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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

480TH PLENARY SESSION HELD ON 25 AND 26 APRIL 2012

Opinion of the European Economic and Social Committee on the 'Seventh Environment Action Programme and follow-up to the sixth EAP' (exploratory opinion)

(2012/C 191/01)

Rapporteur: **Mr RIBBE**

On 11 January 2012 the Danish EU Presidency decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Seventh Environment Action Programme and follow-up to the sixth EAP

(exploratory opinion).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 129 votes to 2 with 6 abstentions.

1. Summary of the EESC's conclusions and recommendations

1.1 The last six Environment Action Programmes (sixth EAP) have been important in shaping European environmental policy, but have not been able to change the fact that many environmental problems in Europe remain unresolved. This is not because of a lack of understanding of the causes of the problems or of ideas about how to tackle them; what is missing is the political will to follow through.

1.2 The sixth EAP (expires in mid-2012) was conceived as a practical environment policy response to the EU Strategy for Sustainable Development issued in 2001; the Lisbon Strategy was its economic policy pillar. The European Commission has – without a corresponding Council decision – quietly allowed the Strategy for Sustainable Development to be forgotten. It sees the

Europe 2020 strategy as its new strategic policy instrument; environment policy is to be coordinated through the flagship initiative *Resource-efficient Europe* within that strategy.

1.3 It would not make sense to the EESC to implement a further environment policy instrument in the form of a seventh EAP, containing those aspects of environment policy not sufficiently addressed by the Europe 2020 strategy, alongside the flagship initiative. It would be unclear as to how such a seventh EAP would interconnect with the Europe 2020 strategy and the flagship initiative *Resource-efficient Europe*.

1.4 The EESC recommends that the Commission, the Council and the EP to breathe new life into the sustainability strategy, to choose a comprehensive, workable seventh EAP as its environment policy implementation strategy, to include the

flagship initiative *Resource-efficient Europe* with all its individual initiatives within it, and to ensure close and careful coordination between environment and economic policy considerations. This would give the Europe 2020 strategy, important as it is, the important task of preparing and implementing the short and medium-term economic and finance policy orientations that are needed on the road to long-term sustainable development.

2. The role of previous EU Environment Action Programmes (EAPs)

2.1 At the Paris Summit of 1972, the European Council decided on measures to improve living standards and conditions and quality of life in Europe. As a result, in 1973 the then European Economic Community adopted the **first Environment Action Programme** for the period 1974-1975. The notable success of this first EAP hinged on its introduction of the 'precautionary principle', which gives priority to preventing pollution over tackling its effects.

2.2 The **second Environment Action Programme** (1977-1981) supplemented the objectives of the first EAP with five 'guiding principles': (a) continuity in environmental policy, (b) measures for setting up the machinery for preventive action, particularly as regards pollution, land use and the generation of waste, (c) protection and rational management of space, (d) prioritisation of measures for the protection of fresh water and sea water, and of those on atmospheric pollution and combating noise and (e) consideration of environmental aspects in the policy of cooperation between the Community and the developing countries.

2.2.1 Thus, the second EAP provided an important initial foundation for broad fields of environmental policy that are still relevant today, such as protection of waterways, waste policy, and international cooperation.

2.3 With the **third Environment Action Programme** (1982-1986), **sustainable use of natural resources** was adopted as an objective of European environmental policy for the first time.

2.4 The **fourth Environment Action Programme** (1987-1992) was adopted in 1987, the European Year of Environmental Protection. It was shaped by the ratification, shortly before then, of the Single European Act, which considerably expanded the environmental policy-making powers of the European Community, while national environmental standards and limit values were simultaneously restricted with the implementation of the European Single Market. Debate on environmental policy was very intense at the time. As the period of the 4th EAP came to a close, the Rio Conference, which dealt with 'global sustainability', was held.

2.4.1 A State of the Environment report published in 1992 made clear, however, that in spite of the efforts so far and the four Environment Action Programmes, most areas of environmental policy showed signs of, or potential for, deterioration; areas mentioned include water and air quality, and biodiversity.

2.5 In response to the Rio Conference and this rather sobering description of the state of the environment, the **fifth Environment Action Programme** was adopted in early 1993, formally for the period 1992-2000.

2.5.1 In line with the debate at the Rio Conference, it articulated the objective of '*transforming the patterns of growth in the Community in such a way as to reach a sustainable development path*' – an intention from that time that has lost none of its political relevance. The fifth EAP can be seen as one of the first EU initiatives for sustainable development, as reflected in its subtitle: 'towards sustainability'.

2.5.2 The **fifth EAP** proposed '**strategies**' for seven areas:

- global warming
- acidification
- biodiversity
- management of water resources
- the urban environment
- coastal zones
- waste management.

It will be noticed that some of these were already mentioned in previous EAPs.

2.5.3 In reviewing the **fifth EAP** in 1996, the European Commission itself pointed to a lack of concrete targets and inadequate participation by Member States as the Programme's weakest points. The Economic and Social Committee also observed in its Opinion of 24 May 2000 '*that the programme has produced a number of positive results,*' but added that it was '*very much worried about the continuing deterioration of the quality of Europe's environment, which it considers the single most important criterion for assessing the effectiveness of the successive European Environmental Action Programmes and European environmental policy at large*'.

2.5.4 The fifth EAP paved the way in policy strategy terms for the **Sustainable Development Strategy adopted in 2001 in Gothenburg** by the heads of state or government.

2.6 This Sustainable Development Strategy was, in turn, to take environmental policy form as the **sixth Environment Action Programme** (2002-21 July 2012), and economic policy form as the Lisbon Strategy.

2.6.1 The sixth EAP was also given a subtitle (*Our Future, Our Choice*). It mentions four priority themes for European environmental policy: (1) **tackling climate change**, (2) **protection of nature** and biodiversity, (3) **environment, health and quality of life**, and (4) **sustainable use** and management of **natural resources and wastes**.

2.6.2 In addition, just like in the fifth EAP, **seven thematic strategies** were declared and later adopted with regard to:

- air pollution
- the marine environment
- waste prevention and recycling
- sustainable use of natural resources
- the urban environment
- soil protection
- sustainable use of pesticides.

2.6.3 As was the case previously, some old themes reappeared in the sixth EAP.

3. The state of environmental policy and of debate on sustainability in Europe at the end of the sixth EAP

3.1 First of all, it is clear that even at the end of the sixth Environment Action Programme, many fields of environmental policy that have been on EAP agendas for a number of years have been addressed inadequately or not at all. To give just two examples:

- 'Protection of soils' has been identified as a priority theme in various Environment Action Programmes for some years now, but has not resulted in any genuine 'actions' at EU level; one reason for this is the failure to achieve consensus in the Council about the draft Directive proposed by the Commission.
- The theme of biodiversity runs almost like a common thread through the history of the EAPs. In 2001 the European Council pledged to arrest the decline in biodiversity by 2010, but even a Biodiversity Action Programme comprising 160 measures was not enough to achieve this objective. In 2011 a new biodiversity strategy was issued with the declared goal of achieving the original objective ten years later.

3.2 In its opinion of 18 January 2012 (NAT/528, CESE 152/2011, 6th EAP final assessment), the EESC addressed the again partly sobering results of the sixth EAP; the opinion also discusses a new State of the Environment report with little positive to say about progress in core areas of EU environmental policy.

3.3 The question as to why many environmental problems in Europe remain unresolved despite many long-running EAPs has not yet really been investigated and answered by the EU. One thing is clear to the EESC: the problem is not a lack of knowledge or of possible solutions, but often a lack of will to take decisive action. What is lacking is putting knowledge, and sometimes even political decisions, into practice. The underlying cause of this is probably that there are often conflicts between necessary action on the environment and short-term economic interests, in which the latter prevail.

3.4 Of chief relevance to the EESC at the end of the period of the sixth EAP, however, is the observation that the Commission appears to have abandoned the Sustainable Development Strategy, of which the sixth EAP formed the environmental policy pillar.

3.5 Whereas previously the Commission and the Council referred to the Sustainable Development Strategy as the framework for all others, including the Lisbon Strategy, there is now an alarming silence on the issue. It no longer appears in the Commission's work programmes (even if the European Council has not issued a formal decision on the matter). The EESC has criticised this on numerous occasions. It reiterates its criticism now and once again makes clear that all but merging the Sustainable Development Strategy into the Europe 2020 Strategy is the wrong move. It has repeatedly stated its reasons for this view, with no response from the Commission, the Council or the Parliament.

3.6 Consequently, previous attempts to coordinate the three pillars of the economy, ecology and social cooperation within a single policy of sustainability have been suspended. Therefore, the framework in which the Commission, the Council and the Parliament wish to coordinate sustainability and environmental policy in future is now unclear.

4. The Europe 2020 Strategy and the prospect of a seventh EAP

4.1 The Europe 2020 Strategy, seen by the Commission as the most important element of its planning and governance framework, at least offers a more or less clear response to the question of how the Commission appears to see things.

4.2 The Europe 2020 Strategy specifies seven flagship initiatives:

- *Innovation Union*
- *Youth on the Move*
- *Digital Agenda for Europe*
- *Resource-efficient Europe*
- *An Industrial Policy for the Globalisation Era*

— *Agenda for New Skills and Jobs*

— *European Platform against Poverty.*

4.3 Without a doubt, *Resource-efficient Europe* is understood by the Commission as a new Environment Action Programme, and the absence of a draft for a seventh EAP even though the sixth EAP is set to expire in July 2012 must come down to this understanding.

4.4 It is thus no coincidence that the European Commission only started working on a draft seventh EAP after the (Environment) Council and the EP critically questioned where the seventh EAP was.

4.5 The Commission has chosen, as part of the new structure for its policy and programme planning, to make the Europe 2020 strategy an overarching strategy to be implemented through the seven flagship initiatives, with the *Resource-efficient Europe* initiative covering environment policy.

4.6 However, it is becoming increasingly apparent that

— on the one hand, certain overarching sectors that were hitherto covered by the sustainable development strategy (e.g. issues such as distribution justice and intergenerational justice) are not adequately addressed by the Europe 2020 strategy, and

— on the other, certain environment policy areas are not mentioned in the flagship initiative *Resource-efficient Europe*.

4.7 Thus, among the 20 individual initiatives that are meant to give life to *Resource-efficient Europe*, there are a considerable number of familiar faces from previous Environment Action Programmes, such as biodiversity, and water and air quality policy (including transport policy). However, the issue of the environment and human health is not given adequate consideration, nor are chemicals policy or nanotechnology.

4.8 The EESC has commented on both the *Resource-efficient Europe* flagship initiative and its road map, making explicit reference to the shortcomings that characterised previous Environment Action Programmes: many fine objectives and promises, few tangible measures, hardly any indicators and little concrete implementation.

4.9 The EESC invited the Commission 'to describe in precise detail within the 20 individual initiatives:

— what exactly is meant by "resource efficiency";

— what can already be achieved simply through technical optimisation; and/or

— which sectors require the "significant transition" it refers to, what this should look like in each case and what instruments are to be used to achieve this, and

— what specific behavioural changes on the part of producers and consumers are considered necessary and how these can be speeded up.'⁽¹⁾

The Commission has failed to respond, however, and instead stuck to vague and noncommittal language.

4.10 The EESC takes this as confirmation that the Commission's approach to date does justice neither to all environment policy needs nor, more particularly, to the requirements of sustainability. This being the case, what could a seventh EAP achieve?

4.11 The time when Environment Action Programmes were needed to ascertain and describe what must be done has passed. Decision makers in Europe are well aware of what they need to do. Only a few fields are in need of further brainstorming; nanotechnology can be seen as one of them. That does not call for a separate Environment Action Programme, however.

4.12 Above all, Europe wants for implementation. There is serious dearth of real action for which all levels (EU, Member States, regions, communities and citizens) are culpable. In this context, the EESC would like to state clearly: the Commission can draw up all the well-intentioned programmes and make all the announcements it likes, but the main responsibility for implementation lies with the political bodies and/or in the Member States.

4.13 The EESC does not consider establishing a seventh EAP just to offer a home to all the environment policy areas that are not covered by the *Resource-efficient Europe* flagship initiative to be a worthwhile option. The interconnection between such a seventh EAP with a) the flagship initiative but also b) the Europe 2020 strategy would remain unclear.

4.14 However, the Committee is open to the idea of a seventh Environment Action Programme if it is clear what it is supposed to achieve, how it can be ensured that it is ultimately more successful than its predecessors and – thirdly and most importantly – if there is clarity as to which overarching policy area it is supposed to serve.

4.15 The EESC recommends that the Commission, the Council and the EP revive the EU sustainability strategy, choose a comprehensive, workable seventh EAP as its environment policy implementation strategy, include the flagship initiative *Resource-efficient Europe* with all its individual initiatives within it, and to ensure close and careful coordination between environment and economic policy considerations. This would give the Europe 2020 strategy, important as it is, the extremely important task of preparing and implementing the short and medium-term economic and finance policy orientations that are needed on the road to long-term sustainable development.

⁽¹⁾ See OJ C 376, 22/12/2011, p. 97, point 1.2.

4.16 In the view of the EESC, such a seventh EAP would need to focus on implementation of absolutely binding decisions on issues that in many cases have been live for years.

4.17 The question is whether Europe is ready and able to do this. There is no ignoring the fact that in politics, time and time again, ambitious goals are set and initiatives called for – and this is equally true of the Commission. However, it is often the very same politicians who then find reasons for failing to adopt or implement them. There is no shortage of examples of this. Whether it be the Energy Efficiency Directive, which is blocked by the Council, or the failure to carry out old promises (in the Sustainable Development Strategy), such as to compile a list of environmentally damaging subsidies and abolish them – there are yawning gaps between word and deed, and the Commission, the Council and the Parliament are called upon to explain to the public how these will be closed.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Promotion of sustainable production and consumption in the EU' (exploratory opinion)

(2012/C 191/02)

Rapporteur: **An LE NOUAIL MARLIÈRE**

On 11 January 2012, the Danish Presidency of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

Promotion of sustainable production and consumption in the EU

(exploratory opinion).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 April 2012.

At its 480th plenary session of 25 and 26 April 2012 (meeting of 26 April) the European Economic and Social Committee adopted the following opinion by 124 votes to 8 with 5 abstentions.

1. Conclusions and recommendations

1.1 In accordance with the request from the Danish Presidency, the EESC has assessed the instruments and measures needed to shift to sustainable modes of production and consumption. Welcoming the awareness and efforts of the European institutions in this area, and with a view to working towards these objectives and ensuring a just transition, the EESC calls for the development of a renewed, joint vision of the economic model, including consultations within a specialised forum with all sectors of organised civil society, in order to set objectives and targets and update the monitoring procedure.

1.2 It would be advantageous to:

— integrate policies for promoting sustainable consumption and production closely with the implementation of the *Roadmap to a Resource Efficient Europe* ⁽¹⁾ and encourage the Member States to implement these policies via the Roadmap and the European Semester;

— make use of a range of cross-cutting implementation and incentive instruments, such as phasing out non-sustainable products, developing a more equitable tax policy, promoting green public procurement, phasing out subsidies that do not take account of negative impacts on the environment, supporting research and eco-innovation, internalising environmental costs, creating other market-based incentives and encouraging consumers and the workforce to play an active part in the transition process.

1.3 The financial system also needs to be addressed ⁽²⁾, so that its focus can be shifted back to supporting an economy based on sustainable production and consumption, by concentrating on areas such as the agro-food industry, agriculture, housing, infrastructure and transport, which have the largest ecological footprint.

1.4 In addition, it is important to go beyond a strict focus on energy and greenhouse gas emissions to take account of other resources and environmental impacts, such as water management and conservation, soil use, and air pollution and the overall impact which products have on the environment.

1.5 By supporting improvements in the production process and in products themselves, consumers can be provided with the goods and services that will empower them to enact changes in behaviour and opinion.

1.6 Lastly, in order to promote sustainable consumption and lifestyles, the role of consumer associations and fair trade producers needs to be strengthened so as to promote and protect alternative, non-predatory forms of consumption and support best practice.

⁽¹⁾ COM(2011) 571 final.

⁽²⁾ EESC opinion on *Regulating financial services for sustainable growth*, rapporteur: Mr Iozia, OJ C 107, 6.4.2011, p. 21 and EESC opinion on *Enhancing economic policy coordination for stability, growth and jobs – Tools for stronger EU economic governance*, rapporteur: Mr Palmieri, OJ C 107, 6.4.2011, p. 7.

2. Introduction

2.1 In December 2011, with a view to reconciling a way out of the crisis, recovery and the EU's undertakings to combat climate change, the Danish government asked the EESC to draw up an exploratory opinion on the **promotion of sustainable consumption and production (SCP)**. Referring to the Commission's *Roadmap to a Resource efficient Europe* and the milestones it sets for SCP ⁽³⁾, the Danish government asked the EESC to assess the instruments needed to transform the European economy into one based on sustainable modes of production and consumption within the EU.

2.2 Hitherto, economic development has been based on the use of non-renewable energies and resources, according to a central paradigm of 'man as master and owner of nature'. The production of goods and services is still characterised by externalisation of costs that should be attached to the extraction of non-renewable natural resources and emission of GHG and other pollutants into the environment. In market economies economic agents must be obliged to internalise these costs by means of binding rules, which should, as far as possible, be applied universally.

2.3 Sustainable consumption and production, offering products and services of better value and using fewer natural resources, is at the heart of strategies for increasing resource efficiency and promoting a green economy. In 2008, the Commission adopted its first SCP Action Plan, incorporating a raft of policies promoting SCP ⁽⁴⁾. Taking account of these milestones, the Commission is now reviewing its SCP policies for 2012.

3. SCP policies/instruments needed

3.1 Creating a shared vision about the economic model

3.1.1 One of the reasons for the low impact of SCP policies so far is the fact that although the concept of sustainability is incorporated in the EU 2020 strategy it is frequently being neglected in practical policy. In the current economic model, the prevailing objective is still to generate growth and increased consumption and overall performance is measured in GDP. A shift towards SCP would require an open and transparent debate about a self-sustaining economic model where success is measured using indicators 'beyond GDP' assessing environmental footprints, human and social well-being and prosperity. In previous opinions, the EESC has proposed that it work together with the Commission to create a forum on sustainable

consumption to explore the values that could shape a sustainable economy, and what prevents people from choosing sustainable consumption patterns and existing experiences of low-impact ways of living ⁽⁵⁾.

3.2 Defining clear objectives and targets and monitoring progress

3.2.1 Many policy areas are involved. In order to assess the current state of SCP and monitor progress towards it, a robust database on the impacts of production and consumption on the environment should be set up to evaluate the effectiveness of SCP policy instruments, further develop strategies and objectives, readjust priorities and monitor progress.

3.3 Involving civil society

3.3.1 Involving civil society at global, national and local level is crucial for a successful transition to a sustainable green economy. A transition of this kind can only succeed if SCP is seen by businesses, consumers and workers as an opportunity and a desirable objective. Appropriate systems for dialogue and democratic participation should be established at each level ⁽⁶⁾.

3.3.2 Accordingly, we need to stop setting industrial investment, business competitiveness and consumer purchasing power against each other. Raising consumer demand is a sure way of stimulating Europe's internal market, whilst also capitalising on the results of European research and meeting environmental protection targets. This will also mean ensuring that investment stays in Europe.

3.4 Integrating SCP policies closely with the implementation of the Resource Efficiency Roadmap

3.4.1 With its flagship initiative and the *Roadmap to a Resource Efficient Europe* ⁽⁷⁾, the Commission has made the promotion of resource efficiency an issue of key importance for European economies. The Roadmap's implementation is integrated into the EU 2020 strategy and the European Semester. The EESC recommends linking the revision of

⁽³⁾ COM(2011) 571 final, pp. 6 and 7.

⁽⁴⁾ COM(2008) 397 final.

⁽⁵⁾ EESC opinion on *Building a sustainable economy by changing our model of consumption*, rapporteur: Ms Darmanin, - OJ C 44, 11.2.2012, p. 57; and EESC opinion on *GDP and beyond – the involvement of civil society in choosing complementary indicators* (own-initiative opinion), rapporteur: Mr Palmieri (See page 1 of this Official Journal).

⁽⁶⁾ OJ C 44, 11.2.2012, p. 57.

⁽⁷⁾ COM(2011) 571 final and EESC opinion on *A Roadmap to a Resource Efficient Europe*, rapporteur: Ms Egan (not yet published in the OJ).

the SCP Action Plan strongly with the work on the implementation of the Resource Efficiency Roadmap and the 7th Environmental Action Programme for Europe⁽⁸⁾, so that SCP policies can benefit from the increased political importance of resource efficiency and the European Semester monitoring framework. The addition of specific SCP indicators within the resource efficiency indicators will also provide a basis for SCP targets and monitoring schemes.

3.5 Encouraging Member States

3.5.1 SCP policy targets as suggested above could move Member States' SCP policies forward. It would also be beneficial for SCP policies to be integrated into the implementation of the Resource Efficiency Roadmap and the monitoring process provided by the European Semester.

3.6 Using a broad range of SCP policy tools

3.6.1 Due to the cross-cutting nature of SCP policy and the many different aspects to be considered, a broad range of policy tools at different levels must be put in place or mobilised in order to move production and consumption patterns towards sustainability. Active policies have to be established at European level and by Member States and local authorities. Instruments have to combine regulatory and voluntary measures, in particular, regulatory measures to phase out unsustainable products, tools to make fiscal policy more equitable, the promotion of green public procurement, the gradual elimination of subsidies that do not take account of negative impacts on the environment, research and eco-innovation, the internalisation of environmental costs and other market-based incentives and the active involvement of consumers and the workforce in the transition⁽⁹⁾.

3.6.2 The Commission's 2008 SCP Action Plan was based on this mixed policy approach and should be kept in the revision process. However, the ambitions could be stepped up and the instruments readjusted, taking into account the objectives to be achieved, the little progress made so far and the opportunities which the transition to a low-carbon economy and lower use of non-renewable resources offer for recovering from the crisis.

3.6.3 Policy instruments used in SCP are to large extent voluntary and information-based instruments (Eco-label, EMAS, consumer awareness campaigns, etc.). Uptake of these instruments by businesses and consumers is rather limited, restricted to certain sectors and social groups. It is unlikely to

be increased by making more use of the same type of measures. The use of regulatory instruments is necessary to phase-out products and consumption patterns that are clearly unsustainable.

3.7 Focusing on areas with the highest environmental footprint

3.7.1 Three areas of consumption - food and drink, housing, and infrastructure and mobility - are responsible for the majority of adverse environmental effects together with energy and industrial production. Consequently, future SCP policies should focus on all these areas. Since the high environmental impacts of food and drink consumption are strongly related to the agricultural sector, SCP policies in this area need to be closely linked to policies promoting sustainable agriculture.

3.7.2 Sustainable agriculture means rational use of natural inputs, support for organic farms and an agro-food industry that can provide healthy, unpolluted foods for intermediate and final consumers. The EESC considers the key to sustainable agriculture to lie in maintaining – everywhere and on a sufficient scale – high-quality, regionally differentiated, ecologically sound food production that protects and cares for rural areas, safeguards the diversity and distinctiveness of the products concerned and fosters Europe's diverse, species-rich cultural landscapes and rural areas⁽¹⁰⁾.

3.8 Extending from energy and GHG emissions to other resources and impacts

3.8.1 In recent years, particular attention has been paid in SCP policies to the issues of energy consumption and GHG emissions. However, production and consumption also has other relevant environmental impacts such as on water management and protection, land-use and air pollution which cannot be neglected. Future SCP policies should therefore extend the application of policy instruments to the consumption of resources other than electricity and should take into account the overall environmental impact.

3.9 Improving production processes and products

3.9.1 In order to encourage producers to improve the environmental performance of their products over the entire life-cycle, the principle of extended producer responsibility, as introduced in some legislative acts, should be enshrined as a general principle and basis of legal corporate accountability and responsibility.

⁽⁸⁾ EESC opinion on the Seventh Environment Action Programme and follow-up to the sixth EAP, rapporteur: Mr Ribbe, See page 1 of this Official Journal).

⁽⁹⁾ See also EESC opinion on *The EESC position on the preparation of the United Nations Conference on Sustainable Development (Rio+20)*, rapporteur: Mr Wilms - OJ C 143, 22.05.2012, p. 39.

⁽¹⁰⁾ EESC opinion on *Rio+20: towards the green economy and better governance*, rapporteur Mr Wilms, OJ C 376 of 22.12.2011, p. 102-109.

3.9.2 A double-track approach should be used to move towards sustainable products. Research into and development of eco-friendly products must be promoted by public funding of research and setting the right incentives for innovation. On the other hand, regulatory instruments such as the Eco-Design Directive should be used to phase-out unsustainable products and to this end the scope of the Eco-Design Directive must be extended and its implementation speeded up.

3.9.3 Establishing transparency about the environmental performance of products and services is crucial, if we want businesses and consumers move towards more sustainability. The Commission's proposal in the consultation on SCP policies to use the Product Environmental Footprint methodology for this purpose seems an appropriate approach. However, it needs to be complemented by other instruments (social criteria beyond GDP, for example) to improve the communication of sustainability information along the supply chain.

3.9.4 New business models need to be promoted to replace the current focus on material throughput with a focus on the creation of value and welfare, for example by putting the emphasis on leasing goods instead of purchasing, car-sharing schemes and logistics concepts reducing unnecessary 'empty' lorry trips through inter-business cooperation.

3.10 *Promoting sustainable consumption patterns and life-styles*

3.10.1 More attention than previously needs to be devoted to changing consumption patterns. The task is to successively decouple consumption from negative environmental impact. A policy mix of instruments must be put in place to promote sustainable consumer behaviour, taking into account the length of resource renewal cycles and their limits, and the global impact (on imports and exports) of the EU internal market.

3.10.2 SCP policies must take account of the fact that sustainable consumer choices require the availability of affordable sustainable products and services on the market, clear and reliable consumer information and economic incentives. In particular steps must be taken to improve consumer information and avoid confusing information and 'green-washing'.

3.10.3 Policy measures should **strengthen the role of consumer associations as agents of change** and facilitate civil society dialogue on sustainable lifestyles by creating *platforms for the discussion* of visions of sustainable lifestyles and the exchange of experiences and best practices.

3.10.4 A change towards sustainable life-styles also requires investment in appropriate public infrastructure. For instance promoting public transport as alternative to the private car require modern public transport systems, sustainable transport

needs infrastructure for electricity and biofuels, and a circular economy requires well-functioning take-back systems and amenity sites for end-of-life products.

3.10.5 The EESC has, on a number of occasions, emphasised the importance of educational programmes to bring about effective sustainable behaviour. The EESC reiterates that such learning programmes should not only be targeted at schools and young people, which is important, but at people at all stages of life and in every social situation, taking particular account of the accumulated inequalities faced as a result of environmental damage or risks.

3.10.6 Shippers, retailers and other actors in the supply chain have a significant influence on sustainable consumption choices through their requirements for global production, logistics etc. The Commission has in the past worked with the most important European retailers in a round-table retailer forum. This strategy might be broadened to other shippers, logistics operators etc.

3.10.7 Green public procurement is an important driver for developing markets for sustainable products. Consideration should be given to introducing better drivers to increase the effectiveness of GPP policies.

3.11 *Setting economic incentives in fiscal policies*

3.11.1 The measures to promote sustainable consumption and production mentioned above can be strengthened if businesses and consumers are stimulated to sustainable behaviour by economic incentives which are – as is well known – not only reflected in market prices. SCP policies therefore have to be accompanied by a greening of the tax system setting economic incentives to ensure that the efforts involved in making the shift are shared fairly between big companies and SMEs and between the public, businesses and consumers, and also by a phasing out of environmentally harmful subsidies. Nevertheless, these efforts will be in vain if they entail sacrificing spending on the European social model by substituting a new tax on non-renewable resources, with no guarantees that this will subsequently be earmarked for funding social protection. This would be dangerous, costly and ineffective. In any case, taxation falls within the remit of the Member States and, from the point of view of future sustainability, it would not be appropriate to increase tax competition between them.

3.12 *Ensuring a just transition*

3.12.1 A shift to a green economy will be sustainable if it generates so-called 'green jobs' in more environmentally friendly production processes, such as the generation of renewable energy, sustainable transport and energy efficient housing. However, reaping the social benefits of this transition requires active policy measures which are based on social dialogue, address social aspects and aim to create decent work and high-quality jobs for the workforce (in terms of salaries,

working conditions and career prospects). Green economic activities and markets must be actively developed and suitable labour skills need to be provided through appropriate support,

vocational training and re-training measures⁽¹¹⁾ that further gender equality and equal participation of men and women in the transition process.

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹¹⁾ EESC opinion on *Promoting green jobs for the EU energy and climate change package*, rapporteur: Mr Iozia, OJ C 44 of 11.2.2011, p. 110.

Opinion of the European Economic and Social Committee on 'Energy education' (exploratory opinion)

(2012/C 191/03)

Rapporteur: **Mr IOZIA**

On 11 January 2012 the Danish Presidency of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

Energy Education

(exploratory opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 'Global development challenges cannot be met if the world's economic powers do not rethink their growth model' – Connie Hedegaard, Commissioner for Climate Action.

1.2 The European Economic and Social Committee (EESC) is aware of the strategic part played by energy education. A substantial change in behaviour is needed to move to the low-carbon economy provided for in the Commission's 2050 Roadmap. It is imperative to involve civil society in order to achieve the EU's objectives, in particular its medium-term target of a 20 % reduction in energy consumption by 2020.

1.3 The main aims of energy education concern combating climate change and restoring harmony between man and nature. We have the responsibility of looking to the future and understanding and anticipating what society's needs will be. This is an extremely important, decisive time in which the European Union, national governments, local authorities, schools, universities, research centres, businesses, industries, banks, trade union organisations, NGOs and the media are involved in an integrated, multi-level approach.

1.4 NGOs' first-hand expertise in developing energy education models and tools is extremely important. Exchanges between professional bodies from the highly-varied world of grassroots associations and teachers at various levels of education will make energy education particularly effective. Combining best practices with teaching experience is the key to obtaining high-quality results.

1.5 The EESC believes it is necessary to develop innovative education, teaching and training methods and combine them

with existing, proven methods. Information and communication technologies will play a key role here.

1.6 The EESC supports the new SET-Plan *Energy Education and Training Initiative*, which brings together bodies from academia, research institutes and industry. Public-private cooperation, particularly in the research and innovation sector, has yielded excellent results and should continue to be supported in the future. The EESC urges the Commission to support these initiatives.

1.7 Energy education will be able to help resolve issues related to poverty and energy insecurity. All citizens must have the right to affordable energy.

1.8 The European Union must give the priority of energy education all due attention and set aside appropriate resources in the next multi-annual financial framework.

1.9 The present opinion stresses the increasing need to support EDEN, a European network of national forums for energy and environment education based on existing local, national, European and international initiatives in this sector.

2. Introduction

2.1 Education is one of the main factors in behaviour change. This opinion highlights the key role of education in the process and reinforces the idea that '*the best energy is unused energy*'⁽¹⁾.

⁽¹⁾ OJ C 77, 31.3.2009, pages 54-59.

2.2 In 2009 the EESC drew up an exploratory opinion at the request of the Commissioner for Energy on *Education and training needs for the carbon-free energy society* ⁽²⁾. It now reiterates the recommendations made in that opinion and raises further points for thought in the light of subsequent developments.

2.3 The radical change we are experiencing today and which future generations will also experience on a global scale makes sustainable energy an increasingly important factor in political, industrial, collective and individual choices. This transition period, which could almost be called a revolution, will yield a system in which our behaviour patterns and way of thinking will be completely different. We have limited time to bring about the transition and so long-term programmes and initiatives need to be launched without delay.

2.4 Energy and the environment

2.4.1 Energy has always played a key part in human life. In particular, the striking change in people's lifestyles and patterns of consumption contributed significantly to growing energy demand. In the coming decades, Europe will have to tackle numerous energy-related challenges, such as:

- the human factor (education, behaviour patterns),
 - globalisation,
 - safety,
 - competitiveness.
- 2.5 *The European Union's priorities and energy education*
- 2.5.1 In order to achieve the main objectives of European energy policy such as security of supply, competitiveness and sustainability, the European Union should factor in these future challenges and make all appropriate changes.
- 2.5.2 The process therefore needs to be given fresh impetus. Everyone should be aware of energy issues and the dangers of failing to achieve the goals set. Smart energy education is the key to changing behaviour. For example, it is essential to develop specific energy education measures in the area of ionising radiation from radioactive waste which is potentially harmful to humans and the environment ⁽³⁾.
- ### 3. Energy education – some considerations
- 3.1 Energy education is one of the keys to building a new development model and fostering a new culture. Moreover, because of the cross-cutting nature of the issue, a joined-up approach is required, encompassing different aspects of modern life and civil society, involving all sectors (farming, services, industry, construction) and all people.
- 3.2 The need for lifelong learning, an education process for individuals that extends throughout school and post-school life, is now greater than ever. The EESC stresses the importance of putting together a smart energy education programme that caters for the various areas of social life – family, school, workplace, cultural and recreational institutions.
- 3.3 To bring about sensible, responsible behaviour, measures are needed to facilitate, encourage and reinforce more efficient energy use. Clear, comprehensible, reliable and, most importantly, accessible information is needed on technologies requiring use of energy. There is a vital role for education as a necessary precursor to gaining public acceptance of legislation on energy saving and efficiency measures both at EU level and in Member States.
- 3.4 Energy education must be provided from infant and primary school onwards. Children are quite familiar with energy-related issues and are highly receptive to new ideas

⁽²⁾ OJ C 277, 17.11.2009, page 15.

⁽³⁾ OJ C 218, 23.7.2011, page 136.

and habits. They can influence the views and actions of their parents and the people around them. The children of today are the workers, employees, teachers, engineers, architects, politicians and entrepreneurs of tomorrow. The decisions they take in the course of their lives will have a huge impact on our society's use of resources.

3.5 Issues related to all aspects of energy and climate change should be included in all the Member States' curricula, from primary and secondary school through university to specialisation. It is vitally important to train the young people of today in the new careers. Energy education can provide practical skills which could meet the energy sector's future requirements, and therefore facilitate job creation in the short-to-medium and long-terms.

3.6 Liberalisation of the energy market and the sector's new technologies pose new challenges for consumers who have thus far bought energy from companies with monopolies. Energy education and training should also include, for instance, *how to use smart meters in a way that saves energy; consumers' rights and obligations when signing a contract with an energy supplier; how to calculate one's carbon footprint; and green labelling*. The experience of the Dolceta project (www.dolceta.eu) has been extremely important and the EESC strongly recommends that it not be wasted but kept visible to the general public.

3.7 Energy education also extends beyond school. Children and young people can influence the wider social community through family and friends, making adults aware of the need to behave more responsibly. If significant results are to be achieved, it is essential to ensure continuity in education measures and educate all people. Energy education needs to be extended and stepped up significantly, to embrace a wide range of target groups, adults and professionals (such as engineers, architects and opinion makers). A targeted trainer training policy is also needed.

3.8 Learning is a highly complex process. There are many key players in the process, each with a specific, important role. The EESC stresses the importance of looking at the best method of education – and therefore development of appropriate teaching and training programmes – for each reference group, taking into account age, gender, cultural differences and level of education. New training media such as social networks should be judiciously explored and developed.

4. The role of the European Union

4.1 The European Union can contribute to the development of quality education and training by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their activities (Articles 149 and 150 of the Treaty). Without neglecting the chronic need to raise

education standards in all areas, the European Union should focus particularly on the need for knowledge and skills in the field of energy. The webpage www.energy.eu already makes a significant contribution. Europe needs chemists to work on capturing solar energy and engineers to design and build smart networks, and that is not all. In addition, the EU must avoid jumping on bandwagons as it did in the case of the subsidies for biofuel production in developing countries, which had undesirable effects, one example being jatropha (a spontaneous desert oilseed plant) crops in certain African countries.

4.1.1 The EESC considers it essential that when the Commission establishes the next multi-annual financial framework, it includes energy education as an integral part of the European strategy for achieving the energy and climate goals that the EU has set itself for 2020 and 2050.

4.2 The role of public authorities

4.2.1 Under the subsidiarity principle, education is a sector which is governed solely by the individual Member States, which have full responsibility for the content and organisation of its education and training systems. National governments should facilitate involvement of all stakeholders in society in defining priorities and setting up energy programmes. Moreover, they should monitor information and make various instruments available to consumers, such as websites for price comparison and/or providing up-to-date information on the different aspects of energy.

4.2.2 Public authorities must set a good example. Regional and local authorities must coordinate activities effectively with a view to helping to build a widespread energy-saving culture. Awareness of the necessary changes and energy efficiency techniques and use of renewable sources must become part of the culture everywhere. Thus, as well as adopting regulatory and technical measures, the institutions must mount widespread information and awareness-raising campaigns targeting all people, businesses and trade associations. In this regard, the EESC is setting an example with its internal EMAS (Eco-Management and Audit Scheme) programme, which has enabled it to obtain the highest level of certification granted by the Brussels Region environment agency (IBGE Ecodynamic Enterprise label).

4.3 The role of schools

4.3.1 Many of our ideas and much of our knowledge are absorbed during our time at school. Schooling is currently based on a traditional system of learning in which there are some gaps in national curricula. With few exceptions, there are no energy or environment education programmes and teachers

with suitable formal training in these subjects are often lacking. For these and other reasons, schools must in the future provide an opportunity to further students' knowledge of energy saving, energy, science, the environment and climate, helping to instil in them an awareness of energy efficiency and giving them the social and analytical skills to be able to rationally assess behaviour and change it in the future. Energy and environment knowledge could be included in the key competences of the European reference framework for lifelong learning. Teachers play a decidedly key role and need teaching materials which are appropriate for the level of education and the subject taught. Every teaching programme should include up-to-date resources and appropriate support and training activities for teachers. The role of universities is essential, as under the Bologna process, whose objectives include building an education system that is in increasing harmony with the fast-moving global world and the EU's interests, which will in turn give qualifications more weight in the labour market throughout the European Area.

4.4 *The role of businesses*

4.4.1 The partnership between education establishments and businesses, which was supported by the EESC in 2009 ⁽⁴⁾, is of fundamental importance. The flexibility typical of the professional sectors, particularly SMEs, can make the partnership one of the main resources for job creation in times of crisis and considerably boost development of the spirit of enterprise and creativity. Research and innovation should be an integral part of this partnership in order to encourage fast transfer of new technologies. Professionals (engineers, architects, etc.) should be given ongoing education in new developments in the sector in question. Seminars on energy-saving should also be held in the workplace.

4.5 *The role of banks*

4.5.1 The role of the banking sector is very important for the economy and society. Banks are involved at numerous stages of people's day-to-day lives and, as well as being financial intermediaries, they should also be trustworthy advisers. By providing dedicated soft loans along with sufficient information, they could support energy and environment education activities, facilitating green investment in various sectors of the economy (construction, transport, etc.).

4.6 *The role of trade unions*

4.6.1 Trade union organisations can do much to further a process in which education and vocational training are tools in a unique plan for civilisation and sustainable development. The green economy, for example, needs skilled staff able to adapt to the changes brought about by developments in technology, research and innovation. Trade unions can play a key role when it comes to individual behaviour as well, raising awareness among their members through schemes, possibly

contractual in nature, which reward responsible behaviour and energy savings achieved. Cooperation between businesses and workers' organisations in this area could yield significant results.

4.7 *The role of civil society (NGOs)*

4.7.1 Consumer and environmentalist organisations play a vital role, given their exceptional contribution of skills and knowledge transfer. They should be involved in raising awareness about consumer issues and energy efficiency at all levels – planning, drafting, deciding on content, distributing information, proposals, dissemination, evaluating results.

4.7.2 NGOs should be the natural partners of national authorities and should be supported in their educational initiatives, which benefit society as a whole. Informal education programmes, liaison with teachers, organisation of educational visits on the ground, specialised mini-campuses and publications for different age groups are all areas which should be delegated to organisations that are active and expert in energy education.

4.8 *The role of the media and social networks*

4.8.1 In disseminating accurate information and providing huge-scale educational activities for all ages, the media have a strategic, valuable role. The messages contained in programmes raising awareness of energy- and environment-related issues should always have scientific depth and be culturally neutral. The details of information provided should be subject to rigorous examination before media tools, particularly television, are used. There are huge stakes involved in the environment and energy sectors, which can influence people in one direction or the other who do not have the knowledge or analytical tools to make an informed assessment of the information received.

4.8.2 Social networks play an equally important, sensitive role, given that their public is essentially young and emotional and tends to become passionate about such important issues. All those who use this facility should comply with a code of practice and agree to be monitored and, if necessary, change information which is ambiguous or biased.

4.8.3 There is no doubt that these tools will become increasingly important in the future. (The number of people currently connected to social networks is greater than the earth's population at the start of the 20th century.) The huge amount of information available will change the language and nature of information provision. Education will be affected by these changes, and we will need to learn how to reduce multifaceted, complex information to bite-sized messages accessible to all. See http://en.wikipedia.org/wiki/List_of_social_networking_websites.

⁽⁴⁾ OJ C 228, 22.9.2009, pages 9-13.

5. The EESC's priorities

The EESC calls for focus on the following priorities:

5.1 Living with the effects of climate change, adaptation and the need for relevant skills. The existence of climate change has been proven by scientific tests and is widely acknowledged throughout the world. Certain events, such as floods, will occur with increasing frequency. It will become vital to adapt to these phenomena if we are to survive. Furthermore, the lack of appropriate specialists could seriously jeopardise achievement of the European Union's short-, medium- and long-term goals.

5.2 Energy efficiency. Energy efficiency is at the heart of the Europe 2020 strategy. The combined effects of fully implementing new and existing measures will transform our daily lives and, in the Commission's view, could generate a saving of EUR 1 000 per year per household, boost the competitiveness of European industry, create up to two million jobs and reduce annual greenhouse gas emissions by 740 million tonnes⁽⁵⁾. Energy consumers play a key role in supporting this process. Everyone, adults included, must change their behaviour, and so appropriate, reliable information on energy needs to be provided.

5.3 Fighting energy insecurity and poverty. Fighting energy insecurity and poverty is now a social priority which must be tackled at all levels. Fossil fuel prices are still rising and this trend looks set to continue in the coming years. If we do not act fast and effectively, the number of vulnerable energy consumers will also rise substantially⁽⁶⁾.

5.4 Securing access to energy for all consumers (individuals and enterprises). Energy is a public commodity and plays a key role in ensuring a country's economic well-being. It is vital to secure supply of energy at affordable prices which will not vary excessively or unpredictably in the coming years, ensuring that all citizens and consumers have access to energy.

5.5 Sustainable mobility. The growing need to transport people and goods from one place to another exacerbates the risk of pollution and congestion, especially in urban areas. A form of sustainable, environment-friendly and energy-efficient mobility needs to be developed. Co-modality is of the utmost importance in this sector.

5.6 Lack of resources (energy, water, raw materials). The 6 to 9 billion increase in the world's population will heighten international competition for natural resources and put pressure on the environment⁽⁷⁾. Preserving fundamental resources such as air, water, the soil, forests and food is therefore essential to promote sustainable growth and create a modern economy.

5.7 ICTs. Information and communication technologies are now an integral part of the information and knowledge-based societies. For instance, smart energy distribution at affordable prices will help considerably to change the behaviour of future generations.

6. Some examples

6.1 There are numerous initiatives and good practices in Europe and the wider world for facilitating education in the field of energy and environmental protection, very often relating to reducing pollutant gases.

6.2 The *Défi Énergie* (Energy Challenge) project, coordinated by the Brussels energy and environment authority *Bruxelles Environnement* as part of the Sustainable Energy Europe campaign, involved around 4 000 people in 1 400 households, reducing CO₂ emissions by the equivalent of a tonne per year, in other words cutting their energy bill by EUR 380 (www.ibgebim.be).

6.3 Italy's Carlo Collodi Foundation has a *Pinocchio ripensa il mondo* (Pinocchio rethinks the world) project targeting primary school children. It is in three phases: differentiated waste collection; energy saving; and ethical choices relating to sustainability (<http://www.pinocchio.it/fondazionecollodi/>).

6.4 With its MUS-E® Arts at School programme, the International Yehudi Menuhin Foundation develops new learning processes through the arts – music, dance, singing, drama and visual arts. The project operates in 11 countries, with 1 026 artists working with 59 189 children in 623 primary schools (www.menuhin-foundation.com/).

6.5 The Spanish Energy Mix Forum (SEMF), open to all energy stakeholders, holds debates on Spain's different energy sources (<http://www.semforum.org/>).

6.6 The Mediterranean summer school (UMET) on sustainable energy in the Mediterranean involves the universities of France, Italy, Portugal, Spain and Greece, as well as Morocco, Algeria, Tunisia, Egypt, Turkey, etc. Over the coming years the summer school aims to expand to other cities (<http://www.ome.org/index.php>).

6.7 The Green Beautiful (*La Belle Verte*) is a 1996 film directed by Coline Serreau which deals with the problems of the western world, including the frenetic pace of life, abuse of power, pollution and unbridled exploitation of natural resources and land (<http://www.youtube.com/watch?v=TTvoZkHugr0>).

⁽⁵⁾ COM(2011) 109 final.

⁽⁶⁾ OJ C 44, 11.2.2011, page 53.

⁽⁷⁾ COM(2010) 2020 final.

6.8 The Commission's Intelligent Energy – Europe Programme has been supporting energy education projects since 2004. These include KidsCorner, U4energy, Flick the Switch, Kids4Future, Rainmakers, Young Energy People, My Friend Boo, etc. As regards professional training in the building sector, the BUILD UP Skills project deserves a mention (<http://ec.europa.eu/energy/intelligent/>).

6.9 My Friend Boo, a fun cartoon series supported by the IEE programme which is the first of its kind in Europe, aims to help young people understand subjects such as energy, climate change, the environment, conservation and health (<http://www.myfriendboo.com/>).

6.10 Other Europe-wide initiatives include the Covenant of Mayors, with over three thousand signatories. From day one the EESC has supported the dissemination of this instrument to as many European municipalities as possible⁽⁸⁾, prompting the Commission to change its strategy. CONCERTO, CIVITAS and the new Smart Cities and Communities Initiative are tools for sharing good practices in the area of sustainable transport and appropriate, intelligent energy use. The SET-Plan Energy Education and Training Initiative lends considerable added value to the SET-Plan project as a whole and develops it.

6.11 Various international initiatives have already been launched, such as NEED (National Energy Education Development Project) – a network of students, educators, businesses and government and community leaders – which started a good 30 years ago in the United States (<http://www.need.org/>); the United States Department of Energy's Energy Education and Workforce Development programme (<http://www1.eere.energy.gov/education/>); and the EnergyQuest energy education website (<http://www.energyquest.ca.gov/>).

7. Public hearing on energy education

7.1 During the EESC public hearing numerous additional interesting experiences in the field of energy and environmental education were presented.

7.2 Representatives of the EACI, the EU-ASE (European Alliance to Save Energy), the Carlo Collodi Foundation, the Yehudi Menuhin Foundation, Solvay, CIRCE, Business Solutions Europa and the ELISAN network, as well as the Covenant of Mayors representative to DG Energy, each with their specific point of view, firmly stressed the key nature of the issue.

7.3 Issues raised during the discussion included the role of education and vocational training, instruction of engineers and graduates in scientific disciplines, the need to strengthen the relationship between universities, research and industry, the

urgent need for public authorities to engage in fighting poverty and energy insecurity, involvement of local communities to develop initiatives and raise awareness relating to intelligent, sustainable energy use, and innovative tools for both informal and formal extra-curricular training.

7.4 One specific suggestion arises from the need to introduce a single, comprehensible energy assessment system, for instance using EUR/MWh as a unit of measure for all products which use energy so as to measure their efficiency and cost immediately.

7.5 The quality of the information provided and content of the education is of the utmost importance. There is a real danger that it can be manipulated to protect interests rather than generate informed decisions. Particular scrutiny from public authorities is therefore necessary to ensure the independence and integrity of the information and education processes.

7.6 One of the most important points concerns the difficulty of systematically incorporating energy education material into school curricula because of lack of time, excessively intensive programmes and different priorities.

8. EDEN: the European energy and environment education network. The EESC–Carlo Collodi Foundation Cooperation Protocol

8.1 The European network of national forums for energy and environment education (EDEN), as proposed in the Exploratory opinion on *Education and training needs for the carbon-free energy society*, could help fill the existing gaps and achieve the EU energy-saving target of at least 20 % and help achieve the European 2050 vision of a resource-efficient, low-carbon economy, and strengthen energy independence and security of supply.

8.2 In order to implement the opinion's proposals and support the establishment of a European network, the EESC and Italy's Collodi Foundation signed a cooperation protocol on 26 March 2010 in which they undertook to work together. Pinocchio, the universally-known character from Carlo Collodi's book, was chosen as the initiative's symbol.

8.3 This European network, based on organisations operating in the field of energy efficiency, renewable energy and environment education, acts as a national distribution channel for suitable programmes and materials, facilitating integration of clean energy, more efficient use of natural resources and guaranteed high environmental standards into national school curricula.

⁽⁸⁾ OJ C 10, 15.1.2008, page 22.

8.4 Thus far, a number of organisations have joined the network. In addition to the EESC and the Carlo Collodi Foundation (IT), which are founder members, the following are currently part of the network: the Terra Mileniul III Foundation (RO), ARENE Île-de-France (FR), Les Péniches du Val de Rhône (FR), the Municipality of Greenland (Greenland), the Climate Action Network (RO), The Mosaic Art and Sound Limited (UK), Art For Green Life (UK/BE), CECE (ES), Intercollege (CY), Business Solutions Europa (BE), EU-ASE (BE), CIRCE (ES), and the Menuhin Foundation (BE).

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

**Opinion of the European Economic and Social Committee on ‘Book publishing on the move’
(own-initiative opinion)**

(2012/C 191/04)

Rapporteur: **Ms ATTARD**

Co-rapporteur: **Ms VAN LAERE**

On 14 July 2011 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Book publishing on the move

(own- initiative opinion).

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 12 April 2012. The rapporteur was Ms Attard and the co-rapporteur was Ms Van Laere.

At its 480th plenary session, held on 25 and 26 April (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 156 votes to 2 with 1 abstention.

1. Conclusions and recommendations

1.1 The book publishing industry is undergoing an evolving process of modernisation that carries important consequences in the digital era.

1.2 The EESC stresses that at EU level, an overall analysis of the role of the book publishing industry in the social, economic, cultural, scientific and artistic development of Europe while addressing the rights and needs of other stakeholders including booksellers, writers, scientists, illustrators, printing and allied industries, libraries and reproduction rights organisations and consumers, should be an immediate priority. The publishing industry needs to be included by the European Commission in the basket of industries when contemplating strategies for Digital Europe.

1.3 The EESC emphasises the importance of addressing the need for adequate EU legislation and policies that have an impact on the publishing industry: intellectual property (in particular copyright) and its enforcement, taxation, information society and cultural policies.

1.4 The EESC reiterates the need at EU level for the elimination of the discriminatory regime that is currently in place both within the EU - where online versions of the same cultural products are currently taxed at standard rates, creating an unjustified distortion between comparable content - and in comparison with the USA where online publishing is tax-free thus creating a non-level playing field and unfair competition.

1.5 The EESC believes that the graphics sector should be encouraged to reverse the economic and technological models that have characterised its development by placing itself at the

hub of information management and distribution, rather than limiting itself to the role of service provider, in line with the European plan for the graphics industry.

1.6 The EESC maintains that a European-level Observatory needs to be set up to measure the printing sector’s current and future skill needs to encourage professional training, career change and re-skilling through public funding for the sector especially via the ESF and ERDF and the European Globalisation Fund, including research through FP7 and Horizon 2020 for the printing industry to remain competitive.

1.7 The EESC stresses that IPR governance is crucial to the flourishing of European culture, science, the arts and the quality of life enjoyed by European citizens, besides being a key factor for technological and commercial innovation.

1.8 The Committee considers that giving consumers a secure digital environment, including effective control over their personal data and privacy, will make digital markets work to the benefit of users.

1.9 The Committee emphasises the social and economic obligations when tackling the digital switch to ensure that the largest number of people of all ages, in every Member State, are able to reap the benefits of the digital revolution.

1.10 The EESC stresses that decent work must be guaranteed for workers, including self-employed workers and contractors, and that this must be subject to social dialogue and collective agreements at national and European levels.

1.11 The adoption of open, interoperable electronic standards is essential to increase competitiveness and prevent the locking up of markets and the creation of dominant positions.

1.12 The EESC stresses the importance of a more integrated single market for services in the Europe 2020 strategy ⁽¹⁾ for all actors and stakeholders in the book publishing industry to grow and create jobs.

1.13 The EESC would like the Commission to encourage the publishing and printing professions to continue their efforts to develop a more participatory model and to operate within a transparent common framework allowing better coordination between the economic, social, technological and environmental dimensions.

1.14 The EESC urges the Commission to enter into a strategic dialogue with the European publishing industry to come to conclusions on strategies that will concretely address the needs of print books and ebooks in the digital era thus also strengthening global competitiveness of this sector. The EESC once more urges the Commission to set up a high-level group including representatives from publishing and the graphics and paper industries, in order to assess the investment and employment prospects available to these sectors in the context of the multimedia revolution.

2. Introduction and background

2.1 As the largest cultural industry in Europe, book publishing is a crucial player in the economic, social, political, ethical, educational, artistic and scientific development of Europe. European literature is one of Europe's key artistic and cultural heritages, embodying the vast diversity of each country as each European language, region, minority is represented and recorded for posterity in books, while promoting intercultural dialogue.

2.2 European publishers (EU Member States plus Norway and Iceland) generated a turnover of approximately EUR 23,5 billion (2010), published a total of about 525 000 new titles and employed a total of about 135 000 people full time. Almost 7,5 million titles were available in stock. Book publishing contributes also indirectly to job creation: more than 100 000 writers, illustrators and literary translators in Europe, and over 25 000 individual bookstores. There is the need for more specific data collection for a more detailed picture of the sector.

2.3 The methodologies of book production, from commissioning to editing, printing and distribution, have undergone considerable changes in execution though not in concept through the centuries, although the book itself has remained unchanged in essence, as a creative artefact. It is with the development of digital publishing that these methodologies are being recast.

2.4 The core creative industries contributed 4,5 % to EU GDP in 2008 representing 8,5 million jobs ⁽²⁾, while the total creative industries contributed 6,9 % to EU GDP in the same year. Within these industries, the publishing sectors contributed 1,07 % to EU GDP in 2003, compared to 0,41 % by the radio/tv/film/video sectors and 0,06 % by the music industry.

2.5 At international level, the European book industry is worth more than that of the US, which has generated an annual turnover of USD 24-25 billion in the past years (EUR 17-19 billion). In addition, every year between six and eight European-owned companies appear among the 10 largest publishing groups in the world. Moreover, the three biggest international book fairs take place in EU countries: Frankfurt, London and Bologna.

2.6 The positive impact of reading on society is highlighted by the OECD, with reading being the best indicator of a child's life chances. Publishing also fosters pluralism of opinions, exchange and dialogue, and freedom of expression - a pillar of a democratic society.

3. The digital transition

3.1 The digital transition in the publishing sector is resetting most of the dynamics, relationships and economic as well as cultural models of book publishing.

3.2 European e-book markets present a fragmented and diversified picture. Rates of growth in the developed markets are very high, but even there the overall size of digital publishing compared to the printed book market is very small (ranging from less than 1 % to maximum 5 % of the book market). The lack of adequate portable reading devices contributed markedly to this slow development until recent years.

3.3 However, more and more publishers are offering their books in electronic format in other fields. A wide range of different business models for providing access to digital book content has arisen after some years of experimenting with technology and innovation. Readers access books on PCs, dedicated e-readers, tablets and also smartphones which are becoming more and more sophisticated and user-friendly, but most of all economically accessible. The expected downwards trend in the price of e-readers is likely to further widen the market.

3.4 New players are entering the chain, thanks to their major roles in connection to end-users in other fields: search engines/portals such as Google, players of the internet including other kinds of online shops such as Amazon which also manufactures the Kindle; electronic device manufacturers, such as Apple, are moving to the content market for their equipment, thus providing their own e-bookstores as well and mobile carriers or internet access providers.

⁽¹⁾ COM(2010) 2020 final.

⁽²⁾ EESC Opinion on *Protection of intellectual property rights/OHIM*, OJ C 376 of 22.12.2011, p. 62.

3.5 E-books offer ease of access to knowledge, culture and leisure activities also for vulnerable groups who have reading difficulties, such as older persons and the physically disabled, and for people who are not reading in their native language.

3.6 The digital book also redefines the ecological impact of the publishing industry. While paper is a renewable and recyclable raw material, the environmental impact of electronic devices including raw metals, and the use of electricity, has still to be gauged further.

3.7 The role of the publisher in the digital era remains crucial: manuscript selection and sieving is a critical function of publishers, irrespective of the format of delivery, if quality is to be ensured. Editing and marketing are other crucial functions where publishers' expertise cannot be done away with.

3.8 The costs of tackling online copyright infringement, investing in digitisation systems, staff and technology, and the costs of file conversions into specific formats are all new costs that emerge with electronic publishing. Costs are saved on printing, physical storage and physical distribution, which have traditionally constituted less than one sixth of the total, since royalties, editorial work, marketing, distribution, digital storage and archiving costs all remain in the digital world.

4. Challenges to the book publishing industry in the digital era

4.1 In 2009, the Council ⁽³⁾ and the Commission ⁽⁴⁾ set up a European Observatory on Counterfeiting and Piracy to improve understanding of intellectual property rights (IPR) ⁽⁵⁾ infringements.

4.2 For a cultural industry like publishing, copyright is the foundation of the legal recognition of the value it creates; a balanced copyright regime is therefore paramount for the sustainability the industry's investment, while stimulating authors to create new works.

4.3 The EESC stresses that effective enforcement of intellectual property rights is necessary, online as much as offline – piracy weakens culture, creativity and the emergence of new

business models and inhibits the development of the market by reducing publishers' and authors' confidence of recouping their financial and intellectual investments ⁽⁶⁾.

4.4 Copyright legislation predates the digital revolution, whereas the realities of download, peer-to-peer file-sharing and Digital Rights Management (DRM) are not always catered for, as has been recognised by the Digital Agenda for Europe, which aims to update EU Single Market rules for the digital era ⁽⁷⁾. Comprehensive EU regulation, currently being discussed, is necessary in addressing regulation and enforcement practices which vary between Member States.

4.5 Fast and consistent resolution of disputes involving charges of counterfeiting or piracy through strong enforcement would increase consumers confidence. European legislation provides for enforcement via Article 8.3 of the Copyright Directive (2001/29/EC), which allows rightsholders to apply for an injunction against intermediaries whose services are used by third parties to infringe copyright, combined with Article 8 of the Enforcement Directive (2004/48/EC) which gives rightsholders the right to any information regarding the identity of the infringer.

5. The challenges of digitisation and globalisation for the printing industry in Europe

5.1 The European printing industry is facing big challenges due to the increasing and widespread use of the Internet and the attractiveness of the new media which is gradually changing the face of the market as a source of information and advertising.

5.2 Other significant factors influencing competition are on the one hand imports from low cost countries (e.g. China) of books that can be printed without specific time constraints and on the other the high concentration of paper and ink-producing companies, which are creating intense global competition, particularly from India and China where the lowest prices can be secured. The EESC emphasises the need to uphold similar social and environmental standards in all production countries.

5.3 These factors and the difficult economic climate have sometimes resulted in a drop in prices and are having a significant influence on employment in industry.

⁽³⁾ Council Resolution, 25.9.2008 (OJ C 253, 4.10.2008).

⁽⁴⁾ Commission Communication of 11 September 2009 *Enhancing the enforcement of intellectual property rights in the internal market* COM(2009) 467 final.

⁽⁵⁾ EESC Opinion on *Protection of intellectual property rights*/OHIM, OJ C 376 of 22.12.2011, p. 62.

⁽⁶⁾ European Commission, Taxation and Customs Union Directorate General, *Report on EU Customs enforcement of intellectual property rights – 2009*, http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/statistics_2009.pdf. Technopolis (2007), *Effects of counterfeiting on EU SMEs*, http://ec.europa.eu/enterprise/enterprise_policy/industry/doc/Counterfeiting_Main%20Report_Final.pdf. <http://counterfeiting.unicri.it/report2008.php>. EESC Opinion on the *Protection of intellectual property rights*/OHIM, OJ C 376 of 22.12.2011, p. 62.

⁽⁷⁾ Europe 2020: A strategy for smart, sustainable and inclusive growth, 3.3.2010.

5.4 According to figures published by Eurostat for 2009, the European printing industry is made up of 119 000 companies (down from 132 571 in 2007), employs over 735 000 people (down from 853 672 in 2007) with a turnover of over EUR 88 billion (down from EUR 110 billion in 2007).

5.5 However, the introduction of digital printing has allowed for innovation in the cooperation between publisher, printer and users, where books can be printed on demand down to one single copy.

5.6 Printing companies are taking steps to integrate services along the value chain such as storage, database management, design for web or print, e-books as well as developing their pre-press department.

5.7 The EESC supports the proposals of the 2007 Commission report on competitiveness of the European printing industry; however, the Committee calls on the European Commission to set up a European social dialogue committee for this sector as a whole; currently formal social dialogue between employers and trade unions exists at company and national level only.

5.8 The EESC agrees with the Intergraf recommendations, particularly for an independent study on the development of technology (printing technology as well as mobile and internet technology), demographic influences and consumer behaviour.

6. The challenges for booksellers

6.1 Difficulties have arisen due to large retailers imposing territorial limitations to their online sales. Crucially, entrenched distribution systems are being bypassed as a new hegemony of online digital booksellers is taking shape.

6.2 Traditional booksellers are culturally important, retaining personal contact/relationship with consumers also online and offering services that the internet cannot offer.

6.3 Bookshops today are being used as showrooms for books that are then purchased by the consumer online – thus providing free marketing and promotion to their online competitors. However some traditional booksellers need retraining as they lack knowledge of online social media, and need to be innovative in their marketing and product selection. Standards in the digital world are still weak: for example, while practically all printed books have ISBNs, not all e-books do.

6.4 Synergies need to be sought and encouraged between European Library Associations and booksellers. Digitisation is creating a degree of friction between booksellers' and publishers' concerns about e-book piracy on the one hand, and libraries' enthusiasm to promote e-book lending on the other hand. Legal distinctions between lending (of printed books) and e-lending

need to be highlighted, practised and enforced by all parties. A setup that combines embedded anti-piracy safeguards and facilitation of e-lending for legitimate library lending should be examined by the stakeholders.

6.5 With their dual market dominance in sales platform and e-reader (Kindle and iPad), Amazon and Apple have taken a lead that is enabling them to dictate prices and terms and conditions to all other players in the industry. This non-European dominance is also negatively affecting smaller publishers, who do not have the clout to negotiate terms imposed by Amazon and Apple.

6.6 The adoption of open, interoperable standards will prevent the locking up of markets and the creation of dominant positions by some large players currently using closed proprietary technologies that tie the use of certain devices to their own catalogues or vice-versa, thus increasing competition.

7. Taxation and pricing

7.1 A wide majority of countries in the EU and worldwide apply a reduced rate of VAT to the sales of printed books, in recognition of the benefits that readership brings culturally, educationally, scientifically and for society at large.

7.2 Nevertheless, a discriminatory regime is currently in place in the EU, as the online versions of the same cultural products are currently taxed at standard rates, creating an unjustified distortion between comparable content.

8. Preserving orphan works and out-of-print works ⁽⁸⁾

8.1 The EESC agrees in general with the proposed directive for a legal framework to ensure the lawful cross-border online access to orphan works ⁽⁹⁾.

8.2 Very few Member States have implemented orphan works legislation, and even where it exists, it is limiting access to citizens resident in their national territories.

8.3 Article 5.2.c. of the Copyright Directive allows publicly accessible libraries, educational establishments, museums and archives to reproduce works protected by copyright without asking prior permission, provided that those institutions are for no direct or indirect economic or commercial advantage and that the process respects the Berne three-step-test; however any other making available to the public through the internet requires prior right clearance.

⁽⁸⁾ EESC Opinion on the *Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works*, OJ C 376 of 22.12.2011, p. 66.

⁽⁹⁾ EESC Opinion on *Protection of Intellectual Property Rights/OHIM*, OJ C 376 of 22.12.2011, p. 62.

8.4 In terms of out-of-commerce works, book publishers initiated a dialogue that led to the signature of a Memorandum of Understanding on 'Key principles on digitisation and making available of out-of-commerce works' by all stakeholders involved. As yet, no legal structure exists for voluntary agreements between the various stakeholders on out-of-commerce works to be recognised across borders.

8.5 The successful completion of this dialogue will boost the development of digital libraries like Europeana and other public institutions performing public interest missions.

8.6 The ARROW system built by a consortium of stakeholders in the book sector and with the support of the European Commission provides a practical solution by creating a cost-effective tool enabling users to quickly and effectively find information about the rights status of a work and its rightholders.

8.7 Public-private partnership between libraries and publishers can increase access to in-commerce books through digital libraries. Several such partnerships are already in place.

8.8 The question of legal deposit of e-books needs to be discussed among all stakeholders to balance the interests of libraries to collect, preserve and make available these e-books, with guarantees against abusive electronic dissemination.

9. Language and mobility

9.1 Language being an intrinsic part of publishing, there are inherent mobility issues in the book publishing industry, especially where SME publishers are concerned.

9.2 With the exception of English-language publishers, book publishers and employees face considerable challenges to move from one Member State to another, since most SME publishers tend to be medium-sized outfits that publish in a single language⁽¹⁰⁾.

9.3 Some of the newly developing e-book platforms are acting as barriers to language mobility. The largest e-book reader producer – Amazon, an American company – is denying access to all minority languages, including 18 of the EU's 23 official languages, from its Kindle e-reader, thus in effect banning the literature of 18 EU languages from the largest e-book platform in the world.

10. Towards a confident and informed consumer

10.1 The consumers' relationship with the book is changing as digital book storage leaves no physical trail, book purchase is instantaneous.

10.2 The EESC believes that all IPR policy initiatives need to recognise consumers as relevant stakeholders in the IPR debate.

10.3 The development of a dual existence of digital and physical books has to be gradual and complementary to the sustainability of print publishing. A considerable number of European citizens are still not comfortable with dealing in electronic transactions, and/or accessing and consuming content digitally. Measures leading to the acquisition of confidence and narrowing the digital divide can help to increase social inclusion.

10.4 The EESC supports the European Consumers' Organisation (BEUC) for the recognition of net neutrality as a regulatory principle. The European Commission should build on the ongoing work of the Body of European Regulators for Electronic Communications (BEREC) and adopt a binding instrument that will ensure the coherent and effective protection of net neutrality across Europe.

11. Market access for SMEs

11.1 The EU-wide dominance of chain bookstores has provided some restrictions to access to the market for smaller publishers. Publishers without the required financial clout to negotiate their presence into the chains are finding their access to consumers in large part blocked by their under-representation on bookshelves.

11.2 Traditionally in the publishing industry, smaller publishers have been the hotbed of innovation and creativity, and their limited access to the market can have serious repercussions on the vitality of this creative industry.

11.3 Niche book publishers often rely on funding and subsidies for their continued financial existence.

11.4 Businesses, in particular SMEs, need to invest in research, development and innovation⁽¹¹⁾ backed by appropriate legal, administrative, fiscal and financial framework conditions.

11.5 Today, only 8 % of European SMEs do business in other Member States. 92 % of businesses are microenterprises⁽¹²⁾ that operate on a highly diverse range of markets; therefore more focus needs to be given in the Small Business Act to address their specific needs.

11.6 The book publishing industry is peculiar in its reliance for financial independence on a relatively small number of bestsellers. These in turn subsidise the less commercially viable but culturally and socially essential literary genres.

⁽¹⁰⁾ EESC Opinion on *SMEs adapting to global markets*, OJ C 255 of 22.9.2010, p. 24–30.

⁽¹¹⁾ EESC Opinion on *Investment in Knowledge and Innovation*, OJ C 256 of 27.10.2007, p. 17.

⁽¹²⁾ EESC Opinion on *Review of the Small Business Act*, OJ C 376 of 22.12.2011, p. 51.

11.7 SME publishers need financial and organisational assistance as the costing model for non-mainstream literature is rarely financially viable. Furthermore, most SME publishers do not have the resources for putting together viable proposals for accessing EU R&D funding.

11.8 The EESC stresses the importance of a more integrated single market for services in the Europe 2020 strategy ⁽¹³⁾. This is necessary to help businesses including SMEs in the book publishing industry to grow and create jobs.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹³⁾ EESC Opinion on *Single market for services*, OJ C 318 of 29.10.2011, p. 109–112.

**Opinion of the European Economic and Social Committee on ‘Cooperatives and restructuring’
(own-initiative opinion)**

(2012/C 191/05)

Rapporteur: **Ms ZVOLSKÁ**

Co-rapporteur: **Mr OLSSON**

On 14 July 2011, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Cooperatives and restructuring.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 April 2012. The rapporteur was Ms ZVOLSKÁ and the co-rapporteur was Mr OLSSON.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 148 votes with 1 abstention.

1. Conclusions and recommendations

1.1 By their very nature and the business model they provide, cooperatives are contributing to the EU 2020 strategy. They are managing change in an economically efficient and socially responsible way. They are contributing to social and territorial cohesion. They are organising new and innovative business models to increase competitiveness. All this should be highlighted in 2012, the International Year of Cooperatives.

1.2 With the notable exception of some sectors cooperatives represent a limited part of the European economy. However data reported in this opinion show that in times of crisis cooperatives are more resilient and stable than other forms of enterprise as well as they develop new entrepreneurial initiatives. This can be attributed to the specificity of the cooperative enterprises: their long term approach, their strong territorial roots, their promotion of members' interests, and their focus on cooperation among themselves. The manifested cooperative excellence is important to disseminate and develop in national and EU policies.

1.3 Diversity of enterprise is recognised by the Treaty and the specificities of the cooperative model have been recently acknowledged by the European Court of Justice (Judgement of the Court (First Chamber) of 8 September 2011 – Joined Cases C-78/08 to C-80/08) which legitimises targeted policies.

Recommendations for EU policies

1.4 Cooperatives should therefore be taken into account in all EU policies contributing to smart, sustainable and inclusive growth as well as in the relevant flagship initiatives of the EU2020 strategy. A level playing field between cooperatives and other forms of enterprises must be ensured whilst preserving the aims and working methods of cooperatives.

1.5 In order to high-light the particular cooperative experience in restructuring cooperative enterprises should take part in the aims and actions of EU industrial policy including the specific Flagship Initiative.

1.6 The EU Commission and the EIB/EIF should ensure that EU level financial mechanisms – including the SME financing action plan suggested in the Single Market Act – must be accessible by the cooperative enterprises and should make a special effort together with the cooperative banking sector to see that this is the case also identifying specific instruments. The intermediation role of EIB financial instruments for smaller cooperative banks should also be made easier in particular through simplified administrative requirements.

1.7 New rules on public procurements and state aid (Almunia package) should come into force as soon as possible. These rules and their implementation in the Member States should be simplified and incorporate specific measures in order to improve opportunities for social cooperatives that employ persons with disabilities or other disadvantaged groups. They should also cover the experience of cooperatives managing properties that have been confiscated from illegal activities (cf Italian case of mafia property).

1.8 Measures to facilitate the transfer of businesses to employees should be introduced following the EESC proposal of a framework facilitating Employee Financial Participation. Worker cooperatives/worker buy-outs should be supported by a specific EU budget line that also includes financial instruments.

1.9 The programmes and funds that are established for the upcoming EU budgeting period 2014-2020 have to become important instruments for supporting cooperatives, in particular the Structural Funds. When defining operational programmes, priorities and measures should focus on providing support for

sustainable enterprise development and responsible restructuring and include measures such as business transfers to employees, social cooperatives, local development and social innovation using global grants and other financial instruments.

1.10 The EESC asks that a simplified regulation on the European Cooperative Society be adopted during 2012. This should be supplemented by an update of how cooperatives principles are implemented in national laws.

1.11 The EESC urges Eurofound (European Foundation for the improvement of living and working conditions), and particularly its European Monitoring Centre on Changes to collaborate with the cooperative sector, to examine in detail the role played by cooperatives in restructuring.

1.12 The upcoming EU research programme Horizon 2020 should also include specific references to study factors behind the resilience during the crises.

1.13 By their objectives and governance model, cooperatives are a natural stakeholder in the social business initiative recently launched by the EU Commission. The key actions proposed should therefore also target the cooperative sector. One urgent issue is to take into account the cooperatives experience on tailor made financial instruments also in the recent proposal for European Social Entrepreneurship Funds.

Recommendations for Member States policies

1.14 In line with ILO Recommendation 193/2002 on the Promotion of Cooperatives Member States should create an enabling environment for the recognition and the development of cooperatives in all fields and sectors and adopt a comprehensive policy to support the cooperative business model. In particular, they should foster education and training on cooperatives for both students and workers, improve statistics to identify and make the cooperative sector more visible, to modernise legislation on cooperatives, introduce appropriate financial tools, and recognise the cooperatives' role in the national social dialogue. They should study the possibility to introduce in their legislation the indivisible reserves or 'asset lock' regime for cooperatives, which already exists in a substantial part of the EU member states, and has proved to be an important development tool.

1.15 The EESC recommends national ESCs to adopt opinions within the framework of the International Year of Cooperatives.

Recommendations to Cooperatives

1.16 Cooperatives should make themselves more visible and reinforce mutual learning both inside and outside the

cooperative movement. Inside, they should focus on 'cooperation among cooperatives'. They should draft guidelines and actively disseminate good practices with particular attention to the management of change. Outside, they should engage themselves in partnership with other private businesses, public authorities and other actors.

1.17 Cooperative Social Responsibility (CSR the cooperative way) reports should be a major instrument for visibility and promotion. The cooperative sector should also establish rules for good governance and strict internal auditing in order to avoid abuse of the cooperative form.

2. Introduction

2.1 The object of this opinion is to highlight how cooperative enterprises, because of their particular business model, anticipate and manage change in industry and services in the current crisis, the impact on employment being particular severe, as pointed out by recent ILO reports. It is aimed at raising awareness on the role of cooperatives as a form of enterprise that brings in new perspectives of social innovation and contributes to the sustainable generation and distribution of wealth.

2.2 The cooperative business model is people-centred. The cooperative enterprise has been defined by the International Cooperative Alliance (ICA), and recognised by various international institutions (UN, ILO, EU) as 'an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations, through a jointly owned and democratically controlled enterprise'.

2.2.1 The opinion should also feed into the current CCMI work on restructuring ⁽¹⁾.

2.3 The cooperative identity is enhanced by the values of democracy, equality, equity, solidarity, transparency and social responsibility. ICA has established seven principles for cooperatives to follow: 'voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives and concern for community'.

2.4 The cooperative business model is fully in line with the values of the EU Treaty and the aims of Europe 2020 strategy. By pursuing both economic and social objectives cooperatives are an indispensable part of the 'social market economy'.

⁽¹⁾ COM(2012) 7. *Restructuring and anticipation of change: what lessons from recent experience?*

2.5 Cooperatives have a long-term objective of achieving economic and social sustainability through empowering people, anticipating changes, optimising the use of resources. Their profits are not used to maximise the remuneration of capital but to distribute benefits towards sustainable investment.

2.6 Being people-centred and controlled by members, the cooperative enterprise has strong local roots. This is not in contradiction with its capacity to operate in national and international markets.

2.7 The flexibility and the creativity of the cooperative method permitted cooperatives to operate in all sectors of the economy, traditional as well as new ones.

2.8 In Europe there are 160 000 cooperative enterprises owned by 123 million members, providing jobs for 5.4 million people.

2.9 The cooperative enterprise form is not well-known either among citizens in general or in the private business and public administration sectors. In some countries 'cooperative' even has a bad connotation particularly in Central and Eastern Europe countries. Cooperatives are not recognised as fully-fledged enterprises in the same way as conventional companies. In some Member States the obstacles for cooperatives development have become worse over the last years (e.g. Poland where an attempt of new cooperative legislation tried to reduce the autonomy and independence of cooperatives and Italy where fiscal advantages to compensate for the societal role of cooperatives have been strongly reduced).

2.10 Access to venture capital and credit on the regular capital market is difficult for cooperatives.

2.11 There is not always a level playing field as the specific features of cooperatives are not taken into account in national and European legislation and programmes to support business.

3. Business restructuring challenges in Europe

3.1 We are witnessing a large-scale restructuring as a consequence of the crisis in the European economy. Socially responsible restructuring strategies are essential in order to avoid additional enterprise closures and failures, preserve and create employment and organise social welfare by boosting competitiveness and local development.

3.2 The European Commission considers that restructuring involves a wider conception of enterprise innovation which should be 'part of a long-term vision of the development and direction of the European economy in order to ensure that the changes really are a way of strengthening its competitiveness', including organisational and social patterns, so as to ensure sustainable territorial development. For this purpose, the Commission considers innovation as 'generated not only through research and technology, but also through new marketing and management solutions'.

3.3 The Commission has observed that 'companies which are able to handle restructuring in a socially responsible manner are often those with better track records in terms of market competitiveness and resilience' (2).

3.3.1 The Commission has also expressed the wish that responsible restructuring should include the involvement and participation of the workers (3). The EU-level social partners have established the principles of a 'socially intelligent' restructuring in a joint text laying emphasis on the importance of creating and saving jobs.

3.4 The Commission wants to facilitate conditions for the transfer of businesses to employees:

— 'Employees have a particular interest in the sustainability of their enterprises and often have a good understanding of the business in which they work. However they often lack the appropriate financial means and support to take over and manage an enterprise. Careful and gradual preparation of transfers to employees organised in the form of a workers' cooperatives can improve survival rates' (4). 'If no family successor can be found a transfer to employees ensures a large degree of continuity of the business'. However 'only a few Member States encourage such transfers by providing special income tax relief (...)' (5).

3.5 The Commission has invited Member States to develop a framework for business transfers to employees based on best practices to avoid closure. As for example the single payment in Spain (pago unico) and Legge Marcora in Italy, which allow unemployment benefits to finance new cooperative start-ups.

4. The specificity of the cooperative economy: resistance and new developments also in times of crisis

4.1 Cooperative enterprises are displaying a stronger resilience in time of crisis compared to conventional enterprises. This particularly applies to cooperative banks, worker cooperatives in industry and services, social cooperatives, and cooperatives formed by SMEs. Also the cooperative business model is emerging in new sectors (energy, liberal professions etc.). Restructuring has opened up an additional space for cooperatives to contribute towards a genuine pluralism of the economy and, in particular, of enterprises when looking for more sustainable models of production and consumption.

(2) COM(2005) 120. Restructuring and employment - anticipating and accompanying restructuring in order to develop employment: the role of the European Union.

(3) COM(2001) 366. Promoting a European framework for Corporate Social Responsibility.

(4) COM(2004) 18. On the promotion of cooperative societies in Europe.

(5) COM(2006) 117. Implementing the Lisbon Community Programme for Growth and Jobs: Transfer of Businesses - Continuity through a new beginning.

4.2 According to the ILO report 'Resilience of the Cooperative Business Model in Times of Crisis' financial cooperatives remain financially sound; consumer cooperatives are reporting increased turnover; worker cooperatives are seeing growth as people choose the cooperative form of enterprise in order to respond to new economic realities.

4.3 This is particularly shown in the banking sector. No cooperative bank has yet failed in the EU. Data from the European Association of Cooperative Banks shows that they have a market share of about 20 % of deposits. They finance around 29 % of SMEs in Europe. They have increased their market share steadily over the last few years. In the UK the Cooperative Banks have quadrupled their market share from 1.2 % in 2009 to 5 % in 2010. In Italy the BCC – Banche di credito cooperativo system, increased its deposits in the last five years by 49 %, loans by 60 % and employment by 17 % (while in the rest of the Italian banking sector the employment decreased by 5 %). In Cyprus the Cooperative Credit Institutions, according to the Authority for the supervision and development of cooperative societies, increased their market share during 2011 (from 35 to 38 % in deposits, from 27 to 29 % in loans) confirming that Cypriots consider the Cooperative Credit Institutions as a safe harbour in time of crisis.

4.4 The International Monetary Fund ('Redesigning the Contours of the Future Financial System', IMF staff position note – 16 August, 2010 SPN/10/10) underlines the essential role of cooperative banks: 'Smaller, cooperative banks or mutual institutions may also thrive. These banks, less reliant on shareholders' expectations, were generally able to avoid many of the mistakes made by larger private sector institutions. Though not always considered the most efficient, vibrant, or innovative institutions, in many countries they dependably and safely supply the small and medium-sized enterprises and many households with their credit needs'.

4.5 CECOP – the European confederation of workers and social cooperatives and other employee-owned enterprises in industries and services – has since 2009 observed the effects of the crisis on the enterprises within its network. Cooperatives in countries with a stronger level of cooperative implantation and experience (France, Italy, Spain), seem to be more resilient in weathering the crisis than conventional enterprises active in the same sectors and the same territories.

4.6 Different kind of social cooperatives play an important role in the restructuring process and have been major instigators of social innovation. Work integration cooperatives employ many people that have been laid off and could not come back to the normal employment market. In some countries social cooperatives are major employers of disabled people (e.g. Bulgaria, Czech Republic, Poland, Italy ...). Cooperatives providing social services are active in the restructuring of the public sector. A specific new phenomenon are the Italian cooperatives that manage the 'confiscated properties from illegal activities'.

4.7 In a sector seriously hit by the crises, housing cooperatives are proving much more resilient than the private sector, measured by new housing production. They are also more strongly committed to reducing greenhouse emissions by increasing energy efficiency. This role is particularly important in some EU countries where, for example in the Czech Republic and Poland, large cooperative renovation projects are implemented, often financed by the European Regional Development Fund.

4.8 A rapid overview of some European countries shows the relative superior performances of cooperative enterprises when it comes to growth, employment, survival rates, start-ups (see in particular: Zevi A., Zanotti A., Soulage F. and Zelaia A. (2011), 'Beyond the crisis: Cooperatives, Work, Finance', Cecop Publications, Brussels 2011).

4.8.1 In 2009 in the UK cooperatives turnover grew by 10 % whilst the UK economy contracted by 4.9 %. In 2010 the cooperative sector continued growing by 4.4 % compared with a growth rate for the British economy as a whole of 1.9 %. The number of cooperatives in the UK is increasing steadily, with a 9 % increase in 2010. There is cooperative growth in all sectors of the economy.

4.8.2 In Germany, the cooperative sector is expanding, particularly in the field of energy, SMEs and health care. Over the last three years there is an extraordinary growth in new cooperatives: 370 in 2011, 289 in 2010, 241 in 2009 (Genossenschaften in Deutschland from DZ-Bank). According to DGRV Geschäftsbericht 2010, based on figures from Creditreform-Datenbank, in 2010 only 0.1 % of the insolvencies concerned cooperative enterprises, the lowest figure among any enterprise form. However, it has also been affirmed that joining a cooperative reduces very much the failure risk of the individual member enterprises.

4.8.3 In France the survival rate of worker cooperatives after three years is 74 % compared with the national average of 66 %. 329 enterprises were converted into worker cooperatives between 2000 and 2009. More than 250 of them have survived. The figures for 2010 confirmed the upward trend seen during the last three years in particular. More than 50 new conversions took place (CG SCOP Annual report 2010).

4.8.4 In Italy employment in cooperatives grew by 3 % in 2010 against a back drop in total private employment of 1 %. The crisis in welfare means that the number of social cooperatives has grown fast. Most new cooperatives are start-ups but approximately one in four are 'spin offs' promoted by other cooperatives. Cooperatives have a longer life expectancy. One third of the cooperatives created in 1970-89 are still alive as against one quarter of other enterprises. Mortality is lower; 4 % of cooperatives closed down between 2006 and 2009 compared with more than 6 % of other companies. Bankruptcy was the most dramatic cause for closure, affecting 2 % of cooperatives in 2009 compared with 6 % for other enterprises. Employment in cooperatives measured by type of labour contracts is less precarious. 6 % of newly recruited workers

have temporary work contracts as against 11 % in other enterprises. Training was provided to 40 % of the staff in cooperatives, compared with the national average of 26 %.

4.8.5 In the case of Spain, which has been particularly hit by the crisis, job reduction in 2008 and 2009 was 4.5 % in the cooperative sector compared with 8 % in conventional enterprises. However, in 2010 worker cooperatives increased their number of jobs by 0.2 % while total employment decreased in conventional enterprises by 3.2 %.

4.8.6 In some countries we find similar situation as described above. For instance, in Sweden the number of cooperative start-ups has been proportionately higher than other start-ups. The mortality rate of cooperatives is lower than for conventional enterprises. Also, the cooperatives in Cyprus show growth. The government underlines their contribution to the economic and social improvement of the society is of vital importance.

5. How cooperatives manage change

5.1 The specific cooperative governance model, based on joint ownership, democratic participation and members' control, as well as the ability of cooperatives to rely on their own financial resources and support networks, explain why cooperatives are more flexible and innovative in managing restructuring over time, as well as in creating new business.

5.2 A long-term view is a basic feature of a cooperative enterprise. The crisis has strengthened the long-term approach to achieve economic and social sustainability for their members. A cooperative enterprise will sacrifice return on capital in order to maintain employment and investments.

5.3 Another basic feature of their governance is that cooperatives are rooted in the territory in which they operate. Unlike the private sector, they do not delocalise, this is not incompatible with globalisation.

5.4 Because of their local roots the role of cooperatives is becoming ever more important by promoting local sustainable development, creating new jobs and thereby pursuing general interest. As restructuring takes place at local level the experience of cooperatives is important to draw upon when solutions are to be found. In rural areas they maintain economic and social activities, thereby also reducing migration.

5.5 Their territorial anchorage and their focus on members' (households or small enterprises) interests explain why cooperative banks have fared well during the financial crisis. Cooperative banks also have a very strong focus on sustainable and socially responsible financing. The effects of their conduct

have been reinforced by customers switching their deposits and loans from private banks to cooperative banks.

5.6 Cooperatives safeguard employment through a model of internal mobility combined with job security. Worker and social cooperatives prefer to adjust their salary levels or the number of hours worked, rather than cut jobs. Whenever possible they have internalised activities that they had previously outsourced. Job security has been reinforced by sharing available jobs between enterprises within the same cooperative network or group. The model of creating security for workers during the transition process is backed up by vocational training, as cooperatives focus on human resource development.

5.7 Cooperatives have for a long time developed various kinds of modalities by which they cooperate among themselves in a permanent way, both through representative organisations at all levels and through entrepreneurial combinations such as groups, consortia and secondary cooperatives. Over the last few years and decades, we can observe a strong consolidation of this trend, with a proven positive correlation between the growth of cooperatives and the development of the institutions that connect them to one another.

5.8 The potential of representative organisations is well illustrated by the Italian example. Italy is characterised by the existence of several cooperative intersectoral associations. All types of cooperatives (worker, consumer, agricultural, etc.) are members of one of these associations. This pattern has facilitated the establishment of common economic structures between sectors, which are factors of great importance. Thanks to the possibilities of transferring human and financial resources, as well as experiences, from one sector to the other, many cooperative enterprises and sectors are able to cope with even the most difficult times.

5.9 Groups, consortia and secondary cooperatives allow individual enterprises to remain small while taking advantage of economies of scale. Italy is a good example of consortia in the construction and service sectors and in the area of social cooperatives, which substantially contribute to the development of small as well as new cooperatives. Small consortia of social cooperatives can also be found in other countries such as Sweden. Important cooperative groups can be found in other sectors such as agriculture, manufacturing, banking and distribution in various other EU countries such as France, Germany, Spain, and the Netherlands, among others.

5.10 The Spanish Mondragon group is an outstanding example of how individual cooperative enterprises can organise themselves on a voluntary basis into a large scale entrepreneurial group comprising industry, agriculture, distribution, finance, R&D and higher-level education. A striking aspect of Mondragon is the capacity to maintain employment in globalised industrial sectors, and to engage in a continuous restructuring of products, processes and after sale services, through their industrial platforms across the world and an innovation triangle comprising the group's industrial enterprises, university and R&D centres.

5.11 SMEs can also organise themselves in cooperatives, following the same logic of increasing their business scales. This experience has, for example, been very successful in Germany where cooperatives of small enterprises are important, in such trades as bakery, butchery, etc.

5.12 New phenomena are emerging to respond to the needs of certain groups. The cooperatives formed by medical doctors in Germany which were mentioned earlier is such an example. In Italy in particular, the younger generation of highly specialised professionals is starting to use the cooperative enterprise model to exploit market opportunities. Thereby they combine self-employment with a collective entrepreneurial form. A recently approved Italian law on the professions, which was part of the overall package of economic reforms, supports these initiatives.

5.13 So-called 'Activity and Employment Cooperatives' have been created in France and, to a lesser extent, Belgium and Sweden. They enable the unemployed to become self-employed, organising not only their commercial activities but also their vocational training and social security within a cooperative enterprise.

5.14 Cooperatives can normally not obtain great quantities of capital from their members and have no easy access to

capital markets. Cooperatives have developed their own financing mechanisms. Cooperative shares are usually non-transferable and profits are not used to remunerate capital, but are normally re-invested in the enterprise under the form of reserves, which reflects their long-term strategy: it is the interest of their members to avoid excessive risk and to allocate investments in activities directly serving their needs.

5.15 In some EU countries, such as France, Spain and Italy, these reserves are indivisible, namely they cannot be distributed among members even in case of liquidation, but must be used for the development of the cooperative movement. Indivisible reserves have proven to be a strong deterrent against demutualisation.

5.16 Legal provisions have been introduced in some countries to allow outside parties to provide venture capital, both with and without voting rights, in cooperatives (e.g. 'socio sovventore' in the Italian Law 59/1992). Special institutions have been set up for this purpose (e.g. in Italy the Cooperative Development Funds (*Fondi mutualistici*) and *Cooperazione Finanza Impresa* (CFI), in France IDES and in Spain the investment structures of the Mondragon Corporation. This has also enabled cooperatives to improve their dialogue with other financial institutions.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

480TH PLENARY SESSION HELD ON 25 AND 26 APRIL 2012

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006'

COM(2011) 615 final — 2011/0276 (COD)

(2012/C 191/06)

Rapporteur: **Mr VARDAKASTANIS**

On the 25 and 27 October 2011, respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 177 and 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006

COM(2011) 615 final — 2011/0276 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April 2012), the European Economic and Social Committee adopted the following opinion by 162 votes to 9 with 9 abstentions.

1. Conclusions and recommendations

1.1 The EESC considers that the economic policies currently being pursued in the EU (austerity, budget restraint at national level, limiting the EU budget, fiscal compact, limiting the ECB, etc) are initiating a recessionary process with unpredictable effect, at a time when what is needed instead is the opposite, i.e. steps taken at the same time, if not beforehand, to support **growth and jobs** with a more courageous, effective proposal. A significant contribution to this aim could come from the

Structural Funds (SFs) (and in part, on a temporary basis, from those of the CAP), as already suggested at the Summit of 30 January 2012, albeit in a limited form.

1.2 A European plan for growth – a 'New Deal' – should be launched, with large, targeted projects, involving a few key sectors that are able to get the EU economy moving again. Such a plan could be financed by using, with immediate effect, residual funds from 2007-2013, to which, as soon as possible, part of those planned for 2014-2020 could be added for a limited time. Such a fund should be supported and

boosted by intervention by the EIB through a bond ⁽¹⁾ issue (article 87 of the new regulation). This would have a multiplier effect on investments, as it would attract capital from outside and would produce a positive effect on sovereign debt on the Euro, which would be strengthened.

1.3 The EESC strongly believes that **partnership** which involves all partners as defined in Article 5(1) of the Common Provisions Regulation (CPR) in the preparation, execution and ex-post evaluation of projects undertaken in the framework of EU cohesion policy contributes directly to its success. It welcomes the progress in Article 5 of the European Commission's (EC) proposals which make horizontal partnership a mandatory feature; it recalls that participation should be real at all stages of the implementation of the funds, including these partners with the right to vote in the monitoring committees. Against this background, the EESC believes that Article 5 of the Common Provisions Regulation should be reviewed and redrafted in such a manner that the provisions on partnership contained in it, and notably paragraph 2, be effectively applied at all administrative levels: national, regional and local.

1.3.1 The EESC is keen to contribute towards the Code of Conduct (CoC) mentioned in Article 5 and is deeply worried by signals from the Council where Member States want to restrict the implementation of the partnership principle; it calls upon the EC and the European Parliament (EP) to overturn this development. The CoC should include a clear inclusive definition of Non-governmental organisations including representative organisations of vulnerable groups in accordance with Articles 10 and 19 of the TFEU, such as women, the elderly, the young, sexual orientation, disability, religion and ethnic minorities. The CoC should further determine clear rules for the implementing projects and programmes insist on timely processing and foresee a complaints procedure thus enabling an effective and non-bureaucratic implementation and use of Cohesion Policy programmes. The EESC believes that additional criteria for approval used by Member States should first be subjected to public scrutiny to avoid additional bureaucracy (and national 'gold-plating').

1.4 The EESC approves a greater use of ex- ante and ex-post **conditionality** in EU Structural Funds (SFs) with a view to achieving more focussed and real, sustainable results; the EESC, however, rejects macro-economic conditionality for penalising regions and citizens who are not to blame for macro-economic decisions committed at national or European level.

1.5 The EESC recognises the efforts undertaken by the EC to **simplify procedures** but considers these insufficient. Too much complexity remains. Through an excessive emphasis on

auditing and procedures, both national and European authorities are still stifling simple access to EU funding for SMEs and NGOs. Bureaucracy needs to be reduced, especially in countries where federal territorial systems create different layers of bureaucracy.

1.6 The EESC offers for consideration the idea to set up a 'one stop shop' approach for beneficiaries in order to make cohesion policy more 'beneficiary led' (a client-based approach). The EESC also believes that it is necessary to raise the threshold below which projects are audited only once as per Article 140 from EUR 100 000 at the moment to EUR 250 000. This sum should apply to the Community funding component of such projects, in order to have further simplified rules.

1.7 The EESC welcomes the EC's proposals for **thematic concentration** as a means to reduce fragmentation of efforts; in this light the EESC encourages a strong coordination of efforts between the various SFs in order to create a single and unified cohesion policy which can contribute fully to the achievement of the Europe 2020 objectives. It believes that (i) enhancing accessibility and (ii) capacity building of stakeholders in cohesion policy (partners as defined in Article 5(1) of the CPR) should become specific thematic areas.

1.8 The EESC reiterates the importance to amend Article 7 of the CPR in order to integrate access to the funds and **accessibility for persons with disabilities** in accordance with the United Nations Convention on the rights of persons with disabilities.

1.9 The EESC underlines the importance of **capacity building** for partners as defined in Article 5(1) of the CPR, and calls for the inclusion of a definition of capacity building in Article 2. The definition of capacity building should be understood as the enhancement of the participation of partners as defined in Article 5(1) of the CPR in the preparation, implementation and monitoring of the SFs at all stages.

1.10 The EESC calls for the **Common Strategic Framework (CSF)** to be tabled by the EC allowing the EU institutions and political bodies to participate in the negotiation and adoption of the CSF.

1.11 The EESC recommends the clarification of the participation of **social economy** actors in the pursuit of the different Funds' objectives.

1.12 The EESC believes that conditionality should not undermine the capacity for **flexibility** in the structural actions since no solution fits all regions, while keeping common objectives of bringing more cohesion through common rules.

⁽¹⁾ For more details, refer to EESC's opinions on *Restarting growth*, OJ C 143, 22.05.2012, p. 10 and *Cohesion Fund*, (See page 38 of this Official Journal).

1.13 The Committee strongly supports the proposal that at least 20 % of the total national appropriations of the ESF be earmarked for social inclusion and combating poverty.

1.14 The EESC welcomes the effort to make a more result-oriented CPR and believes that **indicators** based solely on macro-economic indicators such as GDP are clearly inefficient to identify the level of cohesion.

1.15 The EESC calls for strengthening the capacity of partners as defined in Article 5(1) of the CPR in Article 51 of the CPR. The inclusion of these partners in this process of support, studies, evaluations, expert support along with other actions supported through **technical assistance** will bring more meaningful participation and capacity of participation for all partners in SFs and will ultimately be of benefit for cohesion policy's successful implementation. The EESC regrets that it is proposed that in operational programmes technical assistance is excluded for environmental actions, equal opportunities and equality between men and women. This exclusion should be deleted from Article 87.

1.16 The EESC strongly believes that through intelligent **financial engineering** the best possible use of limited available funding must be made, and that maximum impact must be sought from each euro made available for cohesion funding. The EESC underlines the importance to carefully coordinate activities of the various SFs and the need to review co-financing rates to reflect better the needs of beneficiaries in the current crisis.

1.17 In accordance with Article 174 of the TFEU, Cohesion policy is at the heart of the EU, leading to the strengthening of its economic, social and territorial cohesion. For Member States, whose average GDP growth in the period 2007-2009 is negative and who have demonstrated a good absorption rate in the current period, the capping rate will be set at least at the level of current period. The level of capping for cohesion policy, shall not apply to the fisheries and rural development funds.

2. The challenge to the EU posed by the crisis: New Structural Funds for a challenging era

2.1 The unemployment rate in the EU has increased up to 10.3 % due to the economic crisis (more than five million are young people – the 'lost generation') and the percentage of people at risk of social exclusion has increased more than 4 % in some EU countries and 3 % for severely materially deprived people.

2.2 Despite the efforts of the EU's cohesion, rural development and fisheries policies to date, the inequalities between regions are again increasing. According to the Fifth Cohesion Report disparities have generally increased, and especially disparities within countries (capitals getting richer/less developed regions getting poorer), - in some cases quite

dramatically. The report also shows the important disparities between cities and countryside regarding the level of development ⁽²⁾.

2.3 The EESC, on the basis of what was agreed during the Summit of 30 January 2012, asks the Commission and the Council to adopt a 'special procedure' suspending the current regulations for 5 years in order to allow an immediate and accelerated utilisation of the funds and eliminating useless barriers and administrative discretion. This would be of particular advantage to SMEs involved in innovation and improvement of production and projects that involve young people.

2.4 Cohesion policy is at the heart of the EU; in accordance with Article 174 of the TFEU, the EU shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

2.5 Respecting this, the Committee stresses, that for Member States, whose average GDP growth in the period 2007-2009 is negative and have demonstrated a good absorption rate in the current period, the capping rate will be set at least at the level of current period. The level of capping for cohesion policy, shall not apply to the fisheries and rural development funds.

2.6 The EESC has placed great emphasis on the importance of integrating the SFs with the Europe 2020 strategy; therefore its objectives and targets should be strongly aligned with the Cohesion policy ⁽³⁾ and include a clearer and more visible reference to how the future SFs will contribute to the goals set by the Europe 2020 flagship initiatives. These will need to be reviewed in the near future if the EU wants to deliver them in a context of profound crisis.

2.7 Several EESC Opinions ⁽⁴⁾ have underlined the fact that the SFs objectives are broader than the Europe 2020 strategy. Therefore the SFs should be a mechanism to ensure that the EU economy reinforces its employment and education policies in order to preserve and strengthen its human capital and investments needed to ensure growth, employment and social inclusion. It should contribute to achieve other strategies and policies in the EU, inter alia the Strategy for Equality between

⁽²⁾ See the EESC's opinions on *Metropolitan Areas/City Regions: Europe 2020*, OJ C 376/02, 22.12.2011, p. 7, and *Agriculture and crafts*, OJ C 143, 22.05.2012, p. 35.

⁽³⁾ See the EESC's *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68, *The role and priorities of cohesion policy within the EU 2020 strategy*, OJ C 248/01, 25.8.2011, p. 1 and *Metropolitan Areas/ City Regions: Europe 2020*, OJ 376/02, 22.12.2011, p. 7.

⁽⁴⁾ The EESC's Opinions on *Regional policy and smart growth*, OJ C 318/13, 29.10.2011, p. 82, and on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68.

Women and Men 2010–2015, the Small Business Act, the Energy Strategy for Europe, the European Disability Strategy 2010–2020, the EU Framework for National Roma Strategies and the Strategy for Sustainable Development.

2.8 The EESC is profoundly worried about the impact of the crisis and believes that the SFs can contribute to exit from the crisis provided the review of the economic governance of the EU that is not currently delivering growth, employment and social inclusion emphasises that austerity measures taken for macro-economic stability should not undermine the efforts to achieve more cohesion in EU; structural interventions should bring results for growth, social inclusion and better levels of employment.

2.9 The severity of the economic crisis highlights the fact that the amount (EUR 376 bn) currently proposed by the Commission for SFs 2014–2020 will not be enough to bring about more economic, social and territorial cohesion in the EU. The EESC therefore calls on the EC and the EP to reconsider the current SFs' proposal in the Multiannual Financial Framework (MFF) and invites the institutions to concentrate the EU funds on the less developed regions and not to create further bureaucracy and fragmentation.

2.10 The crisis should not prevent the EU from respecting its international commitments and conventions such as the United Nations Framework Convention on Climate Change and the United Nations Convention on the Rights of Persons with Disabilities.

3. Efficient Structural Funds require sound principles

3.1 Strategic programming

3.1.1 The EESC believes that the Common Strategic Framework (CSF) is a key development that will ensure a better coordinated action for implementation of cohesion policy by the various SFs.

3.1.2 The EESC welcomes the CSF but calls for a beneficiary-led approach. Nowadays potential beneficiaries are face different procedures for subsidies (e.g. differences between the ERDF and EAFRD), this is leading to administrative burden for potential beneficiaries. The CSF, as currently proposed, is only an administrative set of criteria but the idea of one-stop shop for the beneficiaries is lacking. The CSF should also provide for clear documentation and a single interpretation of the rules to be applied in all Member States. The latter would ensure that the CSF becomes an instrument to enhance efficiency in the use of the funds and does not add an extra layer of administrative burden.

3.1.3 The EESC believes that the CSF should provide the details of the investment priorities stemming from the Europe 2020 Strategy objectives and should not fail to recognise, in particular, the channels through which the social inclusion of people furthest from the labour market, including women, youth, immigrants, older persons and persons with disabilities, could be achieved.

3.1.4 The EESC further believes that the CSF should be agreed with the participation of all EU institutions and consultative bodies in order to ensure the maximum level of ownership by all.

3.1.5 The inclusion of the partnership contracts is welcomed to ensure delivery of common European, national and regional targets.

3.1.6 The EESC calls for each partnership contract and its programme to be linked to the National Reform Programmes (NRPs). NRPs should reflect all the objectives set in the Europe 2020 Strategy, as well as other obligations stemming from other international commitments and conventions such as the United Nations Framework Convention on Climate Change and the United Nations Convention on the Rights of Persons with Disabilities.

3.1.7 The inclusion of the partners as defined in Article 5(1) of the CPR in the preparation and adoption of the partnership contracts will be a key element for the success of the SFs, including the amendments to be proposed to the partnership contracts (Article 15); therefore the proposed CPR should be modified accordingly.

3.1.8 The EESC asks that Article 14 of the proposed CPR is modified in the light of Articles 10 and 19 of the TFEU in order to include in its Paragraph c) adequate references to vulnerable groups such as women, the elderly, the young, sexual orientation, disability, religion and ethnic minorities.

3.2 Thematic concentration and simplification

3.2.1 The EESC welcomes the proposed CPR outlining a common set of rules applicable to the SFs; this will bring EU common perspective and more coherence and effectiveness to the cohesion policy in the EU.

3.2.2 The EESC welcomes the 11 thematic areas. However, the EESC believes that other thematic areas such as (1) enhancing accessibility and (2) capacity building partners as defined in Article 5(1) of the CPR should be added as well. The EESC calls for their inclusion in Article 9 of the proposed CPR.

3.2.3 The EESC highlights that all countries should focus on the areas defined in the CPR in order to ensure synergies and more cohesive and inclusive growth.

3.2.4 The EESC recalls that it has argued in favour of simplifying administrative, accounting and auditing procedures, 'simplification should become cohesion policy's main objective'⁽⁵⁾ and therefore welcomes the efforts of the current proposal to include this principle. There is a need to avoid

⁽⁵⁾ The EESC's Opinions on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68, and *Efficient partnership in cohesion policy*, OJ C 44/01, 11.2.2011, p. 1.

excessive bureaucracy and more efforts should be done in order for final beneficiaries to take advantage of the actions. Simplification should result in more clarity in eligibility, audit, payments, and use of ICT. This includes simplifying the text of the regulation and reducing the number of articles.

3.2.5 The threshold of EUR 100 000 to apply simplified rules should be raised to EUR 250 000 for the Community part of funding for projects being audited only once as per Article 140 of the draft CPR. Most projects' budgets cost more than the amount of funding proposed in the regulation due to excessive administrative burden. This simplification with this new threshold could have a positive impact on the application of this rule to global grants mechanisms.

3.2.6 The EESC offers for consideration the idea to set up a 'one stop shop' approach for beneficiaries in order to make cohesion policy more 'beneficiary led' (a client-based approach).

3.2.7 The use of a wide range of reimbursements and e-governance is also welcomed. The EESC highlights the importance of ensuring that the use of e-governance includes accessibility for all, including older people, people from ethnic minorities and people with disabilities.

3.3 *Performance framework and conditionality*

3.3.1 The EESC believes that the inclusion of conditionality in the CPR is an appropriate mechanism to ensure that common EU goals are indeed achieved.

3.3.2 The EESC welcomes the ex-ante conditionality as expressed in previous opinions ⁽⁶⁾ as this approach is considered to be a way of improving the quality of EU cohesion policy spending. Such conditionality should however not create extra administrative burdens, but ensure a more coherent and efficient use of the SFs.

3.3.3 However, the EESC disagrees with the use of the macro-economic conditionality ⁽⁷⁾ as a methodology, as it 'punishes' the wrong parties. The EESC does not support any coercive measure through cohesion policy (including suspension of payment) in the next 6th economic governance package. Any measure taken in the area of macro-economic conditionality should not have effects on the beneficiaries from the SFs.

3.3.1 It is essential that the performance review includes the participation and acknowledgement of partners as defined in

Article 5(1) of the CPR as real actors in the implementation of cohesion policy.

3.4 *Flexibility*

3.4.1 The EESC believes that the principles of conditionality should not undermine the capacity for flexibility in the structural actions since no solution fits all regions.

3.4.2 Flexibility should not undermine the common goals of cohesion through common rules applied to all beneficiaries.

3.5 *Multilevel governance*

3.5.1 The EESC welcomes the multilevel governance approach as the way to ensure the ownership of the funds and the objectives of social cohesion. Partners as defined in Article 5(1) of the CPR should fully participate, in accordance with Article 5, in all stages of implementation of the funds including the local and regional level. The EESC reiterates the importance that the territorial pacts had in the past to include participation of civil society.

3.5.2 The EESC insists on the importance to ensure synergy between all instruments established by the SFs.

4. **EU cohesion policy principles need adequate instruments to deliver cohesion**

4.1 *Partnership: with civil society – the partnership contract*

4.1.1 The EESC has supported the partnership principle to be applied to cohesion policy ⁽⁸⁾. All relevant stakeholders should be represented in the preparatory work of partnership contracts and technical assistance.

4.1.2 The EESC therefore strongly welcomes Article 5 of the current proposed CPR and the proposal to elaborate an EU-level CoC on Partnership including the different responsibilities and rights for participation among different partners as defined in Article 5(1) of the CPR. The preparation of the CoC should ensure full participation of these partners.

4.1.3 The EESC emphasises that the participation of civil society should also be ensured on an equal access to funding and via clear inclusive definition. Civil society is often excluded from accessing the funds due to barriers created by rules in co-funding, administrative burdens, inadequate goals of the national Operational Programmes and lack of participation in monitoring of the funds.

⁽⁶⁾ Opinion on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68.

⁽⁷⁾ The EESC's Opinion on *Regional policy and smart growth*, OJ C 318/13, 29.10.2011, p. 82.

⁽⁸⁾ The EESC's Opinions on *Efficient partnership in cohesion policy*, OJ C 44/01, 11.2.2011, p. 1, and *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68.

4.1.4 The CoC should determine clear rules for the application, insist on timely processing and foresee a complaints procedure thus enabling an effective and non-bureaucratic implementation and use of Cohesion Policy programmes. The EESC believes that additional criteria for approval used by Member States should first be subjected to scrutiny to avoid additional bureaucracy (and national 'gold-plating').

4.1.5 The CoC should clearly establish the different responsibilities and rights for participation among different partners as defined in Article 5(1) of the CPR.

4.1.6 To this end, the EESC has also argued for a partnership contract between each Member State and its regions and civil society ⁽⁹⁾.

4.1.7 The EESC highlights the need to create a broad partnership that should represent a large spectrum of different interests. Clear ways to fix responsibilities and functions of these different partners should be established.

4.1.8 The EESC regrets that the CPR does not provide a European mechanism of partnership with European partners as defined in Article 5(1) of the CPR; the EESC therefore calls for the inclusion of such mechanism in the proposed regulation.

4.1.9 The EESC welcomes the EC's proposal to strengthen Community-led initiatives based on the experience of the Leader approach. The EESC urges that relevant stakeholders from civil society are represented in the LEADER local action groups.

4.2 Monitoring committees

4.2.1 The EESC strongly supports granting voting rights for partners as defined in Article 5(1) of the CPR in the monitoring committees as per art. 42 CPR and again underlines the importance of ensuring that all partners have equal rights in them. The EESC insists as a matter of urgency that all parties of the monitoring mechanisms should be on an equal footing and calls for the inclusion of concrete guidelines in the CSF.

4.2.2 The EESC reiterates the importance to have sound evaluation and analysis on the use of the funds and highlights that this is a key point to understand the different impact of the funds in the variety of context in European regions.

4.3 Technical assistance

4.3.1 The EESC calls for strengthening the capacity of partners as defined in Article 5(1) of the CPR in Article 51 of the general regulation. The inclusion of these partners in this process of support, studies, evaluations, expert support along with other actions supported through technical assistance will

bring more meaningful participation and capacity of participation for all partners in SFs. It believes this should be a precondition for participation.

4.3.2 The EESC regrets that operational programmes on technical assistance are proposed to be excluded from environmental actions, equal opportunities and equality between men and women. This exclusion should be deleted from Article 87.

4.3.3 The EESC recalls that the European Social Fund is more advanced on the use of technical assistance for participation of partners defined in Article 5(1). The EESC calls for the need to apply the partnership principle equally across all SFs.

4.4 Capacity building

4.4.1 The EESC calls for the inclusion of a definition of capacity building in Article 2. This definition should be understood as the enhancement of the participation of partners as defined in Article 5(1) of the CPR in the preparation, implementation and monitoring of the SFs at all stages, including inter alia training, participation in technical assistance, inclusion of representative organisations of vulnerable groups, support in implementation of funds. It should also be included in the CSF.

4.4.2 Capacity building for partners as defined in Article 5(1) of the CPR, should also include access to the funds, as foreseen in Article 87 of the CPR. The EESC regrets that non-discrimination in access to the funds is not included in its Article 7.

4.5 Non-discrimination and access to the funds

4.5.1 The EESC welcomes the inclusion of non-discrimination in the current proposed CPR. However, it is regrettable that the principle of accessibility for people with disabilities, present in Article 16 of the current general regulation, has not been retained in the proposed future CPR.

4.5.2 Applicants, beneficiaries and partners should have mandatory rights vis-à-vis the authorities in Member States, as well as the right to benefit from a complaints mechanism in order to raise objections.

4.5.3 The EESC recalls that access to the funds will require efforts on capacity building of partners as defined in Article 5(1) of the CPR, as well as a broad use of Global grants mechanisms. The EESC reiterates that training, coordinated by the EC, can substantially ease such access.

4.6 Support to the social economy

4.6.1 The EESC welcomes the provisions proposed concerning the social economy actors and recommends clarification of their participation in SFs' objectives. These should not limit social economy actors to social inclusion programmes but also to other important priorities of all Funds such as the promotion of employment, combating poverty, and improving

⁽⁹⁾ The EESC's Opinion on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68, points 2.1.6, 6.1 and 6.2.

levels of education, creation of enterprises, entrepreneurship, business competitiveness and support, local development, research, development & innovation, training and education.

4.7 *Multi-funds – Financial engineering*

4.7.1 The EESC welcomes the possibility to combine funds in order to achieve better results when implementing the funds.

4.7.2 The EESC believes in the leverage effect SFs should have, in order to foster the latter at local level; the EESC recommends that an appropriate share of the funds be reserved to mixed funds able to mobilise local endogenous resources to create lasting diverse local financing facilities, guaranteeing also the sustainability of EU's intervention.

4.7.3 The EESC strongly believes that by using financial engineering the best possible use should be made of limited available funding, and that maximum impact should be sought from each euro made available for cohesion funding. Greater use should be made of Europe 2020 project bonds; the EESC suggests carefully examining the possibility to use committed future SFs, as well as unspent money from 2007-2013 programming period, as a buffer-guarantee to borrow on for repayable EIB-loans to be made available to SMEs and business with a view to kick-starting the European economy now. In this respect, revolving funds and micro-credits should also be examined.

4.8 *Ring-fencing*

4.8.1 The EESC supports the proposal that at least 20 % of the total national appropriations of the ESF should be earmarked for social inclusion and combating poverty. The EESC is opposed to reducing this target. In view of the current economic crisis, it is necessary that a social Europe remains visible for its citizens. In particular, social enterprises are instrumental in addressing these objectives and make a significant contribution to the inclusion of particularly affected groups in society and the labour market.

4.8.2 The Committee suggests to keep the current practice where transport projects are financed through kept separate budget line. The earmarking in the Cohesion Funds suggested by the EC would mean decreasing the amount available for cohesion.

4.9 *Co-financing rates*

4.9.1 Co-financing rules should be modulated according to circumstances⁽¹⁰⁾. The capacity of absorption of different beneficiaries should be considered.

4.9.2 The EESC supports the increase in co-financing rates as already proposed by the Commission in 2011 to a maximum of

95 % for Member States in financial difficulties⁽¹¹⁾ and retained in the CPR. The EESC believes that co-financing should also be offered as a possibility for local bodies that do not have access to loans as they do not have their own autonomous budget and are therefore unable to offer an own contribution.

4.9.3 The EESC supports the idea that projects which target the needs of vulnerable groups and groups in risk of exclusion should have higher rates in co-financing. Considering the growing risk of budget cuts to national social policies from austerity measures this rate should be as high as 100 % for Member States hit hardest by the economic crisis.

4.10 *Awareness raising*

4.10.1 The EESC emphasises the need to include awareness raising strategies regarding the CPR requirements and the meaning of the main principles and mechanisms established.

4.10.2 Technical assistance and other instruments should be used to ensure that all actors participating in the process (especially including partners as defined in Article 5(1) of the CPR) from managing authorities to project implementers, have enough knowledge of the main elements pursued by this regulation.

4.11 *Social housing*

4.11.1 The EESC recalls the importance of including social housing in the CPR and how this area could benefit from a clearer definition in the CSF annexed to the regulation.

4.12 *Macro-regional policies – urban policy*

4.12.1 The EESC supports the approach to boost the role of macro-regional cooperation strategies in cohesion policy. The cooperation between macro-regions has a high potential to ensure better value for the money invested in those regions.

4.12.2 The EESC fully supports a greater degree of responsiveness to the needs of urban areas: indeed, 5 % of ERDF funding is set aside for urban development and for setting up an urban platform⁽¹²⁾.

4.12.3 Urban policies should focus on greater sustainable environments ensuring better mobility for all citizens, citizens-friendly environments as well as environmentally friendly urban policies, especially for elderly people, people with reduced mobility and people with disabilities.

4.12.4 The EESC underlines the importance of the research and development carried out by ESPON in the field of European territorial development.

⁽¹⁰⁾ The EESC's Opinion on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68, points 2.2.1 and 6.10.

⁽¹¹⁾ The EESC's Opinions: OJ C 24 of 28.01.2012 from 2012/C/24/17 to 2012/C/24/19.

⁽¹²⁾ In line with previous opinions such as *Metropolitan Areas/ City Regions: Europe 2020*, OJ C 376/02, 22.12.2011, p. 7 and *The role and priorities of cohesion policy within the EU 2020 strategy*, OJ C 248/01, 25.8.2011, p. 1.

4.13 Indicators

4.13.1 The EESC welcomes the effort to make a more result-oriented regulation. A result-oriented regulation requires sound indicators.

4.13.2 The EESC strongly believes that indicators based solely on macro-economic indicators such as GDP are clearly inadequate to identify the level of cohesion. Other indicators should be used in cohesion policy⁽¹³⁾. Any use of this kind of indicators should be subjected to review at mid-term of the programming period.

4.13.3 The EESC recommends that the Commission takes into due consideration performance indicators which are defined at local and Community level and that it improves the use of qualitative indicators besides quantitative indicators, namely improve the measuring of local social added value produced by the programmes and operations.

4.13.4 Indicators should measure long term impact. They should not be based solely on the cost/benefit approach but other social considerations should be taken into account as well. It is important that all actors in cohesion policy are trained in the application of new indicators.

4.14 Geographic scope (Article 89)

4.14.1 The EESC insists that social inclusion, education and employment actions through SFs should include all vulnerable groups, such as women, immigrants and persons with disabilities, and should be organised and implemented independently of the geographical scope.

4.15 Strategic progress

4.15.1 The EESC recalls that progress reports should include an evaluation on the progress for the actions on inclusion of vulnerable groups in the regions affected by the actions.

4.15.2 The EESC believes that Article 49 and Article 101 of the proposed CPR should also include an evaluation of the horizontal priorities together with the thematic priorities.

4.15.3 The functions of the managing authority set out in Article 114 should include the information disaggregated by groups at risk of exclusion.

4.16 Joint Action Plans (JAPs)

4.16.1 The EESC believes that the JAPs should clearly establish the participation of all partners referred to in Article 5(1).

4.16.2 The JAPs should also include partners as defined in Article 5(1) of the CPR as potential beneficiaries of this type of actions.

5. Transnational cooperation

5.1 The EESC emphasises the need to further support Operational Programmes promoting transnational cooperation in all Funds, as a mean to reinforce the EC's role in facilitating exchanges of experience and coordinating implementation of relevant initiatives.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹³⁾ Cfr. GINI coefficient mentioned in the Opinion on the *Fourth Report on Economic and Social Cohesion*, OJ C 120/17, 16.5.2008, p. 73 and the Opinion on the *Fifth Cohesion Report*, OJ C 248/12, 25.8.2011, p. 68.

EESC's opinion on 'GDP and beyond – the involvement of civil society in choosing complementary indicators', (See page 38 of this Official Journal): para. '1.5.1 In this regard, there is a clear need to replace the concept of economic growth with that of the progress of societies, fostering a debate on the fundamental meaning of progress. As well as redefining the concept of development, this debate should touch upon aspects of political accountability. This new approach requires that the various dimensions that comprise progress be identified by i) extending national accounts to cover social and environmental aspects; ii) using compound indicators, and iii) creating key indicators'.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006'

COM(2011) 612 final — 2011/0274 (COD)

(2012/C 191/07)

Rapporteur: **Mr CEDRONE**

On 25 and 27 October 2011 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 177 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006

COM(2011) 612 final — 2011/0274 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 180 votes to 9, with 7 abstentions.

1. Conclusions and proposals

1.1 Broadly speaking, the Committee endorses the Commission's approach as regards the new proposal for a regulation on the Cohesion Fund. It particularly supports the efforts to harmonise procedures relating to the various funds with those laid down by the general regulation, although it does highlight a number of key points (set out above) which need further discussion and improvement, especially in view of the EU's current situation resulting from the financial and sovereign debt crises.

1.2 The Committee is pleased that the fund can be used to promote the production and distribution of renewable energy sources, to promote energy efficiency, to protect the environment and promote climate change adaptation, to restore biodiversity and to renew the urban environment. This could have a positive impact on other sectors such as tourism. These are all factors that support sustainable development.

1.3 The Committee salutes the Commission's decision to reduce the number of interventions at this time of crisis by concentrating the thematic areas, a key means of reducing waste, concentrating resources on specific activities and boosting the multiplier effect that can generate growth and jobs.

1.4 The Committee supports the proposal to fund the Connecting Europe Facility while avoiding the possibility of its becoming a specific fund, as this could lead to unnecessary duplication.

1.5 The Committee is also seriously concerned by and expresses major reservations regarding the current proposals on the conditionality principle (specifically the macroeconomic proposal). This should not be oriented towards punishment, acting as a means to penalise offenders; instead, it should focus on responsibility and reward, thereby avoiding undermining and compromising the convergence objective.

1.6 The Committee considers that it is vital to improve coordination of the array of funds, as well as between cohesion policy as a whole and the EU's other economic policies (including the CAP) within the reinforced framework of a common budget policy. This would produce a multiplier effect and boost the effectiveness of investments. The aim should be stronger cooperation on economic policy (including cohesion policy) in order to establish common economic governance, at least in the euro zone; the Committee has repeatedly called for this and most unfortunately the December 2011 summit failed to deliver it.

1.7 It is also crucial to improve the currently unbalanced institutional partnership between the Commission, the States and the regions, so that the Commission again provides support and guidance. This partnership should be supported throughout every phase by the partnership defined in Article 5(1) of the proposal for a regulation setting out the common provisions, which even now is often limited to consultation and information, drawing up a code of conduct for the entire EU and parameters for assessing the partnership's added value.

1.8 The Committee considers that upstream and downstream simplification is an absolute priority, for the Cohesion Fund and

for all the Structural Funds; administrative fees should be cut, possibly establishing a flat-rate fee for some types of project, and the 'only once' principle applied.

1.9 For countries hit hardest by the crisis, cohesion policy is one of the most important instruments that Member States have to reduce social, economic and geographical disparities and to re-ignite and ensure the continuance of growth.

1.10 **Co-financing:** the criteria for co-financing should be examined more carefully and reviewed; they should be linked to the real budget conditions of local and regional authorities so as to avoid situations whereby the most vulnerable authorities have no access to any funding.

1.11 The Committee considers that the current backdrop of reform and debt adjustment organised in two stages (first austerity, as a threat, then growth) leaves no room for an investment and growth policy. It also considers that growth and austerity should operate in tandem. Cohesion policy should therefore be oriented in that direction, for example supporting businesses with a strong technological dimension and a strong impact on youth employment.

1.12 The Committee considers that the economic policies currently being pursued in the EU (austerity, budget restraint at national level, EU budget cuts, the fiscal compact, ECB restrictions, etc.) are sparking a recession with unpredictable effects, at a time when what is needed is the opposite, i.e. steps should be taken at the same time, if not beforehand, to support growth and jobs with a more courageous and incisive proposal. A significant contribution to this end could come from the Structural Funds (and in part, on a temporary basis, from the CAP), as already suggested at the summit on 30 January 2012, albeit in a limited form.

1.12.1 What is needed in other words, is a European 'new deal' for growth ⁽¹⁾, a plan involving major targeted projects in a few key sectors that are able to get the EU economy moving again in a relatively short period of time. This plan should be seen as complementary to the Europe 2020 Strategy which is geared more towards delivering in the medium term. Such a plan could be:

- financed by using, with immediate effect, residual funds from 2007-2013, to which part of those planned for 2014-2020 could be added, as soon as possible, for a limited time;
- carried out via projects on which work could start at once, or via an accelerated, subsidiarity-based procedure, or via a drastic provisional amendment to the current regulations, which would allow for swift implementation;

— supported and bolstered by EIB intervention in the form of a bond issue (Article 87 of the new regulation). This would have a multiplier effect on investment, as it would attract capital from outside and would produce a positive effect on sovereign debt and on the euro, which it would strengthen.

1.12.2 This growth plan should be implemented using the same criteria for at least the first three years of the forthcoming planning period.

2. Introduction

2.1 In several of its previous opinions, the Committee has stressed the principles and importance of economic and social cohesion policy and solidarity, as enshrined in the Treaty and reiterated in Commission texts.

2.1.1 This principle is now more relevant and possibly in greater danger than at any time ever before; not even enlargement policy, when the old Member States feared losing funds and the new Member States were concerned about lacking adequate funds to cope with the demands of cohesion, presented this degree of risk.

2.2 Despite this, the Committee welcomes the Commission's attempts to factor in the background to the changes to the regulations, such as the proposal on the future EU budget, the 2020 strategy and the sovereign debt crisis which followed on from the financial crisis and is threatening the very survival of the internal market and thus of the EU itself.

3. The new cohesion policy: background, questions, comments and strategic points

3.1 In June 2011, the Commission adopted a package of proposals on the multiannual financial framework that will form the basis of the EU's finances from 2014 to 2020. Primarily, this framework will support the Europe 2020 strategy, which should release funding in addition to the budget, possibly also through the EIB (project bonds and/or eurobonds).

3.2 It must also be borne in mind that, with the ongoing economic crisis, many Member States have been forced to adopt draconian recovery measures and thus to freeze public and private investment in infrastructure, with serious implications for growth and jobs. Furthermore, when drawing up their programmes, Member States tend to give priority to national projects over cross-border projects with a European dimension.

3.3 The background to the discussion on the new regulations on cohesion policy is thus highly specific and exceptional and should be treated as such. For instance, analysis is needed on whether we can continue with such a splintered cohesion policy and whether conditionality is a sufficient and useful response to the need to improve cohesion and help those Member States that are most deeply mired in crisis.

⁽¹⁾ See EESC opinion *Growth and sovereign debt in the EU: two innovative proposals*; (OJ C 143, 22.05.2012, p. 10).

3.4 In view of the extreme problems confronting the EU, with limited resources to earmark for growth, might it not be better to avoid adding to the proliferation of regulations and controls that ought to be drastically reduced in number and finish projects that are already under way? Resources should be optimised and streamlined by means of a 'European new deal' in the form of an extraordinary European plan for growth ⁽²⁾.

3.5 While no radical changes will be made to the EU's current strategy, which the summit of 8 and 9 December 2011 failed to tackle, cohesion policy also requires a thorough overhaul. The most worrying thing, however, is that it will no longer be able to fulfil its key mission of reducing the economic and social divide between the EU's regions, a divide that will widen owing to the recession triggered by policies intended to curb the public deficit. It will thus need radical change and unitary economic governance.

3.6 The Committee wishes to make the following comments with regard to the methodology suggested by the Commission in its proposal to reform the regulations on the management of cohesion policy for the period 2014-2020, and in particular as regards the common provisions governing all Common Strategic Framework funds:

3.6.1 Defining the Common Strategic Framework: the Committee is waiting to examine the new proposal for a Common Strategic Framework, to be presented by the Commission in 2012. However it remains to be established, partly on the basis of the discussions on cohesion policy held by the European Council on 7 December 2011 ⁽³⁾, how the Commission intends to translate 'the objectives and targets of the Union priorities of smart, sustainable and inclusive growth into key actions for the ERDF, the CF, the ESF, the EAFRD and the EMFF'.

3.6.1.1 Previous Committee opinions stressed the need for cohesion policy, albeit aligned and necessarily consistent with the Europe 2020 strategy and its objectives, to maintain intact the characteristics of a policy designed to boost the social, economic and territorial cohesion of the Member States.

3.6.1.2 The link between these objectives is a key factor in the success of the Europe 2020 strategy, but the Commission has yet to explain quite how the link between the Common Strategic Framework strategies and the national-level reform programmes can be implemented in a functional, coordinated and financially sustainable way.

3.6.2 Partnership agreements: the Committee agrees with the European Parliament and the Committee of the Regions that the agreements must first be negotiated between Member States and regions and then discussed between the States and the Commission.

3.6.2.1 In the context of the negotiations to be opened with the Member States, the Committee stresses the importance of the multilevel governance approach suggested by the Commission; however, it also calls for a clearer definition of the institutional players (at both national and local level) that will be asked to draw up and sign the partnership agreements with the Commission, and for broad participation by civil society representatives in the preparation of these documents.

3.6.3 Thematic concentration: the Committee supports the Commission's proposal to reduce the number of financial interventions carried out under cohesion policy, by concentrating financial resources on strategic projects considered to be vital for the sustainability of cohesion and of the economic development processes to be activated in less developed, transition and more developed regions.

3.6.3.1 The choice of thematic areas in which to invest in the next seven-year planning period is a matter for the Member States' freedom to decide, although the decision should be made jointly with the Commission after careful assessment of proposals' consistency with the Europe 2020 strategy.

3.7 Conditionality: the Committee recognises that this is one of the issues on which there is broadest disagreement among the European institutions (Parliament, Council, Committee of the Regions, etc.) regarding the Commission's proposal, and considers that the meaning, purpose and methods of applying the concept of conditionality have not been explained clearly enough. Although some ex ante proposals (which should include social conditionality) could be considered appropriate, the Committee cannot support macroeconomic conditionality in its current form.

3.7.1 Without prejudice to the need to provide the Commission with a guarantee that Structural Fund resources are used in compliance with the principles, objectives and time-frames laid down in Community regulations, the Committee believes that the Commission should review its proposal in light of the following considerations:

- conditionality is a mechanism that should be designed and implemented in such a way as to help Member States to use resources in the way specified by the Commission, more than as a means to penalise the Member States;
- the focus on the principles of conditionality (ex ante, macroeconomic) should therefore primarily be directed towards measures that could encourage the Member States to spend those resources allocated to the regions that are furthest from the EU average better (in terms of effectiveness and efficiency) and more quickly;

⁽²⁾ Ibidem.

⁽³⁾ COM(2011) 615 final - 2011/0276 (COD).

— the Commission should focus more on the planning stage of programmes, that is to say the strategic planning stage when national and regional institutions' priorities and responsibilities with regard to territorial development are established. The Commission should be more active in helping countries and regions to use the funds;

— equal attention should be paid to the stage when ex ante conditionality is verified. During this stage, it must be verified that the Member States have the capacity to ensure compliance with the proportionality and subsidiarity principles when implementing cohesion policy. Here again, the Committee reaffirms that use of the conditionality principle is a valid means of encouraging the Member States to apply Structural Fund rules correctly. Only in truly exceptional cases, when the Member State clearly and repeatedly seeks to delay the reforms requested by the Commission is it possible to apply sanctions.

3.7.2 With regard to macroeconomic conditionality, the Committee shares the concerns expressed by the EP and some Member States regarding the possibility that regions and beneficiaries of Community programmes might be penalised as a result of non-fulfilment/inefficiency on the part of the central government in respect of policies to reduce the public debt. Alternative solutions should be found to avoid assigning responsibility for national budget policies to regional institutions and operators who have no influence over such decisions. Stronger coordination between and within Member States is therefore needed.

3.8 Above and beyond conditionality, cohesion policy therefore needs to tackle a number of core issues that are relevant to all the funds. These issues include the following:

- coordination and complementarity of the funds, and coordination between the funds and other European economic policies;
- institutional coordination of cohesion policies, including through enhanced cooperation;
- drastic simplification of the increasingly complex procedures and regulations, both upstream and downstream;
- real, decisive economic and social partnership (in addition to the institutional partnership);
- tailoring of co-financing on the basis of conditions in local institutions;
- a renewed role for the Commission with priority given to European and macro-regional projects;

— the performance reserve (reward payments) could generate an additional administrative burden and slow down the injection of resources into projects that are vital to cohesion;

— whether value added tax is applicable.

4. Key objectives of the Cohesion Fund

4.1 The Cohesion Fund was set up in 1993 for Member States with a Gross National Income (GNI) of less than 90 % of the EU average and is intended chiefly for infrastructure in the areas of transport, the environment, energy efficiency and renewable energy. Accordingly, investments are channelled towards setting up trans-European transport and energy networks, and supporting energy efficiency, the use of renewable energy and improving public transport.

4.2 The fund represents about 18 % of all cohesion policy spending and helps implement this policy in the spirit of the Treaty. However, the results have exceeded this goal: the Cohesion Fund has delivered added value on investments, promoting growth and jobs in target regions, despite a high level of dispersion owing to the excessive number of projects that have received funding (1 192 in the 2000-2006 period).

4.3 The new regulation breaks very little new ground: Article 2 merely identifies the scope of the fund, setting out two lists that cover what is and is not eligible for funding. Oddly enough, it specifies what is not covered, such as the decommissioning of nuclear power stations or housing measures. Article 3 sets out investment priorities, stipulating four areas of intervention with subcategories, but does not specify whether these are indicative or compulsory, although such indications would make the funds more flexible and easy to use. Article 4 and the Annex deal with indicators.

4.4 For countries hit hardest by the crisis, cohesion policy is one of the most important instruments that Member States have to reduce social, economic and geographical disparities and to re-ignite and ensure the continuance of growth.

5. The new proposal for a regulation: comments

5.1 Our comments, other than those under point 3.3, focus primarily on the selection criteria for projects, the resources attributed to the Connecting Europe Facility to fund the main transport networks, and the indicators.

5.2 As regards the selection of projects to be funded, without prejudice to their consistency and compliance with the guidelines adopted by the Parliament and the Council in this area (trans-European transport networks, environmental projects and energy projects), the Committee considers that the Commission should indicate both the specific types of activity eligible to receive Cohesion Fund resources and the

criteria to help the States that receive this funding to select those projects best suited to the (overly numerous) objectives of the Cohesion Fund (eleven in all).

5.3 The Committee considers in particular that the resources used by the Cohesion Fund in previous planning stages have been spread over too many projects, thus reducing the intended overall impact on improving transport infrastructure. Account should be taken of the specific situation in each Member State in order to secure a more careful and concentrated selection of larger projects with a greater impact, in the transport, environment or energy sectors. This could make a more effective contribution to lessening the infrastructure gaps that still exist between Member States.

5.4 With regard to the resources allocated to the Connecting Europe Facility to fund transport, energy and communication projects (a total of EUR 50 billion, 10 billion of which from the Cohesion Fund which is already pursuing these goals (proportionality principle)), the Committee considers that further discussion of this decision is necessary, in order to explain why the Commission has chosen to:

- create another fund managed centrally by an executive agency that will have to coordinate with all the other strategic programmes (European and national) in the sector, as well as with the Common Strategic Framework for cohesion policy and the partnership agreements with the

Member States. This will result in an apparently unnecessary overlapping of activities and competences;

- earmark resources for the fund that are substantial, albeit modest compared to the Commission's estimates of the resources needed to meet future requirements in terms of goods and passenger transport (EUR 500 billion by 2020), energy (EUR 1,5 trillion for the period 2010 to 2030) and communication (EUR 250 billion). These resources would be taken either from the Structural Funds or, to a smaller extent, from the Cohesion Fund. Such needless complications would reduce the sum available for transport and environment infrastructure. In view of the sheer number of regions that could have access to this funding, the impact of these resources could not have the multiplier effect (new projects and funding, partly covered by the private sector) that the Commission is hoping for; the end result would be further fragmentation of the funds. In order to achieve the desired result, the Committee also advocates drawing on funds from the private sector and avoiding fragmentation.

5.5 While the Committee welcomes the Commission's introduction of indicators, it considers that they are both generic and inadequate; for example, nothing is said about the environmental impact, and only quantitative values (indicators) are mentioned. The same applies to waste, kilometres of roads built, etc.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendment was rejected during the plenary session but received at least one-quarter of the votes cast:

Amendment 1 – tabled by Ms Teder**Point 1.11**

Amend as follows:

- ~~The Committee considers that the economic policies currently being pursued in the EU (austerity, budget restraint at national level, EU budget cuts, the fiscal compact, ECB restrictions, etc.) are sparking a recession with unpredictable effects, at a time when what is needed is the opposite, i.e. steps should be taken at the same time, if not beforehand, to support the priority should be to promote~~ growth and jobs with a more courageous and incisive proposal. A significant contribution to this end could come from the Structural Funds (and in part, on a temporary basis, from the CAP), as already suggested at the summit on 30 January 2012, albeit in a limited form.

Reason

The idea that correct and proper budget management in the Member States will lead to an economic recession cannot be accepted. The Committee should not include critical comments about Member States' efforts to balance their budgets in its opinion.

Outcome of the vote

For: 78

Against: 98

Abstentions: 18.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006’

COM(2011) 614 final — 2011/0275 (COD)

(2012/C 191/08)

Rapporteur: **Mr BARÁTH**

On 25 and 27 October 2011, respectively the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 178 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006

COM(2011) 614 final — 2011/0275 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 178 votes to 1 with 2 abstentions.

1. Conclusions and considered reflections of the opinion

1.1 The legislative proposals for Cohesion Policy for the period 2014-20, which the Commission adopted on 6th October 2011 (the ‘Cohesion Package’), introduce major changes to the way cohesion policy is designed and implemented. The primary goal of this policy and one of its essential tools, the European Regional Development Fund (ERDF), is to use investment as a means of achieving the objectives of the Europe 2020 strategy. ERDF investments must therefore yield benefits for all EU citizens.

1.2 It is important not to lose sight, however, of the rules contained in the proposed regulation laying down general provisions relating to the Funds (‘the Common Provisions Regulation’), some of which relate directly to the ERDF. These general features have an important impact on the use of ERDF funding:

- concentrating funding on a smaller number of priorities;
- linking those priorities more closely to the Europe 2020 strategy;
- focusing on results;
- monitoring progress towards agreed objectives;
- increasing the use of conditionalities;

— and simplifying delivery.

But so do more specific provisions, for instance the ones that promote the use of a more integrated approach, or the ones that regulate more explicitly the use of financial instruments.

1.3 It should also be borne in mind that on 29 June 2011, the European Commission put forward a proposal on the multi-annual financial framework for the 2014-2020 period i.e. the budget for the Europe Union for the forthcoming programming period. EESC also put forward a number of opinions related to the Union's own resources.

1.4 In its opinion on Structural Funds – General Provisions ⁽¹⁾, the EESC formulated a number of key messages with respect to the ‘Cohesion Package’ as a whole. The current opinion fully supports those messages and builds on them with specific regard to the ERDF.

1.4.1 Partnership

1.4.1.1 The EESC strongly believes that genuine partnership which involves all partners as defined in Article 5(1) of the Common Provisions Regulation in the preparation, execution and ex-post evaluation of projects undertaken in the framework of EU cohesion policy contributes directly to their success; it therefore welcomes that various partners have been defined in Article 5(1) of the Commission's proposals and also that partnership will become a mandatory feature of EU cohesion policy.

⁽¹⁾ Structural Funds – General Provisions, Rapporteur Mr Vardakastanis, (See page 30 of this Official Journal).

1.4.1.2 The EESC is pleased to note that the implementation of the Lisbon Treaty may be strengthened, not only through the accentuation of the European identity, but also through the involvement in projects of the partners as defined in Article 5(1) of the Common Provisions Regulation, helping to make these more effective.

1.4.1.3 The EESC is deeply worried by signals from the Council where some Member States seem to restrict the partnership principle; it calls upon the Commission and the EP to help reverse this.

1.4.1.4 The EESC considers that the draft regulation once adopted will uphold the principle of subsidiarity given that the tasks of the ERDF are set out in the Treaty and the policy is implemented in accordance with the principle of shared management and respect of the institutional competences of Member States and regions.

1.4.2 Conditionality

1.4.2.1 The EESC believes that greater use of conditionality in EU cohesion policy will achieve more focussed and real, sustainable results. In many of its analyses, the EESC has dwelt on issues relating to the 'conditionality' of implementation, which should go hand in hand with greater efficiency, improved quality and essential simplification.

1.4.2.2 Ex-ante conditionality should be linked to proper implementation of the partnership principle.

1.4.2.3 The EESC disagrees with macro-economic conditionality as currently formulated for sending out the wrong signals and *in fine* penalising regions and citizens who are not to blame for macro-economic excesses committed at national level.

1.4.3 Simplification

1.4.3.1 The EESC recognises the efforts undertaken by the Commission to simplify procedures in and around EU cohesion policy. Nevertheless, too much complexity remains.

1.4.3.2 Through an excessive emphasis on auditing and procedures, both national and European authorities are stifling access to EU funding for SMEs and NGOs – too much energy is lost in administrative burdens. Gold plating at all levels is absolutely to be rejected.

1.4.3.3 The EESC definitely agrees with the efforts undertaken to coordinate the Europe 2020 strategy and EU cohesion policy, and to concentrate more on key themes and to step up the focus on results.

1.4.3.4 The EESC also fully agrees with the need to simplify the financial, administrative, monitoring and procedural rules relating to utilisation of the structural funds.

1.4.4 Policy coordination

1.4.4.1 The EESC further welcomes the Commission's proposals for thematic concentration as a means to reduce fragmentation of effort.

1.4.4.2 The EESC nevertheless recommends showing greater flexibility with regard to thematic concentration, largely to make the territorial approach easier to apply and thus to improve the effectiveness of the policy.

1.4.4.3 The EESC considers the Common Strategic Framework (CSF) to be an important tool to coordinate interventions of the structural funds; it regrets that, as currently formulated, it cannot offer its opinion on the CSF.

1.4.5 Financing, financial engineering

1.4.5.1 The EESC strongly believes that maximum impact should be sought from each euro made available for cohesion funding.

1.4.5.2 The results of the public consultation on the Fifth Cohesion report show that there is general agreement with the concept to concentrate funding. The EESC considers that several concerns that were expressed regarding certain issues are well-founded and require a response before the future general regulation enters into force.

1.4.5.3 Guarantees are needed to ensure that excessive concentration, especially the rigid interpretation of the 11 thematic objectives and the minimum percentage of resources to be used on funding certain priority thematic objectives (e.g. energy efficiency and renewable energies, research and innovation, support for SMEs) does not obstruct support for development-related projects arising from local and regional differences.

1.4.5.4 The EESC has often emphasised that Europe 2020 and cohesion policy complement each other. However, in order to coordinate stability policy (which requires structural reforms), cohesion policy (which is geared towards convergence) and growth strategies, more resources for the Union are essential.

1.4.5.5 To this end, greater use should be made of Europe 2020 Project Bonds as set out in recent EESC opinions.

1.4.5.6 The EESC further suggests carefully examining the possibility to use committed future cohesion funding, as well as unspent funding from the current programming period with a view to kick-starting European economic growth NOW.

2. General comments and recommendations

2.1 The EESC acknowledges the extremely detailed and painstaking preparations that the European Commission has carried out regarding the implementing provisions for cohesion policy and the Europe 2020 strategy for the 2014-2020 period.

2.2 In its various studies and opinions, the EESC has made a number of observations on the content of the fourth and fifth cohesion reports, on the use of the Structural Funds over the last decade, their effectiveness, and on whether or not they are fit for purpose. Many of these observations have been taken on board in the conception of cohesion policy for the 2014-2020 period.

2.3 The EC proposals for the general provisions governing the use of the Structural Funds for the 2014-2020 period have been published at a time when views as to the nature of the worsening European crisis and its causes differ widely.

2.4 The EESC considers that the historical roots of the current economic and financial crisis in Europe make it necessary to implement structural reforms in the institutional, social and political system. The ERDF may play a crucial role in transforming the social welfare systems to be more cost-efficient and sustainable. However, to bring about change in these systems, additional financial resources are temporarily required. The EESC acknowledges that limited availability of resources and the application of the principle of concentration resulted in less emphasis being given to the investment priorities that aim for structural changes in the infrastructure of social welfare systems. The EESC also points to the fact that without such investments, the impact of cohesion policy on these systems remains limited.

2.5 As a consequence of the crisis, scarcity of both public and private resources may result in difficulties to provide the necessary co-financing for interventions which are essential for making the desired changes happen. The EESC considers that a flexible responsible approach with regard to co-financing rates and conditionality clauses would improve the chances of obtaining a lasting impact of the interventions financed by the Funds.

2.6 The Europe 2020 strategy and the draft ERDF regulation inspired by it, reflect an economic approach that matches the aptitudes and needs of developed economies which are characterised by slow growth, and possess a significant capacity in the area of research and development. In developed countries, there is no doubt that research, development and innovation play an important part in economic growth. Competitiveness, which although it is not in contradiction with cohesion policy as such, does grant it less importance.

2.7 Cohesion policy is meant to be the main investment instrument for supporting the key priorities of the Union as enshrined in the Europe 2020 strategy. It does so by focusing on the countries and regions where needs are greatest. The EESC fundamentally agrees with this approach, but at the same time points to some elements of the proposed regulation that may hamper achieving Europe 2020 objectives.

2.7.1 The ERDF can have a considerable impact both on the achievement of convergence objectives and on Europe-wide objectives in the area of competitiveness. Given that the level

of resources cannot be increased in any significant way, the EESC believes there is a further potential in defining clearer objectives and ensuring that the proposed investment priorities are more precisely linked with the objectives. As the territorial approach lends itself to define more precise objectives, the EESC's view is that more emphasis is to be placed on Europe-wide territory-based strategies, such as existing or future macro-regional strategies, as references for area-specific objectives.

2.7.2 Macro-economic conditionality can hold back economic growth and thus reduce the instruments available, potentially leading to the withdrawal of aid and the redistribution of instruments withdrawn in favour of more developed regions. A major conflict is likely to arise between the pursuit of competitiveness on the one hand, and of cohesion policy on the other. Thematic and institutional ex-ante conditions, as listed in Annex IV of the 'Common Provisions' regulation, however, may serve to improve the effectiveness of the ERDF.

2.7.3 In certain less-developed Member States or regions, the 50 % share of ERDF funding which has been ring-fenced for specific purposes might bring about a loss of effectiveness. This impact may result from the fact that 'mandatory' investment objectives are perhaps not the best way to achieve the optimal development of the region or Member State in question. In these cases, the effectiveness of resource utilisation declines. There is even a risk of absorption problems, while the critical mass which is necessary to effectively address the real bottlenecks of development cannot be achieved. In addition, measures that do not respond to real development problems can give rise to a growing lack of confidence on the part of the public. All these points underline that specific development goals and needs of the regions are to be managed in a flexible way within the context of the ERDF investment priorities.

3. Specific comments and recommendations

3.1 *Particular territorial features (Urban development, Outermost regions)*

3.1.1 The EESC welcomes the fact that extra attention has been paid to address specific problems for sustainable urban development and the outermost regions.

3.1.2 The EESC welcomes the explicit obligation to apply an integrated approach in the area of urban development. It nevertheless considers that the Partnership Contract should give only an indicative list of the cities to benefit from aid and the annual distribution of resources for this objective, in order to allow each State to manage projects more flexibly, which may also have a positive impact on results in beneficiary cities.

3.1.3 As regards the management of integrated actions, the EESC emphasises that for these complex measures there is a risk of implementing excessively bureaucratic and rigid project selection and administration procedures. This can detract from the ability of Member States and beneficiaries to benefit in full

from these opportunities. The EESC therefore recommends that the European Commission must ensure that Member States are able to implement these integrated actions and be encumbered as little as possible by red tape.

3.1.4 The EESC is in favour of establishing a European urban development platform in the context of sustainable urban development. The EESC does not consider it to be necessary that the right to decide which cities take part in the platform should fall to the European Commission; a fixed set of criteria ought to suffice.

3.1.5 Regarding the creation of the urban development platform, the EESC considers that the establishment of a new body is not necessary: the tasks can be carried out by relying on the existing federations of European cities. The Committee recommends that the EC ought to explore the possibilities to involve existing organisations to the operations of the platform as much as possible.

3.1.6 The platform would also support the creation of networks between all cities undertaking innovative measures at the Commission's initiative. The EESC's view is that in addition to the Commission, groups of Member States shall also be able to take the initiative when it comes to innovative measures, or establishing networks within the framework of the platform.

3.1.7 The EESC welcomes the proposal that a minimum of 5 % of ERDF funding is to be spent on integrated urban development. This sends an important and encouraging message from the EU to Member States and their regions. However, the allocation of this amount and its link with the utilisation of other resources is not yet clear.

3.1.8 The EESC believes there is a case for establishing a definition of the urban systems of small, medium-sized and large cities at European level, on the basis of a pan-European strategy for territorial development. It is also important to draw up guidelines for the development of a polycentric network of agglomerations in accordance with the objectives of the Europe 2020 strategy.

3.2 Territorial development

3.2.1 As previous EESC opinions also point out, the best way to help regions to catch up is to reinforce territorial links and support all forms of mobility. Competitiveness grows if spatial networks of agglomeration and production are allowed to develop. However, desired linkages are not restricted to transport and communication, and related objectives differ region by region.

3.2.2 The EESC recommends that a new European framework for integrated project concepts of Special European Interest shall be identified; this framework shall have specific territorial objectives. The CSF shall be considered the appropriate document that refers to this new European framework.

The EESC recommends to consider whether a need for a formalised 'European Territorial Development Strategy' exists. In addition to the priorities of the macro-regional strategies, special attention should be given to the objectives regarding Europe's urban network.

3.2.3 It is worth examining whether, in the case of integrated urban development or macro-regional strategies, it might not be necessary to formulate and promote new objectives without which large-scale projects might be stunted in their development. Well-drafted documents based on preparatory work, drawn up for instance as part of preparations for the EU's territorial agenda or the ESPON programme, are available to help define these objectives, which should preferably be place-based.

3.2.4 The territorial development strategy could define objectives that encourage macro-regional economic and social cooperation in areas such as:

- enhancing research and innovation infrastructure (research areas): linking up European centres of excellence and nurturing centres of competence, in order to invigorate Europe's development poles;
- investment in business research and innovation, product and service development, etc., internationalisation of local production systems (clusters), and support for the formation of European networks;
- transport systems in addition to the TEN-T infrastructure network (management of water resources; environmental protection; energy; information and communication systems; etc.);
- the institutional network, for the bottom-up development of macro-regional and transnational tiers of government, etc.

3.2.5 In this respect, the EESC has high hopes of the European Commission's proposals on the CSF. These are not yet available, but the Committee expects to be informed and consulted.

3.3 Connecting Europe

3.3.1 The EESC has often affirmed that given the concentration of resources, there is a need to provide resources and distinct legal frameworks to bolster transnational cooperation and thus strengthen links within Europe. However, the EESC proposes that the Commission consider widening the scope of possible interventions undertaken by the Connecting Europe Facility by opening it up so that it can co-finance projects of Special European Interest in addition to transport and communication ones. Furthermore, the EESC recommends introducing mechanisms that ensure that financed projects do serve the interest of better economic, social and territorial cohesion in Europe.

3.3.2 The EESC believes that it would be in keeping with the TFEU to develop the Connecting Europe Facility into a financial framework that finances the implementation of project of Special European Interest, as outlined in point 3.2.2 of this opinion. The Facility should include transport, energy and ICT related initiatives.

3.4 *Economic activities*

3.4.1 The EESC is in favour of giving priority to four objectives that are especially important with regard to the ERDF's contribution to the public good:

- the contribution to employment, R&D and innovation through enterprise support;
- investing in basic infrastructure (e.g. transport, energy, environment, social and health infrastructure);
- the creation, and equally important, the transfer of enterprises; and
- the development of competitiveness for SMEs, with special support for micro and crafts-related enterprises.

3.4.2 The EESC also believes that areas such as education or the development of tourism are important and remain the focus of ERDF interventions in accordance with the specific development needs of certain Member States or regions.

3.4.3 The EESC agrees that when it comes to support for enterprises it can be argued that such support, in particular in the form of grants, is most needed for small enterprises, for innovative activities, and in areas which are in industrial decline or undergoing structural change. The EESC believes that the concept of enterprise should not refer exclusively to SMEs in certain regions that are lagging behind.

3.4.4 In the case of innovation chains, also known as clusters, and of local production systems that are functioning perfectly well, the question is whether it would be preferable for there to be greater flexibility for enterprises that are well-rooted in an area and also for suppliers and to increase the share of reimbursable resources in the form of aid (for instance interest rate subsidies) in cases of multiple and combined financing.

3.4.5 This also raises the question as to whether, when it comes to basic infrastructure, support for developed regions is not necessary. Exceptions and a flexible approach ought to be considered e.g. in cases where the development of a central, more developed region is necessary for the development of its surrounding territories.

3.4.6 As regards the proposed priorities concerning the support of enterprises and business competitiveness, the EESC reiterates the important contribution of social economy enterprises to territorial and regional development as the European Institutions have recognised in several official documents. The EESC recommends including social economy in the framework of measures devoted to business competitiveness, entrepreneurship, new business models, training, education, research, technological development & innovation, promotion of employment, fostering of energy efficiency and renewable energy and social inclusion.

3.5 *Financial framework*

3.5.1 The EESC supports the Commission's proposal regarding the new nomenclature of regions and rates of structural funding.

3.5.2 The EESC believes it is necessary to use part of the ERDF funds which are currently earmarked for the Connecting Europe Facility for objectives of extended transnational linkages in general, as proposed in point 3.2.2 above.

3.5.3 The EESC agrees with the Commission's proposal which lays down minimum shares for each category of region in relation to the European Social Fund (ESF), so as to increase the funds' contribution to achieving the Europe 2020 strategy's main objectives. The EESC recommends that resources earmarked for the ESF, which can be invested in educational and social infrastructure should, as a priority, be used for integrated growth-promoting measures.

3.5.4 The EESC considers that the concentration of investment priorities is a good reflection of the objectives of the Europe 2020 strategy, and in this respect refers to the points 1.4.5.3, 2.4, 2.5, 2.6 and 2.7 of this opinion.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal’

COM(2011) 611 final — 2011/0273 (COD)

(2012/C 191/09)

Rapporteur: **Mr PÁLENÍK**

On 25 October 2011 the European Parliament, and on 27 October 2011 the Council, decided to consult the European Economic and Social Committee, under Articles 178 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal

COM(2011) 611 final — 2011/0273 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April 2012), the European Economic and Social Committee adopted the following opinion by 162 votes to 5 with 14 abstentions.

1. Summary of the EESC's conclusions and recommendations

1.1 On 29 June 2011, the European Commission adopted a proposal for the next multi-annual financial framework for the period 2014–2020: a budget for delivering the Europe 2020 strategy. In it, the Commission decided that cohesion policy should remain an essential element of the next financial perspective and should support the Europe 2020 strategy.

1.2 European territorial cooperation is one of the goals of cohesion policy and provides a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States.

1.3 The Commission sets out numerous examples of added value and of growth- and job-creating investment that could not have happened without the support of the EU budget. However, the results of its evaluation also show the effects of lack of focus and prioritisation. Investment for growth is all the more important at a time when public funds are scarce in the Member States.

1.4 European territorial cooperation is of particular importance because of its nature and role as part of cohesion policy. It contributes to cooperation at cross-border, transnational and interregional level.

1.5 The proposed distribution of financial resources between the different components of European territorial cooperation, i.e. between cross-border, transnational and interregional cooperation, provides sufficient financial capacity for each of them.

1.6 The EESC also supports the trend towards thematically focused intervention and investment priorities within each cooperation component, although it is important to take into account the specificities and needs of individual countries and regions.

1.7 The EESC welcomes and supports the attempt to simplify the rules at all the levels involved: beneficiaries, programme authorities, participating Member States and third countries, as well as the Commission.

1.8 The EESC particularly welcomes the unification of managing and certifying authorities, the simplification of the declaration of costs, electronic reporting and the production of annual reports in 2017 and 2019 only.

1.9 The establishment of common indicators (set out in the annex to the regulation) for evaluating the concrete outputs of individual programmes is also a significant element, enabling a better assessment of the results and effectiveness of particular structural interventions.

1.10 The EESC supports the direct involvement of civil society in the whole programming cycle (programming, implementation, monitoring and evaluation) on a basis of equal partnership.

1.11 The involvement of civil society stakeholders is also important in smaller projects, which have the potential to increase the added value of intervention, particularly in relation to cross-border cooperation.

1.12 Technical assistance should be used primarily to increase the absorption capacity of all parties to European territorial cooperation, so as to support the effectiveness of administrative capabilities without additional administrative burdens.

2. Main elements and background to the opinion

2.1 The legal framework for the implementation of cohesion policy is Article 174 of the Treaty on the Functioning of the European Union (TFEU).

2.2 According to Article 175 TFEU, Member States must conduct their economic policies and coordinate them in such a way as to attain the objectives set out in Article 174. The formulation and implementation of the Union's policies and actions and the implementation of the internal market must take into account the objectives set out in Article 174 and contribute to their achievement.

2.3 The aims of the European Social Fund, European Regional Development Fund and Cohesion Fund are defined in Articles 162, 176 and 177 TFEU.

2.4 Article 174 TFEU states that particular attention must be paid to rural areas, areas affected by industrial transition and regions which suffer from severe and permanent natural or demographic handicaps, such as the northernmost regions with very low population density and island, cross-border and mountain regions.

2.5 Article 349 TFEU states that specific measures must be adopted to take account of the social and economic situation of the outermost regions, which is exacerbated by certain specific features which severely restrain their development.

2.6 On 29 June 2011, the Commission adopted a proposal for the next multi-annual financial framework for the period 2014–2020: a budget for delivering the Europe 2020 strategy. In it, the Commission decided that cohesion policy should remain an essential element of the next financial package and underlined its pivotal role in delivering the Europe 2020 strategy.

2.7 The proposal is part of the cohesion policy legislative package⁽¹⁾ for the 2014–2020 period. European territorial cooperation is one of the goals of cohesion policy and provides a framework for the implementation of joint actions and policy exchanges between national, regional and local actors from different Member States.

⁽¹⁾ The Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal and the Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006 (COM(2011) 615 final) together constitute the main legislative framework and the basis for discussion of the future shape of cohesion policy for the period 2014–2020.

2.8 The Commission's evaluation of past cohesion policy spending has identified many examples of added value and of growth- and job-creating investment that could not have happened without the support of the EU budget. However, the results also show the effects of dispersion and lack of prioritisation. At a time when public money is scarce and when growth-enhancing investment is more needed than ever, the Commission has decided to propose important changes to cohesion policy.

2.9 European territorial cooperation is of particular value because:

- Transboundary problems can most effectively be solved with the cooperation of all regions concerned to avoid disproportionate costs for some and free-riding by others (e.g. cross-border environmental pollution).
- Cooperation can provide an effective mechanism for sharing good practice and learning to spread know-how (e.g. enhancing competitiveness).
- Cooperation can ensure that a solution to a specific problem becomes more effective due to economies of scale and the achievement of a critical mass (establishment of clusters to foster research and innovation).
- Governance can improve as a result of coordination of the sector policies, actions and investments on a cross-border and transnational scale.
- Relations with EU neighbours through cooperation programmes on the EU's external borders can contribute to safety and stability, and mutually beneficial relationships.
- In some contexts, such as sea basins and coastal regions, cooperation and transnational action are indispensable to support growth, employment and eco-system-based management.
- It creates the conditions for the implementation of macro-regional development strategies.

3. General comments

3.1 The EESC supports the Commission's aim of presenting the specificities of European territorial cooperation more clearly

in a separate regulation and so facilitating both its implementation and the definition of the scope of the ERDF with regard to the European territorial cooperation goal ⁽²⁾.

3.2 The clear distribution of financial resources between the different components of European territorial cooperation, i.e. between cross-border, transnational and interregional cooperation, provides sufficient financial capacity for each of these. It is clear from this distribution that the greatest emphasis is laid on cross-border cooperation (73.24 % for cross-border cooperation, 20.78 % for transnational cooperation and 5.98 % for interregional cooperation). The financial allocation for the outermost regions is also appropriate.

3.3 In relation to the outermost regions (e.g. the French overseas departments), it would be useful to identify more explicitly their neighbours and hence potential partners.

3.4 The EESC also supports the trend towards thematically focused intervention and investment priorities within each cooperation component ⁽³⁾. However, flexibility is also important in this area and the needs of particular countries must be taken into account in accordance with the principle of subsidiarity.

3.5 The focus on specific priorities within thematic areas and their selection in accordance with the needs of individual European territorial cooperation programmes (projects) could also help with the goal of increasing the value added of European territorial cooperation.

3.6 The EESC welcomes and supports the attempt to simplify the rules at all the levels involved: beneficiaries, programme authorities, participating Member States and third countries, as well as the Commission. Simplification of administrative procedures could significantly increase the value added of cohesion policy under European territorial cooperation ⁽⁴⁾.

3.7 However, the simplification of the rules must also be implemented consistently at national and regional level, so as to avoid excessive administrative burdens. The EESC recommends that the European Commission should, within

the limits of its powers and capacities, monitor and actively reduce the creation of excessive administrative burdens at national and regional level.

3.8 An important element when it comes to monitoring and evaluation is the creation of a common framework for drawing up the 2017 and 2019 annual reports and their focus on the outcomes identified in Article 13(3) of the Regulation on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal.

3.9 The establishment of common indicators (set out in the annex to the regulation) for evaluating the concrete outputs of individual programmes financed under the European territorial cooperation goal is also a significant element, enabling a better assessment of the results and effectiveness of particular structural interventions.

4. Specific comments

4.1 The EESC welcomes the Commission's attempts to simplify the rules. It particularly welcomes the unification of managing and certifying authorities, the simplification of the declaration of costs, electronic reporting and the production of annual reports in 2017 and 2019 only.

4.2 Experience in the field of territorial cooperation in the Member States shows that greater involvement of civil society is important, particularly so that the financial resources intended for intervention in this area are directed towards civil society projects.

4.3 The Committee supports the direct involvement of civil society, on a basis of equal partnership, in the whole programming cycle:

— strategic analysis and programming,

— implementation of projects, and

— monitoring and evaluation.

4.4 In this context, it would be appropriate to consider setting aside part of the funding used for projects aimed at local and regional authorities (i.e. for the needs of regional governments) and at different civil society stakeholders. In certain fields, local and regional authorities should invite organised civil society to take part in project partnerships as early as the project preparation stage.

⁽²⁾ See also the EESC opinion on the European Grouping of Territorial Cooperation – Amendments (See page 53 of this Official Journal).

⁽³⁾ The principle of thematic focus was endorsed by the EESC opinion on the Fifth Cohesion Report, OJ C 248, 25.8.2011, p. 68, points 2.2.5 and 6.14. The EESC has also long insisted on the need for simplification of administrative and accounting procedures, for example in its opinion on efficient partnership in cohesion policy, OJ C 44, 11.2.2011, p. 1 and, once again, in its opinion on the Fifth Cohesion Report, OJ C 248, 25.8.2011, p. 68.

⁽⁴⁾ Simplification of the cohesion policy rules has been the subject of a number of EESC opinions, including OJ C 248, 25.8.2011, p. 68 and OJ C 44, 11.2.2011, p. 1.

4.5 In line with the partnership principle⁽⁵⁾, it is important to focus on supporting civil society stakeholders with specific projects (e.g. micro-projects) that have the potential to increase the added value of intervention under territorial cooperation (particularly in the field of cross-border cooperation) and so include smaller civil society entities in cooperation.

4.6 The EESC underlines the need to ensure better information and publicity in the Member States about these instruments and regulations. Similarly, it is important to provide examples of good practices from projects that have already taken place.

4.7 It is also important to consider the involvement and role of private non-profit entities as lead partners in projects.

4.8 Technical assistance under the European territorial cooperation goal should be used to increase the absorption capacity of potential final recipients of support and to increase the effectiveness of managing authorities' administrative capabilities, with a focus on eliminating excessive administrative burdens.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁵⁾ This principle has been supported by the EESC's opinions OJ C 248, 25.8.2011, p. 68 and OJ C 44, 11.2.2011, p. 1 and in public statements by EESC representatives in Gödöllő in June 2011 and Gdansk in October 2011.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings’

COM(2011) 610 final — 2011/0272 (COD)

(2012/C 191/10)

Rapporteur: **Mr PARIZA CASTAÑOS**

On 25 and 27 October 2011 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 175(3) and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings

COM(2011) 610 final — 2011/0272 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 172 votes, with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) shares the European Commission's commitment to the European grouping of territorial cooperation, and supports the approach of the new regulation, which will help to ensure that the EGTC is a more effective, simple and flexible instrument, helping to improve territorial cooperation, which has been strengthened under the Lisbon Treaty. This opinion complements the opinion on the Proposal for a Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal ⁽¹⁾.

1.2 The EESC supports the fact that, as a result of this regulation, the legal instrument of the EGTC will be strengthened through common solutions at European level, and believes that in future the EGTC will be a key instrument for cooperation and territorial cohesion.

1.3 The continuity of the EGTC will be ensured in future and thanks to the changes to the regulation, this legal instrument will enable there to be greater flexibility in the application of territorial and sectoral policies.

1.4 The political importance of the regions in Europe is growing. The EESC is fully in favour of the EU's territorial cooperation policies enabling regional authorities to play a new role. Member States participate in the Council and the

EESC hopes that the European regions play an appropriate role. The CoR and the EESC have an important institutional part to play, which the Council must respect.

1.5 The future challenge will be to involve local and regional authorities and civil society in the implementation of the EU 2020 strategy, which requires broad cooperation among the various levels of governance.

1.6 The EESC has always taken account of the added value of multilevel governance systems and thus supports the creation of EGTC, which facilitate the participation of all stakeholders from a macro, euro or cross-border region.

1.7 However, multilevel governance should be strengthened with the participation of economic and social stakeholders. The EESC therefore proposes that the amendment of the Regulation make it easier for the social partners and other civil society organisations to participate in European groupings of territorial cooperation in an appropriate way. The link between the EGTC and the EU 2020 Agenda and the sectoral policies will be improved through civil society's involvement.

1.8 National, regional and local public administration officials involved in EGTC must receive training and there must be exchanges among them; the EESC therefore proposes that the Commission promote organisation of joint training programmes in order to improve administrative and policy management.

⁽¹⁾ See page 49 of this Official Journal.

1.9 The EESC proposes that this regulation, which is very specific, should be approved quickly by the Council and the Parliament without waiting for the whole cohesion policy package to be adopted. This will enable its entry into force to be brought forward.

2. The European Grouping of Territorial Cooperation (EGTC)

2.1 The European grouping of territorial cooperation is a legal form used to establish cooperation structures between public bodies of the European Union. It was created under Regulation (EC) No 1082/2006 in connection with the provisions of the Cohesion Policy for the 2007-2013 programming period.

2.2 During this programming period, cooperation measures which had previously been financed under the INTERREG Community initiative, have acquired the status of Cohesion Policy objective, including those of a cross-border and a transnational and interregional nature. They have become the third *objective* and come under the heading of European Territorial Cooperation.

2.3 Territorial cooperation is considered to be a key instrument for cohesion objectives and is thus receiving a boost with an increase in financial resources. However, it is also necessary to take parallel steps aimed at removing obstacles which hamper its development.

2.4 Currently, in order to carry out their cooperation activities, public bodies of EU Member States, especially regional and local bodies, have to deal with numerous difficulties of a legal and practical nature, which stem from the diversity of legislation and procedures and have a negative impact on the management of activities.

2.5 The regulation on the establishment of the EGTC ⁽²⁾ was adopted with a view to providing territorial cooperation stakeholders with new tools to overcome these difficulties and improve implementation of territorial cooperation measures.

2.6 This legal form enables groups of bodies working on common territorial cooperation projects and measures, with or without European co-financing, to have their own legal personality different from that of their constituent members and to act on behalf of those members in legal transactions in the European Union.

2.7 With five years having passed and in light of the experience resulting from this, the European Commission has submitted a proposal to amend the regulation, putting forward changes to clarify, simplify and improve the implementation of the EGTC.

⁽²⁾ Under Article 159 of the TEC, currently Article 175 of the TFEU, which provides for the adoption of specific measures, outside the scope of the funds, in order to meet the objective of economic and social cohesion.

3. The proposal for a regulation to amend Regulation (EC) 1082/2006 on the EGTC

3.1 In fulfilment of its undertaking to submit a report on the application of the current regulation, and as a result of the consultations carried out in cooperation with the Committee of the Regions at institutional level and with existing EGTC, the European Commission has confirmed that the EGTC represent a suitable structure for territorial cooperation over the long term ⁽³⁾.

3.2 The legal characteristics of EGTC provide territorial cooperation with 'a formal framework [...] with more legal certainty, a more official basis and a more solid institutional structure'.

3.3 The feedback from existing groupings has been positive. Twenty-six EGTC have been created, with the participation of 15 Member States, bringing together more than 550 regional and local bodies.

3.4 However, a number of shortcomings have come to light, with the uptake of EGTC falling well short of potential and the shortcomings acting as a disincentive for the possible creation of further EGTC. The amended regulation seeks to resolve these problems.

3.5 There have also been problems relating to the establishment and operation of the EGTC and the slowness and complexity of establishment and modification procedures. In addition, there have been unintended situations involving different interpretations by national and regional authorities, with diverging practices emerging.

3.6 The legal and organisational diversity of the bodies that form these groupings and the different levels of authority they possess hamper the search for an arrangement that suits all members.

3.7 There are also differences in the application of the regulation's provisions in various areas, namely limited or unlimited liability, the labour conditions of workers from the EGTC and the system for procurement of works and services.

3.8 In addition, there are difficulties relating to participation of third countries, in the event that it is appropriate to form a grouping between bodies from a single Member State and those of a third country.

3.9 There have also been diverging interpretations of the regulation's content, as in the case of the participation of private entities, which have to be contracting entities for the purpose of public procurement.

⁽³⁾ Report from the European Commission to the European Parliament and the Council. Application of Regulation (EC) No 1082/2006 on the EGTC. COM(2011) 462 final.

4. General comments

4.1 As already stated by the EESC within the framework of the consultation ⁽⁴⁾ on Regulation (EC) 1082/2006, the EGTC is a useful and valuable tool which can contribute to more effective, more active and more visible territorial cooperation.

4.2 Although there are national differences, the regions are going to play a very important role in the future system of EU governance, which the institutions must support.

4.3 The EESC welcomes the new proposed regulation which will enable them to be used more easily and effectively and make EGTC a more useful instrument for regions. The groupings need an instrument which provides European regional cooperation with a sound, structured and legally effective and reliable basis.

4.4 The new regulation will make it easier to create new EGTC which work more effectively, since it consolidates a structured framework with full operational capacity, making it possible to overcome the legal and practical difficulties involved in transnational cooperation activities. It will establish organisational units specifically geared towards planning, coordination and management.

4.5 The EESC believes this represents a new step in promoting cross-border, transnational and interregional cooperation.

4.6 A more ambitious form of cooperation is thus being promoted. The actions co-financed by the European funds under Territorial Cooperation will be placed within the framework of more strategic guidelines and will be based on the added value of the European common interest and have a long-term perspective.

4.7 In future, it would be desirable for cooperation between the regions to develop within the framework of the EU 2020 strategy and for there to be stronger objectives for job creation, improving competitiveness, sustainability, cooperation between businesses, including SMEs, universities and technology centres, etc.

4.8 The EESC is also in favour of territorial cooperation strengthening thematic and sectoral measures between regions and cities.

4.9 The EESC points out that the EGTC already permits forms of cooperation between regional authorities on economic and technological matters which are also relevant to the Europe 2020 strategy. This form of cooperation should be more visible.

4.10 The EESC appreciates the importance of the various projects which cooperation instruments such as the EGTC promote, from the INTERREG initiatives to the establishment of cross-border public services or multi-sectoral strategic plans.

4.11 The EESC supports the institutional role of the Committee of the Regions in monitoring the EGTC and in exchanging good practices. The CoR's EGTC platform must continue its activities following approval of the new regulation. The EESC wishes to cooperate with the CoR.

4.12 The EESC wishes to work together with the CoR so that civil society and the social partners take part in the follow-up and evaluation of EGTC. The Committee calls on the Commission to draw up a report on the application of the new regulation and on the participation of economic and social actors and of civil society in the EGTC ⁽⁵⁾.

4.13 The Committee is also in favour of simplifying the creation of EGTC in future, as well as conventions being approved within six months, although governments have not given their express approval.

4.14 The EESC agrees that EGTC have considerable flexibility in managing infrastructure and services of general economic interest for the benefit of citizens living in the territories of various Member States.

4.15 The EESC points out that territorial cooperation, the main objective of which is to improve economic, social and territorial cohesion, also takes place within the framework of more ambitious high-level initiatives of greater political complexity, such as the macroregions, euroregions and the basin strategies in the integrated maritime policy.

4.16 The EESC stresses that macroregional and interregional cooperation, with the proper functioning of EGTC, can also play a role in meeting the EU's sectoral objectives. The Europe 2020 strategy will undoubtedly receive an additional boost. The regulation should help link EGTC more effectively to the EU's political and financial instruments for sectoral policies.

4.17 The Commission and Member States must make it easier for the outermost regions and overseas territories to use the EGTC, including with neighbouring third countries.

4.18 The EESC, while respecting the principle that EGTC must be established voluntarily, encourages the Commission to play a more proactive role in facilitating, simplifying and improving the EGTC, which must in turn be linked to the strategic objectives of the European Union.

⁽⁴⁾ Opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC), OJ C 255/15, 14.10.2005, p. 76.

⁽⁵⁾ EESC opinion on *Efficient partnership in cohesion policy*, OJ C 44, 11.2.2011, p. 1.

5. Specific comments

5.1 The EESC regards as appropriate the European Commission's approach in its proposed amendment to the current regulation. The EESC would stress that the EGTC must be simple to use, so that each group of partners configures the grouping and its responsibilities in the way that is most suited to their characteristics, since each grouping of partners has its own specific situation and circumstances, and the EGTC has to be an instrument capable of covering their cooperation objectives.

5.2 Currently, many European regions do not make use of the cooperation opportunities that Community law offers through the legal form of the EGTC, within the framework of EU regional policy. The EESC calls on the European Commission to make a greater effort to publicise and promote this instrument to regional authorities and civil society.

5.3 The principle of simplification, which the Commission wants to incorporate into the future cohesion policy and thus European territorial cooperation, has to be at the core of the various instruments, especially the EGTC.

5.4 The EESC notes that the legal, administrative and procedural complexities act as a disincentive for territorial cooperation stakeholders, especially those regional and local authorities which have more limited administrative tools and scarcer resources.

5.5 The slowness of the administrative procedures to set up an EGTC, and the need to repeat the procedure for every new addition, are incompatible with the dynamism required for cooperation activities and represent a real obstacle to the use of EGTC. The EESC is pleased that these problems are to be solved through the new regulation.

5.6 Flexibility is another desirable feature which is sought by those wishing to set up a cooperation structure, as it enables them to adapt the way it is organised and operates to their specific needs and characteristics.

5.7 The EESC proposes to the European Commission that, in order to facilitate the work of local and regional authorities, it put in place a system of advice, training and for exchanging experience to make it easier to draw up conventions and statutes.

5.8 The EESC considers the measures adopted to avoid digital fragmentation among the public administrations of the EGTC to be insufficient. It is important to guarantee a system of territorial public administrations that is interconnected, interactive and accessible via the Community ISA programme ⁽⁶⁾. This will support the added value of multilevel governance systems and the participation of all stakeholders in a macro, euro or cross-border region.

5.9 The EESC is in favour of the convention indicating the labour and social security rules applicable to EGTC staff, as well as the rules on their recruitment and management.

5.10 The EESC wishes to draw attention to the model of multilevel governance that is the EGTC, in which member partners, from various regional, local, national and institutional backgrounds, form governance and cooperation bodies. However, the Committee proposes that the social partners and other civil society stakeholders also be involved.

Brussels, 25 April 2012.

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

⁽⁶⁾ Interoperability Solutions for European public administrations.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters'

COM(2011) 445 final — 2011/0204 (COD)

(2012/C 191/11)

Rapporteur: **Mr PEGADO LIZ**

On 14 September 2011, the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters

COM(2011) 41 final — 2011/0204 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 The EESC welcomes the presentation of this proposal for a regulation, whose only fault has been its late arrival in relation to the 2006 Green Paper on the attachment of bank accounts.

1.2 The EESC considers that it should be accompanied by a simultaneous initiative – although it should logically have come first – on the transparency of debtors' accounts, as set out in the 2008 Green Paper on the transparency of debtors' assets.

1.3 The EESC is pleased that the Commission has succeeded in proposing, in an area of great technical difficulty, a legal regime that strikes a proper balance between the various interests at stake and a fair balance between the rights of the various parties concerned.

1.4 The EESC welcomes the fact that the Commission has taken on board a considerable part of the recommendations made by the EESC in its opinion on the above-mentioned green paper, including the extension of its scope beyond cash held in bank accounts to include other financial instruments, the issue of a European Account Preservation Order (EAPO) after obtaining an enforceable title, the wide-ranging definition of courts having jurisdiction, the non-inclusion of requests for any amounts other than those due and not repaid together with default interest, and recognised costs, and the clear definition of rules for contesting and opposing the measure and for admissible appeals, in order to guarantee the lawfulness of the procedure and safeguard the rights of claimants, defendants and third parties.

1.5 The clear adoption of an alternative or optional approach, the choice of a regulation as the EU instrument to best ensure the completion of the internal market, application of the measure only to cross-border situations and, lastly, the choice of an appropriate legal basis (Article 81(2) TFEU) – all advocated by the EESC – are particularly welcome. The EESC furthermore supports the adoption of a regime that is appropriate, straightforward and proportionate in cost/benefit terms, all of which are required by the cross-border nature of the mechanism and the means required of all those who may use or be confronted with it.

1.6 The EESC is moreover not entirely convinced with regard to the essential nature of the measure, especially given that it will not be adopted by the United Kingdom and given the fact that uncertainty about the total cost of the procedure as well as finding out the competent foreign court will remain barriers, certainly for small companies. Neither is the EESC entirely convinced with regard to the proposal's compliance with the principles of subsidiarity and proportionality, since the revision of the Brussels I Regulation envisages the abolition of exequatur and the estimates of the expected results contained in the impact assessment are still imprecise.

1.7 Lastly, the EESC considers that the content of some provisions needs to be reviewed and could be improved to make it clearer, less ambiguous and more purposeful, and also to correct some translation and printing errors. It urges the Commission to take note of its comments in this regard.

2. Purpose and background of the proposal

2.1 With the present proposal for a regulation, the Commission is following up on its 2006 Green Paper on the attachment of bank accounts⁽¹⁾. It proposes to introduce an alternative legal instrument to national procedures, the EAPO, into the EU legal system by means of a regulation. The purpose is to secure the speedy and inexpensive preservation of the bank accounts of debtors subject to pecuniary claims in civil and commercial matters, in order to prevent the withdrawal or transfer of funds held in bank accounts anywhere on EU territory, provided that any of the parties or assets involved are located in more than one Member State (cross-border implications as defined in Article 3) whatever the nature of the court or tribunal.

2.2 The regime has been set up on an optional basis (a 2nd regime generally known as the '28th regime') as an alternative to, and in parallel with, existing protective measures in the Member States, with the same nature and purpose.

2.3 The following are excluded from the proposed regime for varying reasons:

- a) revenue, administrative and customs matters,
- b) bankruptcy, winding-up of companies, composition and analogous proceedings,
- c) social security,
- d) arbitration,
- e) bank accounts declared exempt from seizure by the legislation of the Member State where such accounts are located,
- f) the settlement of securities designated in accordance with Article 10 of Directive 98/26/EC⁽²⁾.

2.4 In contrast, it will apply to matters of matrimonial property regimes, successions, and the consequences of registered partnerships⁽³⁾.

2.5 An EAPO may be applied for and decided at different points in time:

- a) prior to the initiation of judicial proceedings for a decision or to enforce a decision against the defendant,
- b) at any stage during judicial proceedings,

c) after obtaining a judgment against the defendant or any other enforceable title in the Member State of origin, but which is not yet enforceable in the Member State where the account is located,

d) after obtaining an enforceable title which is already enforceable in the Member State where the account is located.

2.6 The provisions of Section 1 (Articles 6 to 13) apply in the first three cases, Section 2 (Articles 14 and 15) to the fourth, while Section 3 (Articles 16 to 22) contains the provisions common to all situations.

2.7 Chapter 3 enshrines the principle that exequatur is not required in absolute terms (Article 23) and lays down detailed rules on how EAPOs are to be effectively enforced, establishing the rights and duties of the various parties involved (banks, courts, competent national authorities, defendants, claimants, other competing creditors and other injured third parties).

2.8 Chapter 4 (Articles 34 to 40) governs remedies ranging from the reaction to a refusal to issue an EAPO (Article 22) to review of the EAPO in order to modify/limit its purpose, declaration of its termination, revocation or suspension, and, lastly, ordinary or extraordinary appeals: the parties retain in full the rights granted under the applicable national law regarding the availability of such appeals (Article 37). It also governs how security deposits or equivalent assurance, as a means of terminating enforcement of an EAPO, are to be provided.

2.9 Lastly, Chapter 5 lays down a number of general provisions for the proposed regime, establishing for instance that representation by a lawyer is not mandatory and specifying costs and time limits.

2.10 In addition, it lays down rules on the relationship with other EU or national legal instruments applicable by default, together with the obligations to be met by the Member States in order to ensure the effective and proper implementation of the instrument.

2.11 The prior impact assessment carried out by the Commission reveals in summary that:

- a) Cross-border bad debt is estimated at between EUR 1.12 and 2 billion per year.
- b) Cross-border maintenance claims can be estimated at EUR 268 million per year.
- c) Cross-border bad business debts amount to some EUR 55 billion per year.
- d) Only 11.6 % of companies have applied for a national preservation order to secure payment of a cross-border claim.

⁽¹⁾ COM(2006) 618 final of 24.10.2006.

⁽²⁾ OJ L 166, 11.6.1998, p. 45.

⁽³⁾ Cf. Regulation (EU) 1259/2010 (OJ L 343, 29.12.2010, p. 10) (Rome III) (divorce and separation), Regulation (EC) 44/2001 (OJ L 12, 16.1.2001, p. 1) (civil and commercial matters), Regulation (EC) 2201/2003 (OJ L 338, 23.12.2003, p. 1) (matrimonial matters); and Proposal for a Regulation (COM(2011) 127 final of 16.3.2011 (registered partnerships) and Proposal for a Regulation (COM(2011) 126 final of 16.3.2011 (matrimonial property regimes); cf. EESC opinions: OJ C 325, 20.12.2006, p. 65 (rights of the child), OJ C 325, 20.12.2006, p. 71 (matrimonial matters), OJ C 44, 11.2.2011, p. 148 (matters of succession) and OJ C 376, 22.12.2011, p. 87 (property consequences of registered partnerships).

- e) It is estimated that 34 000 bank attachments concerning cross-border debts are made per year, representing EUR 640 million.

According to the same assessment, the European preservation order may:

- a) Secure the recovery of EUR 373 to 600 million of additional bad debt per year.
- b) Produce estimated cost savings for companies engaged in cross-border trade of EUR 81.9 million to 149 million per year.

3. General comments

3.1 We have long been accustomed to formally flawless, carefully thought-out and limpid technical and legal texts from DG JUST, that have contributed to 'better law-making' and to legal certainty and security.

3.2 The present proposal is no exception and the EESC therefore welcomes its presentation, whose only fault is its tardy arrival.

3.3 The Commission has also succeeded in proposing, in an area of great technical difficulty, a legal regime that strikes a proper balance between the various interests at stake and a fair balance between the rights of the various parties concerned. These rights are painstakingly considered in the detailed and carefully-structured impact assessment accompanying the proposal, for which the EESC had long been calling.

3.4 The Commission has moreover taken on board a considerable part of the recommendations made by the EESC in its opinions on the above-mentioned green paper and on the Green Paper on the transparency of debtors' assets (COM(2008) 128 final) ⁽⁴⁾. This includes such aspects as the issue of an EAPO after obtaining an enforceable title (Section 2); the wide-ranging definition of courts having jurisdiction (Article 6); the non-inclusion of requests for any amounts other than those due and not repaid together with default interest, and recognised costs (such as lawyers' fees or other expenses); and the clear definition of rules for contesting and opposing the measure and for admissible appeals, in order to guarantee the lawfulness of the procedure and safeguard the rights of claimants, defendants and third parties.

3.5 The Commission has also largely heeded the recommendations that the European Parliament has recently adopted in this field ⁽⁵⁾ and which are also welcomed.

3.6 The clear adoption of an alternative or optional approach, as urged by the EESC, which leaves claimants entirely free to choose national law, is particularly positive. The same applies to the choice of a regulation as the EU

instrument to best ensure the legislative harmonisation that is crucial to completing the internal market and greater uniformity of application in the Member States, in turn guaranteeing more legal certainty and security, as also advocated by the EESC; application of the measure only to cross-border situations; and, lastly, the choice of an appropriate legal basis (Article 81(2) TFEU).

3.7 It also welcomes the extension of scope beyond cash held in bank accounts to include other financial instruments ⁽⁶⁾, as previously suggested by the EESC.

3.8 The EESC remains, however, unconvinced with regard to the essential nature of the measure and its compliance with the principle of subsidiarity.

3.8.1 Firstly, and evidently, because the Commission itself recognises that the same result could be achieved by other means.

3.8.2 Secondly, because it may now be assumed that the Brussels I Regulation will be revised along the lines urged by the Commission and supported by the EESC, the crucial issue of *exequatur* is settled.

3.8.3 Lastly, because there is no sign in the well-constructed impact assessment, referred to above, that the increased costs incurred by introducing a new judicial procedure into the law of all the Member States have been fully analysed and properly assessed in all the aspects relating to implementation, information to businesses and consumers, training of judges, lawyers and other legal professionals, and public officials, particularly from the legal administration. Then there are the increased operating costs of judicial bodies arising from having to deal with a range of forms in the 23 EU languages, which cannot therefore be compared, in cost-benefit terms, with the estimated savings for businesses or the expected amount from the additional recovery of debts which, moreover, range from EUR 373 to 600 million. Besides, the uncertainty about the total cost of the procedure as well as finding out the competent court will remain barriers. This might adversely affect companies, in particular small businesses.

3.9 Moreover, the EESC continues to believe, as does the EP, that the present initiative should in any case be accompanied – or even, as would be logical, preceded – by another concerning the transparency of debtors' assets. It still does not understand why the Commission is moving ahead primarily (or exclusively) with this proposal and not the other.

⁽⁴⁾ EESC opinions: OJ C 10, 15.1.2008, p. 2; and OJ C 175, 28.7.2009, p. 73.

⁽⁵⁾ Own-initiative report A-7 0147/2011 14.4.2011, rapporteur: Arlene McCarthy, EP Resolution of 10 May 2011 (TA(2011) 0193).

⁽⁶⁾ As defined in Article 4(1) point (17) of Directive 2004/39/EC and Section C of Annex I (OJ L 145, 30.4.2004, p. 1).

3.10 Lastly, the EESC must express its regret not only at Denmark's stance of not adopting the instrument, in keeping with its well-known declaration of principle, but in particular at the announced decision by the United Kingdom not to adopt it either. This is of course the very Member State which has no comparable legal instrument. One of the main concerns raised during the discussion of the green paper was this very loophole in the British legal systems.

4. Specific comments

4.1 Article 2(2)(c)

The exclusion of arbitration must be clarified in order not to jeopardise the position of the arbitration tribunals that, in a number of Member States, make decisions that are enforceable titles on the same footing as the judgments of ordinary courts.

4.2 Articles 2(3) and 32

No accounts are exempt from seizure: amounts corresponding to income or earnings may be exempt.

4.3 Articles 4(1) and 29

Due to the sensitive nature of the situation, expressions such as 'account ... in the name of a third part on behalf of the defendant' and 'accounts ... held by the defendant on behalf of a third party' must be better defined and made clearer so as to avoid any doubts about their scope which might be damaging to the rights of third parties.

4.4 Article 7(1)(a)

The wording is not the same in all language versions [*translator's note: some language versions, including the Portuguese, read '... the claim against the defendant is well founded', while others, including the English, read 'the claim against the defendant appears to be well-founded'*].

4.5 Article 8(2)(f)

[Does not apply to the English version: the rapporteur points out that the reference to Article 7(1)(b) is wrongly indicated in the Portuguese version as Article 17(1)(b)].

4.6 Article 13

Under a regime of the type the proposal seeks to set up, it should not be left to the Member States to decide different

time periods as otherwise uniformity cannot be guaranteed and uncertainty will result.

4.7 Article 20(1)

'Those courts ... may cooperate' should be replaced with 'must cooperate'.

4.8 Article 25(1)

The expression 'without undue delay' is dangerously vague: it should be replaced by a set minimum deadline, such as 'on the next working day'.

4.9 Article 27(3)

The option of using secured electronic means of communication should be extended to all instruments, including relations between courts, under the Commission's *e-Justice* programme, to speed up procedures.

4.10 Article 41

The following should be added at the end of the article: 'except in cases where the national law of the competent court stipulates that provision of a lawyer is mandatory'.

4.11 Article 44

This provision could be interpreted in different ways and give rise to uncertainty in proceedings. It should be deleted.

4.12 Definition of time limits

Time limits are defined differently in several articles. They refer sometimes to 'calendar days' (Article 21), sometimes to 'working days' (Article 24(3)(c), Article 27), or just to 'days' (Article 35(4)). The definition of time limits should made uniform in the interests of certainty.

4.13 Annexes and Article 47

The content of the annexes, and in particular the languages in which they must be used, together with the need for translation in order to ensure they are properly understood, must be better assessed and tested in advance. The same applies to additional evidence and oral testimony (Article 11).

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts’

COM(2011) 778 final — 2011/0389 (COD)

and the ‘Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities’

COM(2011) 779 final — 2011/0359 (COD)

(2012/C 191/12)

Rapporteur: **Mr MORGAN**

On 13 December 2011 the European Parliament and on 26 January 2012 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 50 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

COM(2011) 778 final — 2011/0389 (COD).

On 15 December 2011 the European Parliament and on 26 January 2012 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities

COM(2011) 779 final — 2011/0359 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April), the European Economic and Social Committee adopted the following opinion by 110 votes to 18 with 63 abstentions.

1. Conclusions and recommendations

1.1 Following its Green Paper Opinion (GPO) on Audit Policy ⁽¹⁾, the EESC expected that the existing Audit Directive 2006/43/EC ⁽²⁾ would be updated. In the event, the Commission proposes to update the directive in part but also to produce a regulation for the other part.

1.2 The EESC endorses the draft directive. It is consistent with the Committee's GPO. There are also many aspects of the regulation which the EESC does endorse.

1.3 The purpose of the regulatory format appears to be two-fold: to introduce fundamental changes onto the audit market and to prescribe in considerable detail the procedures relative to company audits and the relationships between the board and the audit committee.

1.4 Little account has been taken of the EESC recommendation that audit reform should be integrated with the recommendations on corporate governance. There is no discussion of the way in which both statutory auditors and audit committees should improve stakeholder and shareholder communication.

1.5 The Commission proposes to bring about fundamental changes to the audit market by mandatory rotation of statutory auditors after six years and by structural provisions involving non audit services aimed at capping the market share of specific firms in certain Member States.

1.6 Rather than addressing the state of the audit market with a regulation, the Committee proposed that there should be a reference to the competition authorities. These authorities are equipped to undertake full scale economic assessments and formulate appropriate remedies. In recent months the situation in the UK has been referred to the UK Competition

⁽¹⁾ OJ C 248, 25.8.2011, p. 92.

⁽²⁾ OJ L 157, 9.6.2006, p. 87.

Authority. As outlined in our GPO, the EESC would encourage Germany and Spain to take the same course of action. Nevertheless, the Committee recognises that the regulation will allow for more consistent audits of PIEs in Europe, which it considers to be of paramount importance for financial stability and a stronger internal market.

1.7 In its GPO the EESC did not support mandatory rotation of Statutory Auditors (SA). Instead, it proposed mandatory retendering of the contract every six to eight years. After due consideration of the new proposals, the EESC maintains that position, but welcomes other aspects of the regulation. Since the key audit partner is to rotate after seven years, the EESC proposes that the period for mandatory retendering should also be seven years.

1.8 In its GPO, the Committee expressed a very clear view on non-audit services: statutory auditors should not provide to their statutory audit clients any services which could create a conflict of interests for the statutory auditor, in other words, situations where the statutory auditor would be reviewing its own work. At the same time, statutory auditors should be free to provide the full range of non-audit services to non audit clients. The benefits of the experience gained would accrue to both audit and non audit clients.

1.9 The EESC disagrees with the proposal for audit only firms. The formula to determine when an audit firm is disbarred from offering any non audit services should be discarded. The Commission is concerned about the possible risks from firm dominance in three territories. The EESC recommends that the Commission tackle these few cases directly or via the relevant competent authorities and/or competition authorities.

1.10 As in any EESC opinion, the position of SMEs has to be considered. If an SME has shares listed on a stock exchange, it is defined as a public interest entity and therefore subject to the extensive and prescriptive provisions of the regulation which are clearly designed for the audit of banks. Point 4.1.1 contains an analysis of firms listed on the London Stock Exchange. London is further advanced than other EU exchanges in providing equity capital to small firms. Equity is more flexible than bank loans. Half of the firms listed in London should either have an exemption or derogation from this regulation, as should listed SMEs elsewhere in Europe.

1.11 Importantly, the EESC highlights that paragraph 2 in Article 14 strictly limits what stakeholders might otherwise have expected from the statutory audit and it raises a question about what the role of audit should be.

1.12 The regulation also cuts across the ethical, accounting and quality standards already operating in the industry and makes no reference to relevant standards development. Does the Commission intend to sideline the work of these bodies?

1.13 In conclusion, the EESC is fully supportive of the revised directive and it finds much in the regulation which it can support. The EESC has a major concern about the applicability of the regulation to SMEs and it recommends that the more radical proposals be given further consideration.

2. Introduction

2.1 This opinion responds to two parallel Commission proposals: a regulation to increase the quality of audits of financial statements of public interest companies and a directive to enhance the single market for statutory audits. These proposals were developed following a wide ranging consultation based on the *Green Paper on Audit Policy: Lessons from the crisis* ⁽³⁾. The EESC made a full response to the Green Paper and so this opinion draws upon that response.

2.2 There is an existing Audit Directive in place (2006/43/EC) ⁽⁴⁾. The Commission proposes to amend that directive with the new directive and to reinforce the audit of Public-Interest Entities (PIE) with the new regulation. As a consequence, it is proposed that the provisions on the statutory audits of PIEs in Directive 2006/43/EC ⁽⁵⁾ be deleted from that directive with statutory audits of PIEs being regulated by the new regulation.

2.3 Everything that the EESC would choose to say about the societal role of audit, the role of audit in the financial crisis, the market for audit services, etc., was said in the Committee's response to the Green Paper. This opinion concentrates on the detailed proposals included in the new legislative drafts.

3. EESC perspective on the Directive

3.1 The main modifications to the Statutory Audit Directive are:

3.1.1 ***Articulation between the Statutory Audit Directive and an additional legal instrument on specific requirements for the statutory audit of PIEs;***

3.1.2 ***Definition of 'statutory audit' in order to take account of the new accountancy directive;***

3.1.3 ***Modification of the ownership rules;***

Member States should no longer require that a minimum amount of capital in an audit firm is held by statutory auditors or audit firms, provided that only the statutory auditors or audit firms involved

⁽³⁾ COM(2010) 561 final.

⁽⁴⁾ OJ L 157, 9.6.2006, p. 87.

⁽⁵⁾ See footnote 4.

have influence over the issuance of audit reports. Member States should nevertheless be able to decide on the appropriateness of such external equity participation with respect to national conditions.

3.1.4 *Passport for audit firms;*

3.1.5 *Passport for statutory auditors and ‘softening’ the conditions for a statutory auditor to be approved in a different Member State;*

3.1.6 *Requirements to competent authorities to cooperate regarding educational requirements and aptitude test;*

3.1.7 *Auditing standards and audit reporting;*

3.1.8 *New rules regarding competent authorities;*

The EESC supports the establishment of Member State Competent Authorities to be the national independent regulators and supervisors and to be the national counterparties to ESMA. However, where competent independent auditor supervisory bodies (including chambers of public accountants and auditors) are already working well in Member States, the EESC would like to see these bodies equivalently enclosed into the new supervisory framework, and not abandoned.

3.1.9 *Prohibition of contractual clauses influencing the appointment of statutory auditors or audit firms;*

3.1.10 *Special rules for the statutory audit of small and medium-sized undertakings.*

3.2 The EESC supports all these changes. Most are consistent with the EESC GPO.

4. EESC perspective on the Regulation

This section follows the structure of the regulation. Important paragraphs from the text have been reproduced or summarised and then annotated as needed with the opinion of the EESC.

TITLE I: SUBJECT MATTER, SCOPE AND DEFINITIONS

4.1 Articles 1 to 3 - Subject matter, Scope and Definitions

The Regulation applies to auditors (SA) that carry out statutory audits of Public Interest Entities (PIEs) and to the audited PIEs, e. g. rules on the audit committee (AC) which a PIE is required to have. As the financial sector evolves, new categories of financial institutions are created under Union law and it is thus appropriate that the definition of PIEs also encompasses investment firms, payment institutions, undertakings for collective investment in transferable securities (UCITS), electronic money institutions and alternative investment funds.’

4.1.1 In addition to credit institutions, insurance undertakings and all other financial services firms, PIEs are defined as all companies with shares listed on public stock exchanges. The EESC believes that the requirements of this regulation are excessive for SMEs. SMEs are defined by employment, revenue and or balance sheet. The Regulation uses market capitalisation to define large companies and the EESC proposes that market capitalisation should also be used to define SMEs for statutory audit purposes. Exemptions or derogations should be permitted for companies with market capital of up to EUR 120 m. An analysis of the companies listed on the London Stock Exchange is given below. The market capitalisation distribution will be similar in other EU exchanges. Similar consideration should also be given to financial SMEs whose activities are unlikely to have a systemic significance.

Constituent Company Equity Capitalisation (Converted at £1 = EUR 1,20)						
	Main market: 985 companies Equity value: EUR 2 336 055 m			AIM Market: 1 122 companies Equity value: EUR 85 107 m		
Range (EURm)	Number of companies	% of companies	Market value %	Number of companies	% of companies	Market value %
Over 2 400	116	11,8	86,2	1	0,1	4,2
1 200-2 400	87	8,8	6,4	6	0,5	13,1
600-1 200	91	9,2	3,4	16	1,4	16
300 – 600	106	10,6	2	34	3	15,4
120 – 300	169	17,2	1,4	92	8,2	20,4
60 – 120	101	10,3	0,4	133	11,9	13
30 – 60	79	8	0,2	200	17,4	9,9

Constituent Company Equity Capitalisation (Converted at £1 = EUR 1,20)						
	Main market: 985 companies Equity value: EUR 2 336 055 m			AIM Market: 1 122 companies Equity value: EUR 85 107 m		
Range (EURm)	Number of companies	% of companies	Market value %	Number of companies	% of companies	Market value %
12 – 30	88	8,9	0,1	229	20,4	5,3
6 – 12	40	4,1	0	156	13,9	1,5
0 – 6	61	6,1	0	240	21,4	0,9
Other	47	4,7		15	1,3	
> 120	569	57,7	99,4	149	13,2	69,3
< 120	369	37,5	0,6	958	85,4	30,7
< 60	268	27,2	0,2	825	73,5	17,7
< 30	189	19,2	0,1	625	55,7	7,8

Source: London Stock Exchange Web Site / Statistics

4.2 Article 4 - Large public interest entities

'a) The largest 10 issuers of shares in each Member State measured by the market Capitalisation and all issuers of shares that had an average market capitalisation of more than EUR 1 000 000 000 for the previous three calendar years;

b) and c) Any finance industry entity which on their balance sheet date has a balance sheet total exceeding EUR 1 000 000 000;'

4.2.1 These definitions relate to the provisions of Article 10 paragraph 5.

TITLE II: CONDITIONS FOR CARRYING OUT STATUTORY AUDIT OF PUBLIC-INTEREST ENTITIES

CHAPTER I: Independence and Avoidance of Conflicts of Interest

4.3 Articles 5 to 8

4.3.1 The EESC supports these 4 articles in principle.

4.4 Article 9 - Audit fees

'2. When the SA provides to the audited entity related financial audit services, as referred to in Article 10(2), the fees for such services shall be limited to no more than 10 % of the fees paid by the audited entity for the statutory audit.

3. When the total fees received from a PIE subject to statutory audit represent either more than 20 % or, for two consecutive years, more than 15 % of the of the total annual fees received by the SA carrying out the statutory audit, such auditor shall disclose this to the AC.

The AC shall consider whether the audit engagement shall be subject to a quality control review by another SA prior to the issuance of the audit report.

When the total fees received from a PIE subject to the statutory audit represent, for two consecutive years, 15 % or more of the total annual fees received by the SA carrying out the statutory audit, the auditor or firm shall inform the competent authority.'

4.4.1 The EESC supports the proposals for transparency. However, the 10 % limit in paragraph 2 is arbitrary. The EESC proposes that services related to the audit (see 10.2 below) be part of the audit plan (see paragraph 4.16.2 below) and priced without arbitrary limits in the context of the audit overall.

4.5 Article 10 - Prohibition of the provision of non-audit services

'1. An SA carrying out statutory audit of PIEs may provide to the audited entity audit services and related financial audit services.

2. Related financial audit services shall mean:

- a) the audit or review of interim financial statements;
- b) providing assurance on corporate governance statements;
- c) providing assurance on corporate social responsibility matters;
- d) providing assurance on or attestation of regulatory reporting for financial institutions;
- e) providing certification on compliance with tax requirements;
- f) any other statutory duty related to audit work.

3. An SA carrying out statutory audit of PIEs shall not directly or indirectly provide non-audit services to the audited entity. Non-audit services shall mean:

- a) services entailing conflict of interest in all cases
 - (i) expert services unrelated to the audit, tax consultancy, general management and other advisory services;
 - (ii) book keeping and preparing accounting records and financial statements;
 - (iii) designing and implementing internal control or risk management procedures and advice on risk;
 - (iv) valuation services, providing fairness opinions or contribution-in-kind reports;
 - (v) actuarial and legal services, including the resolution of litigation;
 - (vi) designing and implementing financial information technology systems for PIEs;
 - (vii) participating in the audit client's internal audit and the provision of services related to the internal audit function;
 - (viii) broker or dealer, investment adviser, or investment banking services.

b) services which may entail conflict of interest:

- (i) human resources services;
- (ii) comfort letters for investors in the context of the issuance of an undertaking's securities;
- (iii) designing and implementing financial information technology systems;
- (iv) due diligence services to the vendor or the buy side on potential mergers and acquisitions.'

4.5.1 In its GPO the EESC said that SAs should not provide to their statutory audit clients any services which would entail a conflict of interest. While there should be some debate about the nature of the services detailed in 3 (a) and (b) above, the EESC supports the intention of the regulation.

4.5.2 It is not possible to exclude the possibility that there will be circumstances in which it may make overwhelming sense for the SA to provide a service from items (i) to (v) of list (a) to its statutory audit client. An unavoidable event – force majeure – can occur; corporate catastrophes do happen. Services from list (b) may be provided at the discretion of either the AC or the competent authority. The same discretion should be available for items on list (a) in exceptional circumstances.

'5. Where an audit firm generates more than one third of its annual audit revenues from large PIEs and belongs to a network whose members have combined annual audit revenues which exceed EUR 1 500 million within the European Union, it shall comply with the following conditions:

- a) it shall not directly or indirectly provide to any PIE non-audit services;
- b) it shall not belong to a network which provides non-audit services within the Union;
- e) such audit firm shall not directly or indirectly hold more than 5 % of the capital or of the voting rights in any entity which provides the services listed in paragraph 3.'

4.5.3 The EESC understands that the purpose of these provisions is to address the 'dominant' market positions of a Big 4 firm in the UK, Germany and Spain (a different firm in each case) and to act as a deterrent to building such positions in future. In its GPO the EESC proposed that market dominance be

addressed by reference to competition authorities. An investigation is already under way in the UK. The EESC proposes that Germany and Spain should follow suit, pending the adoption of this Regulation.

4.5.4 The EESC does not support audit only firms. In our opinion, such a change is likely to have a detrimental effect on the quality of audit staff and on the quality of statutory audits. The EESC maintains its position that auditors should be free to provide a full range of non-audit services to entities other than statutory audit clients.

4.5.5 In its GPO, the EESC said that it supported the provision of certain non-audit services to statutory audit clients who were SMEs. Small firms will get better quality, service and value from a single advisor. The EESC maintains its position.

4.6 Article 11- Preparation for the statutory audit and assessment of threats to independence

4.6.1 Provisions supported by EESC.

CHAPTER II: Confidentiality and Professional Secrecy

4.7 Articles 12 and 13

4.7.1 Provisions supported by the EESC.

CHAPTER III: Performance of the Statutory Audit

4.8 Article 14 - Scope of the statutory audit

'2. Without prejudice to the reporting requirements as referred to in Articles 22 and 23, the scope of statutory audit shall not include the assurance on the future viability of the audited entity nor the efficiency or effectiveness with which the management or administrative body has conducted or will conduct the affairs of the entity.'

4.8.1 The EESC calls attention to the paragraph above because it strictly limits what stakeholders might otherwise have expected from the statutory audit and it raises a question about what the role of audit should be.

4.9 Article 15 - Professional scepticism

The SA shall maintain professional scepticism throughout the audit. "Professional scepticism" means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud and a critical assessment of audit evidence.'

4.9.1 As in our GPO, the EESC supports the emphasis on professional scepticism.

4.10 Articles 16 to 20

4.10.1 The EESC supports the use of ISAs and the other provisions of Articles 16 to 20.

CHAPTER IV: Audit Reporting

4.11 Article 21 - Results of the statutory audit

The SA shall present the results of the statutory audit in the following reports:

— an audit report in accordance with Article 22;

— an additional report to the audit committee in accordance with Article 23.'

4.12 Article 22 - Audit Report

'2. The audit report shall be in writing. It shall at least:

- k) identify key areas of risk of material misstatement of the annual or consolidated financial statements, including critical accounting estimates or areas of measurement uncertainty;
- l) provide a statement on the situation of the audited entity, especially an assessment of the entity's ability to meet its obligation in the foreseeable future and therefore continue as a going concern;
- m) assess the entity's internal control system, including significant internal control deficiencies identified during the statutory audit, as well as the bookkeeping and accounting system;
- o) indicate and explain any violation of accounting rules or violation of laws or the articles of incorporations, accounting policy decisions and other matters that are significant for the governance of the entity;
- q) where the statutory audit was carried out by an audit firm, the report shall identify each member of the audit engagement team and shall state that all members remained completely independent and had no direct or indirect interest in the audited entity;

t) give an opinion which shall state clearly the opinion of the SA as to whether the annual or consolidated financial statements give a true and fair view and have been prepared in accordance with the relevant financial reporting framework;

u) refer to any matters to which the SA draws attention by way of emphasis without qualifying the audit opinion;

4. The audit report shall not be longer than four pages or 10 000 characters (without spaces).'

4.12.1 This report replaces the audit opinion which is presently published as part of the PIE's Annual Report and Accounts. Paragraph 2 specifies 23 elements (a) to (w) to be included in the 4 pages of this report. In its GPO the EESC was critical of the meaningless and boiler plate content of audit opinions, showing little variation from firm to firm and industry to industry. This report will reveal more, perhaps to the discomfort of the audited entities.

4.12.2 There is a requirement to name the audit team. For the largest PIEs, this could involve 100s of people. A report for a very large enterprise must surely be differentiated in scale and scope from that for a company 100th of its size. A number of the requirements seem to be out of step with international accounting standards. The regulation makes no reference to these standards.

4.13 Article 23 - Additional report to the audit committee

'1. Additional report shall be disclosed to the general meeting of the audited entity if the management or administrative body of the audited entity so decides.'

4.13.1 In the view of the EESC, it is improbable that audited entities would make a full disclosure of this report. The EESC considers that it should be communicated to the company's social partners, in compliance with the different national systems for the involvement of workers.

'2. The additional report shall explain in detail and explicitly the results of the statutory audit carried out and shall at least:

f) indicate and explain judgments about material uncertainty that may cast doubt about the entity's ability to continue as a going concern;

g) determine in detail whether the bookkeeping, the accounting, all audited documents, the annual or consolidated financial statements and possible additional reports show appropriateness;

h) indicate and explain in detail all instances of non-compliance, including nonmaterial instances as far as it is considered to be important to the AC in order to fulfil its tasks;

i) assess the valuation methods applied to the various items in the annual or consolidated financial statements including any impact of changes of such;

j) provide full details of all guarantees, comfort letters and undertakings that have been relied upon when making a going concern assessment;

k) confirm the attendance at stock takes as well as other instances of physical verification;

n) indicate whether all requested explanations and documents were provided.'

4.13.2 This report is based on the long form report used by audit firms in Germany. Its use throughout the EU should improve both the quality of the statutory audit and the audited entity's response to the audit. The EESC supports this report.

4.14 Article 24 - Oversight of the statutory audit by the audit committee Article 25 - Report to supervisors of public-interest entities

4.14.1 Articles 24 and 25 are consistent with the EESC GPO.

CHAPTER V: Transparency Reporting by Statutory Auditors and Record Keeping

4.15 Articles 26 to 30

4.15.1 Chapter V is consistent with the EESC GPO.

TITLE III: THE APPOINTMENT OF STATUTORY AUDITORS BY PUBLIC INTEREST ENTITIES

4.16 Article 31 - Audit Committee

'1. The AC shall be composed of non-executive members of concerns the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity.

At least one member of the AC shall have competence in auditing and another member in accounting and/or auditing. The audit committee members as a whole shall have competence relevant to the sector in which the audited entity is operating.

A majority of the members of the AC shall be independent. The chairman shall be appointed by AC members and shall be independent.'

4.16.1 Paragraph 1 is completely in line with the recommendations of the EESC in its GPO, given that 'as a whole' does not mean 'all'.

4.16.2 Paragraph 5 details the responsibilities of the audit committee. The EESC suggests two further responsibilities: approval of the plan for the audit, including the provision of audit related services and approval of the related budgets.

4.17 Article 32 - Appointment of the statutory auditors

'2. The AC shall submit a recommendation for the appointment of the SA. The recommendation shall contain at least two choices for the audit engagement and the committee shall express a duly justified preference for one of them.

3. The recommendation of the AC shall be prepared following a selection procedure organized by the audited entity respecting the following criteria:

a) the audited entity shall be free to invite any SA to submit proposals on the condition that at least one of the invited auditors is not one who received more than 15 % of the total audit fees from large PIEs in the Member State concerned in the previous calendar year;

b) the audited entity shall be free to choose the method to contact the invited statutory auditor(s);

c) the audited entity shall prepare tender documents which shall be used by the audited entity to evaluate the proposals made by the SA;

d) the audited entity shall be free to define the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;

f) the audited entity shall evaluate the proposals made by the SA in accordance with the selection criteria predefined in the tender documents;

g) the audited entity shall be able to demonstrate to the competent authority that the selection procedure was conducted in a fair manner.

5. If the proposal of the administrative or supervisory board departs from the recommendation of the AC, the proposal shall justify the reasons for not following the recommendation of the AC.

6. In the case of a credit institution or insurance undertaking, the administrative or supervisory board shall submit its draft proposal to the competent authority.

10. In order to facilitate the exercise of the task of the audited entity to organize a selection procedure for the appointment of an SA, EBA, EIOPA and ESMA shall issue guidelines.'

4.17.1 Whatever the duration of the audit assignment, these guidelines are potentially useful for large PIEs but, as they stand, they are excessively prescriptive for SMEs. SMEs will often not follow the process at (a) and will usually employ second, or third, tier firms. SMEs will feel that they have the freedom at (b) and (d). SMEs will not usually prepare formal tender documents, may often not solicit competitive tenders and will feel no responsibility for explaining themselves to competent authorities. Paragraph 5 does not apply to SMEs. These rules are designed for banks, not SMEs. SMEs will not require input from the galaxy of institutions cited in para 10 in order to arrange their affairs.

4.17.2 There is a requirement that the invitation to tender be sent to at least one second tier firm. This can give second tier firms access to larger clients but there are clearly many issues to be resolved by all the second tier firms which collectively only have the resources to respond in a limited number of instances.

4.18 Article 33 - Duration of the audit engagement

'1. The PIE shall appoint a statutory auditor for an initial engagement that shall not be shorter than two years. The PIE may renew this engagement only once. The maximum duration of the combined two engagements shall not exceed six years. Where throughout a continuous engagement of 6 years two SAs have been appointed, the maximum duration of the engagement of each statutory auditor or audit firm shall not exceed nine years.'

4.18.1 In its GPO the EESC did not support mandatory rotation of SAs. Instead, it proposed mandatory retendering of the contract every six to eight years. After due consideration of the new proposals, the EESC maintains that position, but welcomes other aspects of the regulation.

4.18.2 Since the key audit partner is to rotate after seven years (4 below), the EESC proposes that the period for mandatory retendering should also be seven years. There is an issue as to whether the incumbent SA should have a fixed tenure of seven years. In many Member States, the SA is

reappointed each year and the Regulation should contain the option to continue this practice. Accordingly there should be flexibility relative to tenure in the seven year period, but mandatory retendering would be required after seven years of continuous tenure. The EESC emphasises that when the mandatory retender is triggered, the proceedings must be transparent and that, in the case of credit institutions, the competent authority must approve the outcome.

'4. The key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation after a period of seven years. The SA shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved.'

4.18.3 This rotation was supported in the EESC GPO but the gradual rotation of the rest of the team should be at the discretion of the statutory auditor.

4.19 **Article 34 - Dismissal and resignation of the statutory auditors**

TITLE IV: SURVEILLANCE OF THE ACTIVITIES OF AUDITORS AND AUDIT FIRMS CARRYING OUT STATUTORY AUDIT OF PUBLIC-INTEREST ENTITIES

CHAPTER I: Competent Authorities

4.20 Articles 35 to 39

4.20.1 The EESC supports the provisions relating to competent authorities.

CHAPTER II: Quality Assurance, Investigation, Market Monitoring, Contingency Planning and Transparency of Competent Authorities Tasks

4.21 Article 40 to 44

The tasks of the competent authorities include:

- undertaking quality assurance reviews on the statutory audits carried out.
- investigating with a view to detecting, correcting and preventing inadequate statutory audits;
- monitoring the developments in the market for the provision of statutory audit services;
- regularly monitoring the possible threats to the continuity of the operations of large audit firms, including the risks arising from high concentration and requiring large audit firms to establish contingency plans to address such threats;

4.21.1 The proposal that the competent authorities should work with the largest firms in each jurisdiction to develop contingency plans is consistent with the EESC GPS.

CHAPTER III: Cooperation between Competent Authorities and Relations with the European Supervisory Authorities

4.22 Articles 45 to 56

'a) The regulation requires that the EU-wide cooperation between competent authorities takes place within ESMA, thus taking over the current EU-wide cooperation mechanism under the aegis of the European Group of Auditors' Oversight Bodies (EGAOB).

ESMA should issue guidance on several issues: e.g. on the content and presentation of the audit report and the additional report to the audit committee, on the oversight activity of the audit committee or for conducting quality assurance reviews.

b) Under the auspices of ESMA, A "voluntary" pan-European audit quality certification is to be introduced to increase the visibility, recognition and reputation of all audit firms having capacities to conduct high quality audits of PIEs.'

4.22.1 The EESC endorses this proposal.

CHAPTER IV: Cooperation with third country auditors and with international organisations and bodies

4.23 Articles 57 to 60

The competent authorities and ESMA may conclude cooperation agreements on the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy and provided data protection rules are respected.'

4.23.1 The EESC endorses the proposals contained in Chapter IV.

TITLE V: ADMINISTRATIVE SANCTIONS AND MEASURES

4.24 Article 61 - Administrative sanctions and measures

4.25 Article 62 - Sanctioning powers

'1. This Article shall apply to breaches of the provisions of this Regulation identified in the Annex.

2. Competent authorities shall have the power to impose at least the following administrative measures and sanctions:

- b) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities*

- f) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach;
- g) in respect of a natural person, administrative pecuniary sanctions of up to EUR 5 000 000;
- h) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year;

4.26 Article 63 - Effective application of sanctions

'1. When determining the type of administrative sanctions and measures, competent authorities shall take into account all relevant circumstances, including:

- a) the gravity and the duration of the violation;
- b) the degree of responsibility of the responsible person;
- c) the financial strength of the responsible person;
- d) the importance of the profits gained or losses avoided.'

4.27 Article 64 - Publication of sanctions and measures

'Every administrative measure or sanction imposed for breach of this Regulation shall be published without undue delay, including at least information on the type and nature of the breach and the identity of the persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets.'

4.28 Article 65 - Appeal

4.29 Article 66 - Reporting of breaches

4.29.1 In its GPO the EESC had envisaged the establishment of a professional disciplinary body in each Member State. The Committee supports these proposals. In effect, these proposals provide for 'naming and shaming' in cases of malfeasance.

TITLE VI: DELEGATED ACTS, REPORTING AND TRANSITIONAL AND FINAL PROVISIONS

4.30 Articles 68 to 72

4.30.1 A transitional regime is introduced regarding the entry into force of the obligation to rotate audit firms, the obligation to organise a selection procedure for the choice of audit firm and the establishment of audit firms that only provide audit services.

4.31 ANNEX: I. Breaches by statutory auditors or key audit partners

The breaches envisaged are essentially procedural and administrative relating to: conflicts of interest, organisational or operational requirements, the performance of the statutory audit, audit reporting, disclosure provisions, the appointment of statutory auditors or audit firms by public-interest entities and quality assurance. It is not clear how an auditor failure (such as the recent failure to pick up JP Morgan mishandling of client funds) will be handled under these provisions.

4.32 ANNEX II. Breaches by PIEs

The breaches envisaged relate to the appointment of statutory auditors or audit firms.

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following paragraph of the section opinion was amended to reflect the amendment adopted by the assembly but received more than one quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

Point 3.1.8**3.1.8 New rules regarding competent authorities;**

The EESC supports the establishment of Member State Competent Authorities to be the national independent regulators and supervisors and to be the national counterparties to ESMA. However, where competent independent auditor supervisory bodies are already working well in Member States, the EESC would like to see these bodies brought into the new supervisory framework, and not abandoned.

Outcome of the vote on the amendment:

Votes in favour: 88

Votes against: 60

Abstentions: 37

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds'

COM(2011) 860 final — 2011/0417 (COD)

(2012/C 191/13)

Rapporteur: **Anna NIETYKSZA**

On 20 and 17 January 2012 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds

COM(2011) 860 final — 2011/0417 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April), the European Economic and Social Committee adopted the following opinion by 131 votes to two, with five abstentions:

1. Conclusions and recommendations

1.1 The EESC welcomes the Regulation on European Venture capital funds which proposes the establishment of a Europe-wide legal investment vehicle using a single passport to help European venture capital funds attract international investors and to facilitate access to finance by innovative SMEs. The regulation establishes uniform rules on the categories of investors, uniform requirements for the managers of collective undertakings that operate under the designation 'European Venture Capital Fund'; requirements as to the investment portfolio, investments techniques and eligible undertakings that a qualified venture capital fund may target.

1.2 The initiative comes in response to the objectives of the overall Europe 2020 strategy and the Single Market Act, to ensure that by 2012 venture capital funds established in any Member State can invest freely throughout the EU, and finance innovative EU companies and job creation in sustainable way.

1.3 The Regulation on European Venture Capital Funds is aimed at attracting international private investors, including individuals, to invest in venture capital funds based in any EU country. It is very important as the European venture capital sector is over-dependent on public funding, with more than 50 % of funding provided by public contributions. The EESC thinks that public authorities should instead focus on creating a stable regulatory framework.

1.4 The regulation establishes uniform rules on the categories of investors that are considered eligible. The proposed measures must be more flexible and address the needs of private international investors so that they can conduct cross-border investments. The EESC thinks the measures should be attractive to non-European as well as

European investors if we want the pool of available capital for European SMEs to increase.

1.5 The European venture capital fund passport is very important, in the context of prudential regulations such as Basel III, CRDIV and Solvency, for major private providers of capital to the venture capital industry: banks, pension funds and insurance companies which limit their investments in innovative SMEs considered to be high risk assets.

1.6 The EESC particularly welcomes the planned role of European venture funds in supporting jobs creation in innovative, hi-tech European SMEs. The funds whose assets under management should not exceed a threshold of EUR 500m, must dedicate at least 70 % of their aggregate capital contributions directly to SMEs, and provide equity or quasi equity finance to SMEs.

1.7 The Committee is also satisfied with uniform requirements for registration of funds all over Europe and the EU-wide marketing passport, which should facilitate cross-border investments, as well as business compliance, organisational and ethics requirements for European fund managers.

1.8 However, the EESC draws attention to several limitations, which may weaken the anticipated impact such as limiting the scope of action of the qualifying venture fund, restricting it exclusively to investments in equity and quasi-equity instruments issued directly by an undertaking (e.g. new issue of shares or other forms of participation). The EESC proposes to broaden the proposed regulation to include shares or units of others EVCFs as well as funds of funds, which may increase the total amount of capital available to SME investments.

1.9 Such limitations exclude from the scope of the regulation the possibility that a so-called fund of funds may obtain the EU-wide passport.

1.10 The EESC draws attention to the fact that the single passport does not settle the issue of tax transparency of investment vehicles, which is crucial if venture capital or private equity investments are to be carried out effectively. The problem of cross-border tax obstacles in venture capital should be examined and solutions proposed.

1.11 The EESC emphasises that the essence of an effective investment vehicle is that it should enable different types of investor to carry out joint investments, while ensuring tax optimisation, especially as regards avoiding double taxation (at issue here is the tax paid on the portfolio investment and tax on the distribution of funds back to investors in the fund).

1.12 The EESC asks for a transitional period relating to the implementation of the threshold requirements, in order to take into account different levels of income in different EU Member States.

1.13 The EESC considers that European venture capital funds should be a closed-end structure that invests at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments in order to ensure that their shares are not redeemable for cash or securities until they liquidate. Furthermore, European venture capital funds should be located in the European Union, as a means to prevent the establishment of funds managed by an EU manager in tax heavens for tax avoidance purposes.

1.14 The protection scheme of investors should be strengthened by the appointment of a depositary, which is responsible for ensuring the safe-keeping of assets, the monitoring of the cash flow and the oversight functions. The UCITS directive requires the appointment of a depositary for collective investment undertakings.

1.15 The EESC wishes to draw attention to the particular significance of developing use of EU funds for the venture capital market and the availability of financing for businesses in the seed and start-up phase, which are not financed by private capital on account of the level of risk involved.

1.16 The regulation's proposal to introduce a European venture capital fund passport is a step in the right direction; this proposal should be completed and fostered in order to avoid an impact that is disproportionately small compared to expectations.

2. The venture capital and private equity market in Europe

2.1 The proposed regulation of the European Parliament and of the Council was drawn up in the context of a specific assessment. The document describes the venture capital market in Europe as being weak in comparison with the

American market. The European market is significantly smaller, fragmented into a series of national markets and characterised by a lack of uniform rules. Only a few Member States have special venture capital fund regimes, with rules on portfolio composition, investment techniques and eligible investment target. This means that for capital providers such as individual clients, pension funds and insurance companies, directing investment towards venture capital is difficult and costly.

2.2 Traditionally British fund managers have raised and invested the largest share of European capital in the venture and private equity sector. The British systematically managed to raise some 30 % of funds from the market for new investments, and in 2009 they managed to raise 34 %. At the peak of the winning streak in 2007, British fund managers invested EUR 34bn, accounting for 46 % of all European investments. In the crisis year of 2009, this figure was EUR 9bn, representing almost 40 % of the market. In terms of investment, only 52 % of the EUR 9bn invested went to British firms, while most of the remaining capital was exported to other European countries.

2.3 The other main players in the European market are the biggest economies on the old continent, namely France, Germany and Italy. Their position on the market is stable; in 2009 these three countries raised some 31 % of all new capital and invested EUR 6.7bn, amounting to some 29 % of all investments. In their case, most funds are raised on national markets and remain in the country in the form of investment, which, as in the case of Italy and Germany in 2009, are supplemented by imported capital.

2.4 Major changes have also occurred in the structure of capital providers. In 2008, the main source of capital was pension funds (28 %), while the importance of banks had been gradually declining (22 % in 2000 and 7 % in 2008). In 2009, this trend was reversed and the share of banks increased to 18 %. These shifts were the result of a sudden suspension of the flow of resources from the pension fund sector, which was seeking to limit its exposure to risky assets.

2.5 An indicator of the scale of the difficulty linked to raising funds is the time required by fund managers for the final closing of a fund (i.e. to gather a notional group of investors). Between 2005 and 2007, on average no more than one year was required for this. By 2009, this process was taking 18 months, and by the first half of 2010 the figure was 20 months.

2.6 For a number of years, there has been a clear downward trend in venture capital investment in Europe: in 2009 venture investments amounted to EUR 9bn, but investments in businesses in the seed and start-up phase were only EUR 2bn. In the first three quarters of 2010, investment amounted to EUR 7 bn.

2.7 A key consequence of lower investment was the drop in the average value of investments in a single enterprise from EUR 8.8m in 2008 to EUR 4.7m one year later. Data from the first half of 2010 show that this amount subsequently increased to EUR 7.9m.

2.8 Investments are focussed on 5 sectors: in 2009 and 2010, 19 % of investments went to the sector for goods and services for business, 13 % to consumer goods, the retail trade sector and telecommunications, and 15 % was invested in the life science sector. In the case of venture capital, 65 % of investments went to the life science sector, the IT sector and the electronics and telecommunications sector.

3. Overview of the EC proposal

3.1 As a consequence of the financial crisis of 2008 and 2009, and new prudential requirements such as Basel III, CRDIV, and Solvency, the provision and extension of credit lines by banks to SMEs has decreased significantly. SMEs' search and demand for other alternative sources of finance has become pressing.

3.2 There is therefore a need to provide alternative sources of finance to SMEs. In this respect, venture capital funds can play a critical role in closing the funding gap for investment innovation. They provide equity or quasi equity funding to start-up firms and small businesses with perceived long-term growth potential, typically to finance their early market development. Contrary to private equity funds (which mainly focus on buyouts), venture capital funds invest in companies on a long-term basis, alongside entrepreneurs.

3.3 The European venture capital industry is fragmented and dispersed. This leads to a statistically significant investor's reluctance to invest in an venture capital fund (VCF). As a consequence of regulatory fragmentation, potential 'venture capital' investors such as wealthy individuals, pension funds or insurance companies find it difficult and costly to embark on channelling some of their investments toward venture capital.

3.4 The lack of financial resources that are currently directed towards venture capital is directly responsible for the sub-optimal size of the average European VCF. Venture capital, at this stage, plays a minor role in the financing of SMEs. The absence of an efficient venture capital sector leads to European innovators and innovative business ventures punching below their commercial potential. This, in turn, is negative for Europe's global competitiveness.

3.5 This significantly lowers investment potential, i.e. funds, and limits the flow of capital to small and medium-sized enterprises, especially innovative businesses. This in turn 'obliges' SMEs to be dependent on the banking sector. This situation is all the more difficult for SMEs given that, in light of new prudential regulations, banks have become significantly less inclined to finance small businesses in the early stages of their development, even innovative ones.

3.6 A thriving European venture capital market is an objective of the overall Europe 2020 Strategy. The European Commission committed in the Single Market Act ⁽¹⁾ (SMA) to ensure that by 2012 venture capital funds established in any Member State can raise capital and invest freely throughout the EU.

⁽¹⁾ http://ec.europa.eu/internal_market/smact/docs/20110413-communication_en.pdf 13 April 2011.

3.7 In its document of 7 December 2011, the Commission presented a proposal for a Regulation of the European Parliament and of the Council on European Venture Capital Funds. The gist of the proposal is the introduction in the European Economic Area of the possibility for venture capital funds to obtain so-called European fund status (passport), provided that they meet certain regulatory requirements. The passport would enable them to act freely and to raise funds in individual countries. It would ensure that investors enjoy basic security of investment, and for management companies it would lower the regulatory costs of access to individual categories of investors and markets.

3.8 The proposed Regulation addresses these problems by:

- introducing a definition of a 'European Venture Capital Fund', which includes the following essential requirements: (i) it dedicates at least 70 percent of its aggregate capital contributions to SMEs; (ii) it has assets under management in total that do not exceed a threshold of EUR 500 million; (iii) it provides equity or quasi-equity finance to these SMEs (i.e. 'fresh capital'); and (iv) it does not use leverage (i.e. the fund does not invest more capital than that committed by investors so is not indebted). Short-term borrowing should only be allowed to permit the fund to cover extraordinary liquidity needs;
- establishing uniform rules on the categories of investors that are considered as eligible to invest in 'European Venture Capital Funds'. The qualifying funds may only be marketed to investors recognised as professional investors in Directive 2004/39/EC and certain other traditional venture capital investors (such as high net-worth individuals or business angels);
- providing all managers of qualifying venture capital funds with uniform requirements for registration as well as a EU-wide marketing passport, which will allow access to eligible investors across the EU and help create a level playing field for all participants in the venture capital market;
- introducing minimum transparency, organisational and conduct of business requirements that must be complied with by the manager;

4. General and specific remarks

4.1 The proposal for a Regulation of the Parliament and the Council on European Venture Capital Funds forms part of regulatory efforts to create more favourable conditions for the way in which the venture capital market operates and to have a greater impact on SMEs. The EESC believes that this is a very good first step towards developing a European innovative and sustainable modern technologies industry, employing highly skilled, well educated European workers, acting in favour of job creation.

4.2 The EESC emphasises that the essence of an effective investment vehicle is that it should enable different types of investor to carry out joint investments, while ensuring tax optimisation, especially as regards avoiding double taxation (at issue here is the tax paid on the portfolio investment and tax on the distribution of funds back to investors in the fund). It seems that the lack of a reference to the issue of tax transparency means that there will be limited interest in the passport.

4.3 Helping institutional investors gain access to the venture market may be achieved significantly more quickly and more easily by using the fund of funds mechanism, where a significant dispersal of risk is achieved at the level of portfolio investments. Funds of Funds provide a good way to invest in venture capital for institutional investors with small allocations for venture capital or to institutional investors who have not built extensive competence in direct fund investing. According to data from the EVCA, in 2009 funds of funds were responsible for some 13.5 % of new capital allocated to venture and private equity funds, whereas throughout the 2005-2009 period this was on average 14.1 % (at the same time funds of funds were the second biggest provider of capital after pension funds).

4.4 The EESC asks for a transitional period relating to the implementation of the threshold requirements, in order to take into account different levels of income in different EU Member States.

4.5 The EESC considers that European venture capital funds should be a closed-end structure that invests at least 70 % of its aggregate capital contributions and uncalled committed capital in assets that are qualifying investments in order to ensure that their shares are not redeemable for cash or securities until they liquidate. Furthermore, European venture capital funds should be located in the European Union, as a means to prevent the establishment of funds managed by an EU manager in tax heavens for tax avoidance purposes.

4.6 The protection scheme of investors should be strengthened by the appointment of a depositary, which is responsible for ensuring the safe-keeping of assets, the monitoring of the cash flow and the oversight functions. The UCITS directive requires the appointment of a depositary for collective investment undertakings. This principle has also been integrated in the AIFM directive. In order to ensure the continuity of the Community framework, a depositary should also be appointed for the EVCFs.

4.7 The new regulation does not solve the nominal weakness of the venture capital market. There are two phenomena governing the economics of investment funds: first, the dynamic growth of the pension funds sector has prompted systematic growth in the value of capital allocated to (venture, private equity) funds by investors. However the rules governing the breakdown of investment risk in the investment portfolio mean that the optimal venture fund portfolio comprises 8-12 companies. A smaller number of investments increases the risk of the portfolio, whereas a higher number raises the costs of monitoring the portfolio. The combined effect of the growing supply of capital and the rule on optimising the portfolio inevitably leads to a steady trend towards growth in the size of the funds which in turn necessitates an increase in the value of individual investments in the portfolio company. In the end, the growth in pensions savings (long-term savings) has triggered a shift in investment away from the venture sector towards private equity.

4.8 The second phenomenon is linked to the way in which fund managers are remunerated, i.e. paid a percentage of the value of the capital managed. Such a remuneration scheme means that the bigger the fund, the bigger the value of the remuneration. This means that for a given management group it is more profitable (!) to use a private equity fund (large) than a venture fund (small), where the investment risk is considerable higher, as are the management costs. These two phenomena mean that the venture market is becoming relatively weaker (growing more slowly), because capital is inclined to go to larger funds and investments, which at the same time may suit the interests of opportunistic fund managers.

4.9 The proposed regulation is unable to mitigate these two patterns, and the EESC invites the Commission to undertake further reflections in this respect.

4.10 Investments made by executives of a venture capital fund manager when investing in the qualifying venture capital funds that they manage, proving their involvement and responsibility, should be allowed.

4.11 The EESC supports Venture Capital Funds dedicated to information society technologies, energy efficiency and renewable energy sources that can contribute to achieving the goals of the overall Europe 2020 Strategy.

4.12 The EESC welcomes the initiative to confer the power to adopt delegated acts on the Commission, and encourages the Commission to continue monitoring developments and evolutions of the Venture Capital Market.

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the sound level of motor vehicles'

COM(2011) 856 final — 2011/0409 (COD)

(2012/C 191/14)

Rapporteur working without a study group: **Mr RANOCCHIARI**

On 19 January 2012 and 15 December 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the sound level of motor vehicles

COM(2011) 856 final — 2011/0409 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 106 votes, with 1 abstention.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's initiative to update the noise limit values for motor vehicles by lowering them. It does so despite the fact that the proposal comes at a time when the European automotive industry is trying to get to grips with a market crisis, which began in 2008 and shows no signs of letting up, emphasising the problem of production overcapacity in Europe.

1.2 The EESC also shares the proposal's ambitious objectives, which according to the Commission will reduce vehicle noise pollution by about 25 %. There is no question that the very substantial increase in traffic, especially in the last twenty years, calls for action to protect public health and wellbeing.

1.3 Nevertheless, the EESC notes that even in this case, the problem is not addressed through an integrated approach involving measures in other related sectors, which would have enabled even more efficient noise reductions, which would therefore have been easier for the public to appreciate and would have had an undoubtedly better cost-benefit ratio.

1.4 The EESC is even more concerned to see that the new limits have been applied on the basis of a classification of vehicles dating back to 1985. It therefore does not take into account market developments resulting in a higher number and wider range of models for different purposes. New categories have to be added, with limits that are appropriate to their specificities.

1.5 The EESC also believes that the proposal does not make enough allowance for how long it will take to adapt

vehicles to the new noise levels. Manufacturers will have to take immediate action to review their vehicles' architecture in order to make difficult compromises between noise reduction and other, pre-existing requirements relating to safety, consumption, emissions and other areas.

1.6 For all these reasons, the EESC advocates a review of the proposed timeframe (two years following the adoption of this proposal), which increases costs such as type-approval, focusing directly – with a better cost-benefit ratio – on the final result with an appropriate lead time⁽¹⁾, which would therefore be seven (not five) years for new type-approvals and nine (not seven) years for new registrations.

2. Introduction and legislative context

2.1 Noise, which is commonly described as 'unwanted sound' or as an 'unpleasant or annoying auditory event', is a main contributor to deteriorating quality of life in cities, with possibly harmful or serious public health impacts⁽²⁾.

2.2 Ambient noise or noise pollution is measured – as is known – in A-weighted decibels (dB(A)), and human hearing ranges from 0 dB(A) to 140 dB(A) with a pain threshold of 120 dB(A). According to the World Health Organization, 55 dB(A) is the maximum acceptable sound level outside enclosed spaces (houses, offices). However, according to the European Environment Agency, in urban areas over half the population is exposed to higher levels of ambient noise. For the

⁽¹⁾ *Lead time*: The time needed for the industry to implement any new requirement involving structural changes to a vehicle.

⁽²⁾ OJ C 317, 23.12.2009, p. 22.

purposes of practical evaluation, you should bear in mind that noise levels in a residential street are estimated at 50 dB(A), a jet plane emits 120 dB(A), a high-speed train 100 dB(A), a vehicle 74 dB(A) at most, but in a street with heavy traffic, sound reaches 80 dB(A).

2.3 In the specific case of traffic noise, there are numerous possible steps to be taken, but there is no doubt that the first step is to reduce noise at its source, i.e. by limiting the sound levels of individual vehicles.

2.4 The sound levels of four-wheel vehicles was covered by Directive 70/157/EEC, which, as early as 1970, set out procedures for testing and limiting sound levels for the type-approval of vehicles. Over the years, the directive underwent a series of amendments, revising noise limits downwards in order to reduce ambient noise, until the most recent in 1996, which set the limit at 74 dB(A) for cars and 80 dB(A) for heavier freight vehicles.

2.5 This long process has delivered significant results, with noise emissions that are 85 % below the limits set in the 1970 directive for cars (– 8 dB(A)) and 90 % for heavy vehicles (– 11 dB(A)).

However, the reduction in noise pollution is not proportionate to the new limits for a number of reasons, the foremost being that road traffic has tripled since the 1970s. This increase in traffic also called into question the validity of the noise emission test methods used so far, especially for cars.

2.6 For this reason, the UNECE ⁽³⁾ Working Party on Noise developed a new test method, which it published in 2007 and has monitored over the last three years, in parallel with the current method. This has made it possible to put together a database of results using the current test method A and the new test method B and to quantify the differences between the results of the two methods.

2.7 The European Commission therefore tasked the Netherlands Organisation for Applied Scientific Research (TNO) to undertake a comparison of the two test methods, which was concluded in March 2011, when TNO presented the Commission with its report, entitled VENOLIVA (Vehicle Noise Limit Values). The proposal for a regulation under consideration in this opinion is largely based on this report.

2.8 With regard to cars, TNO tested 653 vehicles and noted an average difference of – 2.1 dB(A) between test B and test A. In practice, it turned out that 90 % of the vehicles tested were already below the set 74 dB(A) limit, whereas heavy commercial vehicles were barely capable of staying below their current limits when test B was used.

3. The European Commission's proposal

3.1 In view of the foregoing, the Commission plans to abolish the 1970 directive and its amendments, and to put forward a regulation that adds four new requirements to the existing law:

— new test protocols;

— new limit values;

— additional sound emission provisions; and

— minimum noise for electric and electric-hybrid vehicles.

3.1.1 **New test protocols.** As already pointed out in the introduction, the results obtained using new method B are up to 2 dB(A) lower than those using old method A for about 90 % of the tests carried out. This has convinced the Commission not to establish initial limit values at the current 74 dB(A) but at 72 dB(A).

3.1.2 **New limit values in two stages.** During the first stage (two years after the publication of the regulation) the limits for the type-approval of light passenger vehicles will be reduced by 2 dB(A) and heavy commercial vehicles by 1 dB(A). In the second stage (five years after publication) there will be a further reduction of 2 dB(A) for light and heavy vehicles alike. Seven years after publication, all vehicles will have to comply with these new limits in order to be registered.

3.1.3 **Additional sound emission provisions (ASEP).** New test method B is considered to be realistic in normal traffic conditions but the Commission believes that it may be less reliable in very heavy traffic. As a result, the Commission intends to introduce additional test provisions to the ones used during the already mentioned three-year monitoring period (test for stable acceleration at 2,0 m/s²). This will be complemented by the ASEP test (maximum acceleration of 3,0 m/s²) in order to approximate sound emissions registered when type-approval was granted to real on-road conditions in heavy traffic.

3.1.4 **Minimum noise for electric and electric-hybrid vehicles.** The fact that low-speed vehicles make little noise can present dangers for people with low vision and others, who might not be able to hear them approaching. As a result, the Commission has merely advocated, without making it a requirement for manufacturers, equipping these cars with an Acoustic Vehicle Alerting System (AVAS), for which, however, it sets requirements.

⁽³⁾ United Nations Economic Commission for Europe (Geneva, www.unece.org).

4. General comments

4.1 The EESC welcomes and supports the Commission's initiative to update the noise limit values for motor vehicles through a regulation in light of the noted increase in traffic in Europe, especially in populated areas.

4.2 The EESC nevertheless regrets that the problem was not studied with a view to developing an integrated approach, which should be the guiding principle for all EU legislation in this as in other sectors, and which in this case would have delivered faster and more significant results, which would have been easier for the public to appreciate and would have had a better cost-benefit ratio.

4.3 The reductions currently on the table for new vehicles will only bring medium to long term benefits, as vehicles currently on the road are replaced. Far greater reductions would be achieved by impacting on road surfaces and local infrastructure, and through smart traffic management and more regular and thorough checks for vehicles on the road. Appropriate road maintenance could result in a reduction of over 5 dB(A), whereas the use of special types of asphalt would reduce traffic noise by up to 10 dB(A). A similar reduction could be achieved through road decongestion, e.g. by adding bypasses, bus lanes, Intelligent Transport Systems (ITS). And we should not neglect the important aspect of educating drivers, who are often primarily responsible for their vehicles being too noisy.

4.4 Finally we must not forget that however much we reduce vehicle noise (engine, suction, exhaust pipe etc.), we will never succeed in going below the rolling noise of tyres on roads. This applies equally to electric and electric-hybrid vehicles, which are certainly silent at their lowest engine speed, even to the point where the Commission is planning to have them equipped with an AVAS. In fact, a test carried out on six different electric and electric-hybrid models currently on the market⁽⁴⁾ has shown that at higher speeds (50 km/h) the average noise made by these cars is 68.3 dB(A), i.e. higher than the 68 dB(A) set by the new regulation for cars with internal combustion engines.

4.5 The EESC nevertheless raises a number of questions and concerns regarding the proposed regulation, which could be resolved during the debate at the European Parliament and in Council.

4.6 The first question concerns the 'categorisation' of vehicles for the purposes of noise abatement. The categories listed are the 'historical' ones, which date back to 1985. Market developments, and hence, the higher number and

wider range of models for different purposes, have not been taken into account. Without going into detail, the EESC believes that if the categories were revised to include new sub-categories, obviously with limits suited to their specificities, this would give a clearer picture of vehicles currently or soon to be seen on the road. To give one example, sub-category M3 for urban buses and tourist coaches does not distinguish between the two types.

The situation is even more critical for high-performance cars, otherwise known as sports cars. This is a niche sector in terms of volume of production. However, it is also an area of excellence for Europe's car industry in the world, with innovative knock-on effects for mass produced cars. Unless the M1 sub-category (cars) is redefined it will be very difficult to continue to produce and therefore sell these vehicles, since they will only have five years to reduce their noise levels by 6/7 dB(A).

4.7 The EESC's second, and greater, concern is that the timeframe which the Commission has proposed in an attempt to make up for the absence of updates in recent years does not give adequate consideration to the **lead time** required by manufacturers.

4.7.1 A reduction of 2 dB(A) during the first stage for all light vehicles and 1dB(A) for all heavy vehicles involves structural changes to vehicles requiring a considerable effort from the industry, which will have to lower noise levels while respecting other, pre-existing requirements relating to safety, consumption, emissions and other areas. For instance, the required changes will considerably increase a vehicle's weight (increased exhaust pipe volume, added protection and sound absorbing materials), which will result in higher consumption and therefore polluting emissions. It is important to realise that any measure in this area will affect the entire vehicle in all its aspects as sources of external sound. In fact, it is impossible to get any results by simply applying separate measures.

4.7.2 Nor will achieving the results expected during the first stage (as some have argued, at least for M1 and N1) be helped by the benefits expected from lower noise emissions from tyres under Regulation (EC) No 661/2009. In fact, these tyres are already to a large extent available on the market and will be mandatory for new vehicles as of November 2013. Nevertheless, the average benefit in terms of noise reduction has been estimated at 0.5 dB(A) only for 2016.

4.7.3 Vehicles will therefore have to be re-thought, re-developed and re-engineered. Redesigning an entire vehicle is known to take five to seven years, depending on the type, for light vehicles, and up to ten years for heavy vehicles, with the added need for new type-approvals.

⁽⁴⁾ Source: The European Automobile Manufacturers Association (ACEA).

4.8 In view of the foregoing, the EESC wonders whether it would not be better to review the timeframes and methods for achieving the proposed noise reductions. This could be done by eliminating the first stage, which entails additional costs in terms of type-approval, focusing directly on the end result (with better cost-benefit ratios), reviewing the sub-categories, at least for the more difficult cases and setting the more appropriate lead times of seven years for new type-approvals and nine years for new registrations.

4.9 This would however involve a gradual investment of substantial proportions at a time when almost all European manufacturers are dealing with a market crisis that began in 2008 and seems to be getting worse. These investments will inevitably be shouldered by consumers, with the risk that vehicles on the road will be replaced even more slowly, especially heavy goods vehicles, which would undermine the new regulation's objective.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast)'

COM(2011) 656 final — 2011/0298 (COD)

(2012/C 191/15)

Rapporteur working without a study group: **Mr IOZIA**

On 2 December 2011 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast)

COM(2011) 656 final — 2011/0298 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 115 votes to 1 with 6 abstentions.

1. Conclusions and recommendations

1.1 The Economic and Social Committee (EESC) welcomes the proposal to recast Directive 2004/39/EC, known as MiFID, which establishes a regulatory framework for the provision of services in financial instruments, such as brokerage, advice, portfolio management, underwriting of new issues and the way investment and other banks operate, and for market operators' transactions on regulated markets.

1.2 The overarching objective of the directive is to increase the transparency and efficiency of trading and limit market volatility, but also to increase the integrity of intermediaries and protection of investors and open European markets up to genuine competition in financial services provision. The EESC supports these objectives and sees the proposal as a whole as a step in the right direction.

1.3 In the light of the new Treaty, the EESC believes that the legal basis opted for by the Commission may be inadequate in that it fails to fully reflect the implications of the directive. Consumer protection and consolidation and development of the internal market, which are a key part of the directive, are underpinned by better-defined, more comprehensive legal bases and ensure a more effective role and involvement for representative bodies.

1.4 The proposal to recast the directive takes into consideration changes in legislation thus far and proposes new, better-defined solutions concerning operators' responsibilities. The EESC supports the decision to opt for recasting because of the greater complexity of the financial market, developments in the market and technological instruments used, which have rendered certain previous provisions obsolete, and,

most importantly, because of the shortcomings of regulation for instruments as opposed to the securities market, which is managed by financial operators.

1.5 The EESC believes that the proposal achieves the goal of strengthening the EU financial market and making it more integrated, efficient and competitive, combining greater transparency with greater consumer protection, reducing areas of unbridled speculation – which is an end in itself irrespective of the economic and social context – in particular concerning instruments traded mostly over the counter (OTC).

1.6 Here, too, the EESC stresses that it is opposed to excessive, disproportionate use of delegated acts, as provided for by Article 94, which should govern limited, well-defined subjects for a given period of time. It calls on the European legislative institutions to offer clarification regarding the proper use of the instrument, subject to ex-post verification, and its consistency with the letter and spirit of the Treaties.

1.7 The EESC firmly supports the intention to strengthen the principle of independent advice, under which the operator has to declare in advance whether they are providing an independent service or one that is connected to a sales network. Savers will be able to choose the kind of advice they wish to receive on the basis of their needs.

1.8 The EESC had already in the past called for clear regulation of 'sales against advice', in other words banning financial undertakings from exerting commercial pressure on operators or sales networks to sell products. The proposal in question is

an initial step in the right direction, and the EESC welcomes the Commission's acknowledgement of the need to improve protection of investors and operators, who should operate *only* in the interests of clients, giving them appropriate advice and refraining from influencing them in any way.

1.9 The EESC recommends that the Commission include a further provision in the list of information, to regulate the quality of the information exchanged between data providers. The sensitivity and importance of this information mean that it should be mandatory to provide it, and this would clearly benefit the market in terms of transparency.

1.10 The EESC welcomes the new responsibilities conferred on ESMA, which will, *inter alia*, have to issue a series of mandatory technical standards, draft opinions, ban products and practices in emergency situations and coordinate the work of national authorities, and draw up guidelines on administrative measures and on penalties to be imposed in specific cases.

2. The proposal: the main innovations

2.1 While the proposal does not change the structure of MiFID, it does update it in the light of the provisions of subsequent directives and enhances its content with new elements, setting the following main objectives:

- promoting competition between operators and markets;
- promoting market efficiency and transparency;
- strengthening investor protection.

2.2 The means used to achieve these objectives concern the risks that have to be mitigated through various mechanisms. In the past, certain risks which had been anticipated materialised, revealing the weakness of the risk mitigation mechanisms previously provided for.

2.3 The main new elements introduced with MiFID II concern specifically:

- the exemption system and scope;
- new trading platforms;
- regulation of the activities of Community market operators and investment firms;
- rules applying to third-country investment firms;
- new powers for European Union Member States' watchdog authorities;
- delegated acts.

3. Comments

3.1 There are two parts to the reform: the first deals with the market structure, while the second focuses on transparency issues. As the text states explicitly, the main aim of the proposal is to ensure that all trading is regulated and completely transparent.

3.2 A key point of the directive is the introduction of independent advice. The EESC considers that the provision regarding independent advice has been well drafted. Under the new rules, intermediaries will have to make it clear to the saver what kind of advice they are about to give, whether it is independent or not, the nature of the advice and various other information.

3.3 This provision enables all investors, whatever their financial resources, to be given advice appropriate to their profile. The EESC welcomes this wholeheartedly.

3.4 The transparency principle introduced enables clients to find out who the adviser works for, ironing out current differences in the various Member States, increasing transparency, making the operators involved behave with more integrity, and therefore, ultimately, strengthening investor protection.

3.5 In addition, with the exception of the specific activity of portfolio management, the directive allows existing networks of advisers (both employed and independent) to co-exist, but requires them to declare their nature. The EESC welcomes this provision in terms of protection of both competition and investors, as the directive puts clients in a position where they can choose what kind of advice they prefer.

3.6 In general, the Commission document protects clients and paves the way for healthy co-existence of operators in the financial advice sector, including banks, financial promotion networks and fee-only advisers.

3.7 The EESC proposes that the definition of advice be clarified and provision of advice made mandatory in all investment services (including general investment services). The EESC feels that restricting the activity to specialists in the sector could further strengthen the principle of investor protection.

3.8 It should be made clear that advice consists of recommending a product that fits a client's profile, and that the integrity of the behaviour lies in the appropriateness of the recommendation. The EESC believes that this provision also has an educational aspect, whatever the organisational model. Integrity does not depend, or at least not wholly, on whether the recommendation takes the form of vertical or multi-brand integration, or a fee-only service or brokerage. The number of products available is no guarantee of whether the recommendation made to the client is appropriate.

3.9 The proposal leaves the element of client self-classification introduced by the old MiFID largely unchanged (intermediaries classify their retail clients on the basis of the investment knowledge and experience they say they have). ESMA provides a list of guidelines for drafting the questionnaire to be given to clients. More specifically, different categories of client are identified: retail, professional and eligible counterparty.

3.10 The EESC welcomes the improvement made, in that intermediaries are now in a position to classify clients effectively, but points out at the same time that the directive does not give the market suitable tools for protecting clients at all levels.

3.11 The system will enable clients to be 'educated' by properly trained staff on the spot. Nevertheless, the EESC feels it is quite ambitious to expect a retail client to be able to accurately and correctly assess their own financial abilities, given, not least, the lack of financial education and how overdue the financial education programmes planned at European level are. The EESC therefore suggests revising the procedures laid down in the directive, maybe providing for external support to be brought in to 'educate' the client.

3.12 The directive introduces a new model for the payment of independent advisers. Independent advice will be paid for directly by the client, while non-independent advice will not.

3.13 The EESC believes that this new payment scheme will enhance the quality of the service provided, increase protection and help to ensure that professionals behave honestly. In this connection, the EESC suggests making a distinction between 'advice' and 'sale'.

3.14 Moreover, since genuine provision of advice has a cost, it can reasonably be assumed that advice regarding more complex products costs more. The EESC therefore calls for thought to be given to whether less-complex products could be promoted and more widely distributed in that they are cheaper.

3.15 Many of the new provisions are intended to ensure that banks behave honestly and with integrity; this will oblige them to overhaul their commercial practices. The EESC welcomes this provision because it will bring greater investor protection. At the same time, the EESC urges the Commission to pursue a policy of making financial undertakings accountable rather than clients.

3.16 Another important new element introduced is the proposed specific stock market segment for small and medium-sized enterprises, with lower regulatory compliance requirements. The EESC welcomes this particular innovation as it will raise the profile of the segment in question.

3.17 However, the EESC has some doubts regarding ability to implement the provision. It is not a new proposal: for over 20 years attempts have been made to develop a wider market for SMEs, but it has never become operational and effective. The EESC therefore suggests laying down specific provisions and measures which will enable it to be implemented efficiently and effectively.

3.18 Generally speaking, the directive sets out clearer operating rules for all trading activities. Trading platforms must ensure that, in the context of a transaction, all information is freely utilisable for a period of 15 minutes and disseminated in real time at a cost established by the Commission on a 'reasonable commercial basis'. This measure would be a step forwards in achieving transparent price-setting.

3.19 The EESC supports the process whereby each platform is required to use specific intermediaries to disseminate data relating to trading. However, it feels that this provision relies too heavily on spontaneous exchange of information between operators and suggests that the Commission include a specific point regulating the quality of the information exchanged by data providers.

3.20 With regard to commodity derivatives MiFID II aims to prevent unbridled speculation as an end in itself. One way in which the Commission plans to achieve this objective is to restrict the number of contracts that an investor can enter into in a certain period of time. As it has already reiterated on several occasions, the EESC believes that speculation is not necessarily a bad thing for the financial markets, as it increases their liquidity and boosts their growth. Measures are certainly necessary to counter highly-speculative transactions that affect consumer end prices, but at the same time the EESC calls for the measures to be carefully balanced and weighed up so as to avoid harmful effects on the market.

3.21 Moreover, the EESC considers that although the new regulation pursues the principle of harmonisation between countries, it does not seem to propose specific coordination between Europe and the United States. The EESC supports the principle of harmonisation pursued, but at the same time draws attention to the additional costs that players on the various markets may have to bear as a result of the different rules applying, for example, on the derivatives markets.

3.22 The EESC is in favour of extending the transparency principle to pre-trade relating to securities and structured products. However, it suggests that the sizeable differences between the equity and non-equity markets be taken into account. Pre-trade transparency is more important for order-driven markets (such as the share market), while post-trade transparency is more suited to quote driven markets (such as bond markets). The EESC therefore believes it would be advisable to distinguish between markets when it comes to applying the pre- and post-trade transparency principle.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors’

COM(2011) 895 final — 2011/0439 (COD),

the ‘Proposal for a Directive of the European Parliament and of the Council on public procurement’

COM(2011) 896 final — 2011/0438 (COD)

and the ‘Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts’

COM(2011) 897 final — 2011/0437 (COD)

(2012/C 191/16)

Rapporteur: **Mr CABRA DE LUNA**

On 19 January 2012 the European Parliament, and on 10 February 2012 the Council, decided to consult the European Economic and Social Committee, under Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors

COM(2011) 895 final — 2011/0439 (COD).

On 17 January 2012 the European Parliament, and on 10 February 2012 the Council, decided to consult the European Economic and Social Committee, under Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on public procurement

COM(2011) 896 final — 2011/0438 (COD).

On 17 January 2012 the European Parliament, and on 10 February 2012 the Council, decided to consult the European Economic and Social Committee, under Articles 53(1), 62 and 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the award of concession contracts

COM(2011) 897 final — 2011/0437 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April), the European Economic and Social Committee adopted the following opinion by 179 votes to 33 with 12 abstentions.

1. Conclusions and recommendations

1.1 The review of the directives on public procurement comes as part of an overall programme whose purpose is an extensive modernisation of the procurement system in the European Union, concerning both public procurement in general and procurement by entities operating in the water, energy, transport and postal services sectors. Also included is a new proposal for a directive on the award of concession contracts, which so far have been only partially regulated at European level.

1.2 The support for EESC opinion INT/570 on the *Green Paper on the modernisation of EU public procurement policy*

- *Towards a more efficient European Procurement Market* was almost total, as is shown by the outcome of the vote, as a result of which the Committee must uphold the same principles and views in the present opinion. This has not precluded the present opinion from taking this broad-based consensus as a basis to develop principles and points of view tailored to these specific and concrete legislative proposals.

1.3 The EESC emphasises the importance of taking account of the innovative environmental and social aspects of the Europe 2020 Strategy with regard to public procurement.

1.4 More specifically, it advocates *inter alia* promoting quality and innovation in public procurement, reducing unnecessary bureaucracy, including environmental and social aspects (protecting jobs and working conditions as well as persons with disabilities and other disadvantaged groups), encouraging selection of the most economically advantageous offer rather than the one with the lowest price, which should be the exception rather than the rule, in order to encourage smarter and more efficient public procurement, highlighting the need for greater professionalisation, increasing the participation of SMEs, including social enterprises, combating favouritism, fraud and corruption, and promoting European cross-border contracts in public procurement. The EESC supports the application of the lifecycle costs principle in view of the need to promote sustainable development.

1.5 The EESC believes that having common European procurement procedures would ensure greater transparency and objectivity. In any case, the proposals would allow each Member State considerable administrative flexibility to adjust procedures and tools to their own specific situations. All these parameters, combined with those of quality and professionalism, are unquestionably of benefit to the public and the general interest.

1.6 After lengthy discussions on Services of General Interest (SGIs), it was concluded that these are not procurement as such but services provided by or on behalf of authorities. The EESC reiterates that contracting authorities are free to carry out all or some of their functions themselves or to outsource those tasks which they deem appropriate.

1.7 The EESC reconfirms its support for the award of reserved contracts to sheltered workshops for disabled people and to social enterprises that employ other disadvantaged groups, in order to ensure equal opportunities for the benefit of all citizens and in the interests of social integration.

1.8 The rules on the confidentiality of the information contained in companies' offers must be strengthened.

1.9 Technical specifications should where appropriate be broadened to include production/process characteristics. This would simplify and make more transparent the scope for contracting authorities to be able to make important choices in promoting sustainable objectives including environmental sustainability, enforcement of collective agreements, labour standards, working conditions and equal pay for equal work.

1.10 Again with regard to technical specifications, the EESC takes a highly positive view of the requirement that these specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities and design for all users.

1.11 Regarding the grounds for exclusion in Article 55(3) of the proposal on public procurement, the EESC welcomes the fact that the contracting authorities may exclude tenderers who fail to comply with obligations established by Union legislation in the field of social, labour or environmental law or with international provisions of social and environmental law listed in Annex XI. It is also, however, self-evident that it should be explicitly stated that they may also be excluded when they fail to comply with the national legislation of the relevant Member State in the social, labour or environmental fields, and collective agreements in force in the place where the work, service or supply is performed. At all events the EESC considers that exclusion for these reasons should be mandatory.

1.12 As argued in the earlier EESC opinion INT/570, it would be necessary for Article 57 of the proposal on public procurement to explicitly require bidders to state that 'they have complied with the applicable legislation in each State in terms of labour integration of disabled persons, such as the obligation to recruit a specific number or percentage of disabled persons, in the countries where such obligation legally exists'. This would not of course be necessary in countries where no such obligation exists.

1.13 Opinion INT/570 also noted that ILO Convention C94 on Labour Clauses in public contracts adopted in 1949 is currently binding in ten EU Member States, though others including Ireland, apply the Convention voluntarily in public contracting. The EESC takes note of the principles contained in the Convention and suggests that Member States should be encouraged to ratify the Convention and follow its principles.

1.14 The EESC believes that excessive use continues to be made of the 'lowest cost' or 'lowest price' award criterion. This excessive use inhibits innovation and the pursuit of better quality and value, responding to the requirements of the Europe 2020 Strategy, and does not necessarily lead to more value. Use of the lowest price criterion should therefore always be the exception rather than the rule.

1.15 The EESC considers that the provisions on subcontracting must be strengthened. Multiple layers of subcontracting pose difficulties in applying collective agreements, rules on working conditions and procedures on health and safety. Public authorities should be given more leeway to enable them to influence contracts as regards achieving social, environmental and quality objectives. The details of the main subcontractors should have to be declared before the contract is awarded, and the public authority should specify the responsibilities and duties of all concerned to enable effective supervision and monitoring of the contract. Machinery should be set up so that public authorities can veto and reject certain subcontractors if there is any cause for concern.

1.16 The EESC is in favour of maintaining the difference between A and B Services under the condition of legal certainty and the possible extension of cross-border contracts of B Services. In the previous opinion INT/570 it was recommended that there should be a periodic review of the list of B Services by the Commission to examine whether some B Services could, with advantage, be shifted to A Services. The EESC is in any case concerned about the various public service contracts previously included on the list of B Services, which has now been removed from Annexes XVI or XVII, as appropriate, of the proposals. These annexes list the services to which the procedure governed by Articles 74 to 76, or 84 to 86, of the two proposals is applicable. On the other hand, the EESC considers that the reference to religious services and services furnished by trade unions currently included in Annexes XVI and XVII of the proposals must be removed.

1.17 The EESC notes that considerable doubt persists regarding the need for a EU directive on the award of concession contracts and recalls the European Parliament's resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)) in which it considered that 'any proposal for a legal act dealing with service concessions would be justified only with a view to remedying distortions in the functioning of the internal market; points out that such distortions have not hitherto been identified'. The EESC calls for a further and full impact assessment to be carried out before these proposals are allowed to progress.

1.18 The EESC considers that services of general economic interest are often subject to specific EU and national regulations aimed at ensuring their accessibility, affordability and quality, ensuring equal treatment and universal access, and user safety and rights, which should be recalled and guaranteed by the proposal. In line with the Protocol on services of general interest of the Lisbon Treaty, national, regional and local authorities must retain their wide margin of discretion to decide on the modes of organising and providing those services and to define their characteristics in order to pursue their general interest objectives.

1.19 Public authorities can rightly choose to carry out public contracts in-house or to cooperate with other public authorities as recognised in the European Treaties and the case-law of the Court of Justice of the EU and in keeping with the principles of transparency.

1.20 The EESC advocates the setting up of national oversight mechanisms in the Member States in charge of the implementation and monitoring of public procurement.

2. Overall view of the European Commission's proposals

2.1 Each year, the public authorities spend some 18 % of GDP on goods, services and works. Given the current budgetary restrictions, public procurement policy must ensure the optimal use of funds in order to foster growth and job creation and thereby help to achieve the objectives of the Europe 2020 Strategy.

2.2 The current generation of public procurement directives are the product of a long evolution that started in 1971 with the adoption of Directive 71/305/EEC ⁽¹⁾. A comprehensive economic evaluation has shown that the procurement directives have achieved their objectives to a considerable extent. However, major advances are still required to achieve the objectives of social and environmental sustainability. It is true that they have resulted in greater transparency, higher levels of competition and lower prices but attention must also be paid to jobs, wages and working conditions so that the objectives of growth and job creation in the Europe 2020 Strategy and the cross-sector social and environmental requirements set by the Treaty of Lisbon are not compromised.

2.3 The EESC would also like to draw attention to the possibility of analysing the potential or importance of economically dependent self-employed workers ⁽²⁾.

2.4 Stakeholders have called for a review of the public procurement directives to simplify the rules, increase their efficiency and effectiveness and make them better suited to deal with the evolving political, social and economic context.

2.5 The review of the directives on public procurement comes as part of an overall programme whose purpose is an extensive modernisation of the procurement system in the European Union, concerning both public procurement in general and procurement by entities operating in the water, energy, transport and postal services sectors. Reform of public procurement legislation is one of the twelve planned measures in the Communication from the Commission on the *Single Market Act – Twelve levers to boost growth and strengthen confidence*, adopted in April 2011.

2.6 Also included is a new proposal for a directive on the award of concession contracts, which so far have been only partially regulated by secondary law at European level. However, various organisations, both from industry and the trade unions, together with a number of political actors and public authorities, have already been expressing clear opposition to the proposal, because they doubt that it can bring greater legal security and duly respect the role of public authorities in making decisions in accordance with their own prerogatives as conferred upon them by the European Treaties.

2.7 In general, as far as both public procurement and concession contracts are concerned, the EESC is pleased that the Commission has taken into account the specific nature of social services and is proposing a simplified procedure. However, there is still no precise demarcation of 'procurement' and 'concession' from other ways of perceiving public and

⁽¹⁾ OJ L 185, 16.8.1971, p. 5, ESC opinion OJ 63, 13.4.1965, p. 929.

⁽²⁾ OJ C 18, 19.1.2011, pp. 44-52.

especially social tasks. The EESC therefore proposes that both the directives include additions to the effect that Member State procedures under which all service providers meeting predetermined legal conditions, regardless of their legal form and in accordance with the principles of transparency and non-discrimination, are eligible to provide services shall not be considered as service concessions or award of contracts.

3. EESC Opinion INT/570 Towards a more efficient European Procurement Market

3.1 On 27 January 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the *Green Paper on the modernisation of EU public procurement policy - Towards a more efficient European Procurement Market* COM(2011) 15 final.

3.2 The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

3.3 At its plenary session meeting of 13 July 2011, the European Economic and Social Committee adopted opinion INT/570 on the Green Paper by 164 votes to 1, with 4 abstentions.

3.4 The support for this opinion was almost total, as is shown by the outcome of the vote, as a result of which the Committee must uphold the same principles and views in the present opinion, firstly because nothing has happened in the meantime to require them to be changed, and secondly because the same majority and spirit of cooperation that prompted the entire European Economic and Social Committee to agree on the previous opinion should be maintained. Taking this broad-based consensus as a basis does not, however, preclude the development of principles and points of view tailored to these specific and concrete legislative proposals.

3.5 In opinion INT/570, the EESC welcomed the debate initiated by the Commission in its green paper with a view to modernising EU public procurement policy with a higher degree of efficiency in the context of a better functioning Single Market that was more innovative, greener, and more social.

3.6 The opinion also advocated *inter alia* promoting quality and innovation in public procurement, reducing unnecessary bureaucracy, including environmental and social aspects (protecting jobs and working conditions as well as persons with disabilities and other disadvantaged groups), encouraging selection of the most economically advantageous offer rather than the one with the lowest price, in order to encourage smarter and more efficient public procurement, highlighting

the need for greater professionalisation, increasing the participation of SMEs, including social enterprises, combating favouritism, fraud and corruption, and promoting European cross-border contracts in public procurement.

4. Proposal for a Directive on public procurement – COM(2011) 896 final – and Proposal for a Directive on procurement by entities operating in the water, energy, transport and postal services sectors – COM(2011) 895 final

4.1 The proposed reform aims to thoroughly modernise the existing tools and instruments to fit in better with the changing political, social and economic context. For this reason it was considered necessary, on the basis of the EU Treaties, to draw up a distinct directive for public procurement and another for procurement by entities operating in the water, energy, transport and postal services sectors.

4.2 The European Commission's reform has two complementary objectives:

- to increase the efficiency of public spending so as to ensure the best possible procurement outcomes in terms of value for money. This implies in particular simplification of the existing public procurement rules. Streamlined, more efficient procedures will benefit all economic operators and facilitate the participation of SMEs and cross-border bidders; and
- to allow procurers to make better use of procurement in support of common societal goals such as protection of the environment, higher resource and energy efficiency, combating climate change, promoting innovation, employment and social inclusion and ensuring the best possible conditions for the provision of high-quality social services.

4.3 The EESC believes that having common European procurement procedures would ensure greater transparency and objectivity, in turn making it more difficult for favouritism to affect awards. In any case, the proposals would allow each Member State considerable administrative flexibility to adjust procedures and tools to their own specific situations. All these parameters, combined with those of quality and professionalism, are unquestionably of benefit to the public and the general interest.

4.4 The concept of bodies governed by public law is unclear. The concept of a public body as contained in Article 2 of the two proposals for directives (public procurement and procurement by entities operating in the water, energy, transport and postal services sectors) requires further clarification.

4.5 The EESC considers the thresholds for the application of both directives laid down in Articles 4 and 12 of the proposals to be appropriate.

4.6 After a long debate on services of general interest (SGI), it was concluded that these are not public contracts in the true sense of the term, but services provided by authorities or on their behalf. The EESC reiterates that contracting authorities are free to carry out all or some of their functions themselves or to outsource those tasks which they deem appropriate. Account must also be taken of the systems of the Member States which respect the principles of equal treatment, non-discrimination and transparency laid down in EU primary law and which provide a general right of access to the provision of services. SGIs ⁽³⁾ themselves should not, therefore, come within the scope of the directive, although any outsourcing or contract related thereto awarded by the contracting authorities or on their behalf should be clearly subject to the directive.

Article 14 and Protocol No 26 of the TFEU on services of general interest recognise the specific nature and importance of public services and the wide-ranging discretion of national, regional and local authorities to decide how to provide, allocate responsibility for and organise these services. This includes the provision of services by the authority itself or via public-public collaboration. It is essential to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and user rights. These principles must be applied in all the proposals for directives concerning public procurement.

4.7 The directives should not prescribe what a contracting authority should or should not acquire or outsource but should be limited to establishing procedures for acquisition or outsourcing. The EESC believes that this freedom of action should not be restricted. Whatever happens, it should be carried out in a transparent and proportionate way, without giving rise to any abuse or fraudulent activities.

4.8 Public authorities can rightly choose to carry out certain public contracts in-house or to cooperate with other public authorities as recognised in the European Treaties and the case-law of the Court of Justice of the EU and in keeping with the principles of transparency.

4.9 The general rules governing economic operators in Articles 16 and 30 of the two proposals for directives are correct insofar as they facilitate participation by SMEs, which must always comply with social and environmental standards.

4.10 The EESC reconfirms its support, as expressed in opinion INT/570, for the award of reserved contracts to sheltered workshops for disabled people in order to ensure equal opportunities for the benefit of all citizens and in the interests of social integration. The EESC notes that Articles 17

and 31 of the proposals have extended the scope of Recital 28 and Article 19 of Directive 2004/18/EC, so as now to include disadvantaged people. The EESC therefore suggests that the proposals separate these two aspects as follows: 'Member States may reserve the right to participate in public procurement procedures for:

- a) sheltered workshops, or provide for such contracts to be performed in the context of sheltered employment programmes, provided that the majority of the employees concerned are disabled persons who, by reason of the nature or the seriousness of their disabilities, cannot carry on occupations under normal conditions or easily find employment on the ordinary market;
- b) social enterprises or programmes whose main aim is the social and professional integration of disadvantaged workers, provided that more than 30 % of the employees of those economic operators or programmes are disabled or disadvantaged workers. The call for tenders shall make reference to this provision'.

Moreover, the EESC believes the proposals should explicitly provide for the mandatory award of a certain number or percentage of such contracts in those Member States where circumstances warrant it, for example, if there are a significant number of people with disabilities who can work but are inactive.

4.11 At any event, the EESC considers that the proposals should include a provision, as regards reserved contracts, to the effect that the sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged workers 'should be promoted and controlled primarily by non-profit entities' which would further justify such privileged preferential access to government support.

4.12 The rules in Articles 18 and 32 of the two proposals on the confidentiality of the information contained in companies' offers must be strengthened, especially in cases where the competitive dialogue procedure is used. The EESC considers it essential that the contracting authorities not disclose information designated as confidential provided by economic operators, but neither should they disclose other information provided unless there is good reason to do so. Likewise, contracting authorities should not use such information from economic operators in other competitive procedures.

4.13 The rules on the competitive procedure with negotiation in Article 27 of the public procurement proposal are unclear, and there is a risk that other, unwanted practices may gain a foothold under the cover of such negotiations. It might therefore be better if this procedure were dropped from the proposal for a directive or, if this is not possible, at least for clear criteria to be established to limit its use in order to prevent it being misused in any way.

⁽³⁾ See Articles 14 and 106 of the TFEU and Protocol No 26 of the TFEU.

4.14 In all tenders, but especially the competitive dialogue procedure, the intellectual property of the tenderers must under all circumstances be protected.

4.15 The EESC considers that, given the complexity and length of time that is usually associated with the competitive dialogue procedure covered in Article 28 of the public procurement proposal, its possible use should be restricted to cases where it is really appropriate, i.e. as indicated in Article 29 of the current Directive 2004/18/EC, in the case of particularly complex contracts where contracting authorities consider that the use of the open or restricted procedure will not allow the award of the contract; consideration could also be given to setting a maximum time limit for the award of a contract.

4.16 The EESC agrees with the regulation of the innovation partnership procedure by Articles 29 and 43 in the two proposals, as excessively tight regulation would in practice hamper its use. For the same reason, this procedure should be flexible with regard to the rules on state aid.

4.17 The use of framework agreements (Articles 31 and 45 of the two proposals) must not lead to unwarranted price reductions that could be to the detriment of the quality of works, products or services. In any case, it is also recognised that an appropriate regulation of framework agreements could also encourage consideration of the objectives of sustainability and improved quality by provisions ensuring the security of investment.

4.18 The rules on electronic auctions in Articles 33 and 47 of the proposals favour the lowest price in an exaggerated manner. Their general use would go against the relevant proposals made by the EESC in both this and its previous opinion INT/570. This may also be seriously detrimental to European companies compared with third-country companies with much lower costs. They should therefore be used with the requisite caution.

4.19 As previously argued in opinion INT/570, technical specifications should where appropriate be broadened to include production/process characteristics. This would simplify and make more transparent the scope for contracting authorities to be able to make important choices in promoting sustainable objectives including environmental sustainability, enforcement of collective agreements, labour standards, working conditions and equal pay for equal work. Green electricity is a clear example of how and why production characteristics should be included as technical specifications and not relegated to performance conditions only (see the judgment of 4 December 2003, EVN and Wienstrom, C-448/01, ECR I-14527).

4.20 Again with regard to technical specifications, the EESC takes a highly positive view of the requirement set out in Articles 40(1) and 54(1) of the two proposals that these specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities and design for all users. The expression 'except in

duly justified cases' replaces the term used in Directive 2004/18/EC 'whenever possible', suggesting to the EESC that greater emphasis is now quite rightly being placed on the obligatory nature of the requirement for technical specifications to take into account accessibility criteria for people with disabilities and design for all users. However, the EESC considers that in order to give explicit strength to the obligation, it should be stated that even these justified cases must be exceptional, and therefore proposes that Articles 40 and 54 of the proposals read 'other than, by way of exception, in duly justified cases'.

4.21 As regards the labels referred to in Articles 41 and 55 and Recitals 28 and 36 of the two proposals, the rules are not entirely consistent as Recitals 28 and 36 refer to 'contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics (...)' but further on, among the stakeholders, only environmental organisations are mentioned, and not social organisations; these should be included too. The same applies to the text of Articles 41(1)(c) and 55(1)(c), where social organisations have again been left out.

4.22 A new paragraph could also be included in Articles 41 and 55 of the proposals where, given these labels' own special features and their declared aim, it would be noted that 'contracting authorities may require or look favourably upon labels which certify compliance with across-the-board award criteria of a social or environmental nature, although they may not necessarily be directly related to the subject-matter of the contract'.

4.23 As regards the variants covered in Articles 43 and 58 of the two proposals, the EESC believes that rather than allowing variants only when it is expressly stated, it would be more appropriate to always allow the submission of variants in tenders unless it is expressly prohibited, as this would lead to greater promotion and improved innovation in procurement.

4.24 As noted in the opinion INT/570, the EESC favours public procurement on a level playing field, enabling SMEs 'to secure a "fair share" of public contracts,' but is not in favour of measures of positive discrimination in relation to SMEs, among other things because they could lead to artificial constructions and, consequently, possible corruption. However, the possible division of contracts into lots, where practical, as provided for in Articles 44 and 59 of the two proposals, is a positive move, as this will make opportunities for SMEs more visible and, thus, more accessible.

4.25 However, the rules governing the division of contracts into lots should be clear in order to guarantee that all the successful tenderers of the various lots respect social and environmental standards and to avoid unfair competition between businesses. The EESC considers that the requirement that contracting authorities must justify their decision not to divide contracts into lots is impractical and inconsistent

with the aim of streamlining procurement procedures. Similarly, the EESC believes that the rule limiting the number of lots that may be offered or awarded is unnecessarily complicated and should preferably be dropped from the proposal.

4.26 Regarding the grounds for exclusion in Article 55(3) of the proposal on public procurement, the EESC welcomes the fact that the contracting authorities may exclude tenderers who fail to comply with obligations established by Union legislation in the field of social, labour or environmental law or of international provisions of social and environmental law listed in Annex XI. It is also, however, self-evident that it should be explicitly stated that they may also be excluded when they fail to comply with the national legislation of the relevant Member State in the social, labour or environmental fields, and collective agreements in force in the place where the work, service or supply is performed. In any event, the EESC considers that these exclusions for such reasons should be mandatory.

4.27 Otherwise, the obligations regarding which non-compliance may lead to exclusion could remain within over-general and insufficiently specific parameters, such as those set out in the provisions of Annex XI of the proposal, or in the Union's existing legislation.

4.28 As the EESC previously noted in opinion INT/570, ILO Convention C94 on Labour Clauses in public contracts adopted in 1949 is currently binding in ten EU Member States, though others including Ireland, apply the Convention voluntarily in public contracting. The EESC takes note of the principles contained in the Convention and suggests that Member States should be encouraged to ratify the Convention and follow its principles.

4.29 With regard to the verification of compliance with social and environmental obligations, it would be necessary for Article 57(1) of the proposal on public procurement to require a declaration by the interested parties that they have fulfilled the said social and environmental obligations as preliminary evidence of compliance. The aim would be to make it easier for companies (SMEs in particular) to comply with these requirements without increasing their administrative burden.

4.30 For this purpose, as argued in the earlier EESC opinion INT/570, it would be necessary for Article 57 of the proposal on public procurement to explicitly require bidders to state that 'they have complied with the applicable legislation in each State in terms of labour integration of disabled persons, such as the obligation to recruit a specific number or percentage of disabled persons, in the countries where such obligation legally exists.' This would not of course be necessary in countries where no such obligation exists.

4.31 That opinion also pointed out that it would be against the European and national rules for the public authorities to contract with entities which do not comply with the legislation. To do otherwise, moreover, would constitute discriminatory and unfair treatment of companies that do comply with this legal obligation, and would confer an arbitrary advantage on those that do not, possibly even generating unfair competition by non-compliant companies with regard to compliant ones.

4.32 The EESC welcomes the fact that the criteria for selecting the most economically advantageous tender remain linked to the subject-matter of the contract, although this link should be made somewhat more flexible so as to include more effective social and environmental criteria under the auspices of the Europe 2020 Strategy and commitments to more sustainable growth.

4.33 The EESC believes that both the proposals for directives (Articles 66 and 76) continue to make excessive use of the 'lowest cost' or 'lowest price' award criterion. In its earlier opinion, the EESC argued that this excessive use inhibits innovation and the pursuit of better quality and value, responding to the requirements of the Europe 2020 Strategy, and does not necessarily lead to more value. Use of the lowest price criterion should therefore always be the exception rather than the rule.

4.34 Use of the 'most economically advantageous' criterion must therefore be increased, to assess the sustainably most advantageous tender, in economic as well as in environmental and social terms. In this way, the award criteria can also take account of these aspects in a broad, imaginative and non-restrictive way, by means of a broader acceptance of this criterion's linkage to the subject-matter of the contract and a weighted valuation in relation to the other criteria.

4.35 More specifically, the criteria linked to the subject-matter of the contract that may be used for determining the economically most advantageous tender must explicitly include (Articles 66(2) and 76(2) in the two proposals) 'those characteristics of the working conditions intended to protect workers' health or promote the social integration of disadvantaged or disabled persons amongst the persons assigned to performing the contract,' given that this is included among the Recitals (41 and 47 respectively) of the proposals for directives, but not subsequently in the text.

4.36 The concept of life-cycle costing of products, services or works set out in the directive is also appropriate. In any case, these costs within the life cycle defined in Articles 67 and 77 of the proposals should also include the social costs involved. The calculation method of life-cycle costs has to be provided by the contracting authority and has to be SME compatible.

4.37 Contracting authorities must take special care with bids that appear abnormally low in relation to the works, supplies or services and investigate such cases properly. The EESC noted earlier that contracting entities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. If the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. The EESC welcomes the fact that under Articles 69(4) and 79(4) of the proposals, the contracting authorities must reject the tender when it does not comply with obligations established by social, labour or environmental law, but considers that such legislation should not be limited to that of the Union or the list in Annexes XI and XIV, depending on the proposal, but should include national legislation in these areas.

4.38 The EESC considers that the provisions on subcontracting must be strengthened. Multiple layers of subcontracting pose difficulties in applying collective agreements, rules on working conditions and procedures on health and safety. Public authorities should be given more leeway to enable them to influence contracts as regards achieving social, environmental and quality objectives. The details of the main subcontractors should have to be declared before the contract is awarded, and the public authority should specify the responsibilities and duties of all concerned to enable effective supervision and monitoring of the contract. Machinery should be set up so that public authorities can veto and reject certain subcontractors if there is any cause for concern. In turn, care must be taken with regard to the subcontracting rules, since the option for the contracting authority to transfer due payments directly to the subcontractors could lead to an increase in problems between companies and with the contracting authorities themselves.

4.39 The EESC is in favour of maintaining the difference between A and B Services under the condition of legal certainty and the possible extension of cross-border contracts of B Services. Already in the opinion INT/570 it was recommended that there should be a periodic review of the list of B Services by the Commission to examine whether some B Services could, with advantage, be shifted to A Services. The EESC is in any case concerned about the various public service contracts previously included on the list of B Services, which have now been removed from Annexes XVI or XVII, as appropriate, of the proposals. These annexes list the services to which the procedure governed by Articles 74 to 76, or 84 to 86, of the two proposals is applicable.

4.40 The reference to religious services and those furnished by trade unions currently included in Annexes XVI and XVII of the proposals must be removed.

4.41 Quite apart from this, the EESC welcomes the application of a simplified procedure for social services and other special services, the higher thresholds and the broader discretion granted to the Member States in introducing the relevant

procedures, since it is primarily in the area of personal services that the applicable procedural law must attempt to strike a balance between the principles of competition enshrined in primary law, and the requirements of social law.

4.42 With regard to the governance rules set out in the directive, the EESC considers that too many measures that are difficult to apply in practice are envisaged, which could render the evident good intentions ineffective.

4.43 In any case, with regard to public oversight as referred to in Articles 84 and 93 of the two proposals and the related annual report, it is important that this report should also include an annual comparison between the prices submitted and the actual cost of contracts that have already been performed, and also an indication of the penetration of foreign suppliers in the European zone as regards the procurement contracts awarded each year by contracting authorities.

4.44 The EESC is concerned that the European Commission has dropped Article 27 of the current Directive concerning the protection of jobs, working conditions and the environment. Articles 87 and 96 in the two proposals include a provision that is much watered down on this important point. The current text of Article 27 should be re-instated in full. It should also apply to subcontractors and the entire supply chain.

5. Proposal for a Directive on the award of concession contracts – COM(2011) 897 final

5.1 The proposal for a directive on the award of concession contracts governs partnership agreements between an entity that is usually public and an often private company in which the latter assumes the operating risk with regard to the maintenance and development of infrastructure (ports, water supply, parking, toll roads, etc.) or the provision of services of general economic interest (energy, health, water distribution and treatment, waste disposal, etc.). The proposal covers all concession contracts, for both works and services, but fails to distinguish between them adequately. It only addresses works and public service concessions in general, but does not reflect the specific nature of concessions for services of general interest which are neither 'tenders' nor 'procurement' but a way of delegating the management of services of general interest and frequently an additional means of funding new services of general interest decided by the public authorities.

5.2 The EESC notes that considerable doubt persists regarding the need for a EU directive on the award of concession contracts and recalls the European Parliament's resolution of 25 October 2011 on modernisation of public procurement (2011/2048(INI)) in which it considered that 'any proposal for a legal act dealing with service concessions

would be justified only with a view to remedying distortions in the functioning of the internal market; points out that such distortions have not hitherto been identified'. The EESC calls for a further and full impact assessment to be carried out before these proposals are allowed to progress. The EESC takes the view that the case-law of the Court of Justice of the European Union has largely clarified the application of the Treaty principles of equal treatment, non-discrimination and transparency to the award of concession contracts. As it was made clear by the Court, these principles apply to the award of concession concerning all types of services with a cross-border interest including services of general economic interest.

5.3 Notwithstanding the fact that concessions are defined in Directive 2004/18/EC as a contract of the same type as a public contracts except for the fact that the consideration for the works or services to be carried out consists either solely in the right to exploit the work or service or in this right together with payment, the EESC notes that concessions are substantially different from public contracts as the concessionaire is deemed to assume a substantial operating risk of the service to be provided and to be exposed to the vagaries of the market. This is also the case of certain concessions like 'shadow tolls' where the concessionaire is paid by the contracting authority based on usage of the services by consumers. Hence, rules specifically designed for the award of public contracts are not suitable for the award of concessions and may even dissuade public authorities and economic operators from entering into those arrangements.

5.4 The EESC recalls Article 14 of Treaty on the Functioning of the European Union on services of general economic interest which lays down that 'Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions'.

5.5 The EESC considers that services of general economic interest are often subject to specific EU and national regulations aimed at ensuring their accessibility, affordability and quality, ensuring equal treatment and universal access, and user safety and rights, which should be recalled and guaranteed by the present proposal. In line with the Protocol on services of general economic interest of the Lisbon Treaty, national, regional and local authorities must retain their wide margin

of discretion to decide on the modes of organising and providing those services and to define their characteristics, including any conditions regarding the quality or price of the services, in order to pursue their general interest objectives. Those authorities should also be able to freely establish the social, environmental and quality award criteria which they find to be the most appropriate with regard to the subject-matter of the contract. In no case should public authorities be forced to liberalise or externalise the provision of services of general economic interest against their own will or best judgement. The EESC calls for a clear reminder that the rules of competition and the internal market are to be applied to companies responsible for managing services of general interest in keeping with Article 106 TFEU, i.e. insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

5.6 Public authorities should be able to cooperate in order to perform the public interest tasks conferred on them by using their own administrative, technical and other resources, without being obliged to call on outside entities not forming part of its own structure. Such arrangements do not qualify as concessions and therefore the proposal for a directive on concessions should provide for their clear exclusion from its scope in line with the case law of the Court. Likewise, certain concessions awarded to undertakings affiliated to contracting entities and having as their principal activity the provision of services to the group of which they are part, or concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive (such as water or port services) and of which that entity is part should not be covered by the proposed rules.

5.7 Public authorities can rightly choose to carry out public contracts in-house or to cooperate with other public authorities as recognised in the European Treaties and the case-law of the Court of Justice of the EU and in keeping with the principles of transparency.

5.8 Strict rules should be consequently applied to concessions awarded to associated companies in order to prevent this system from being abused and to ensure that the award procedure is transparent.

5.9 According to the relevant EU Court of Justice case-law, imperative requirements relating to the general interest in the gambling sector, entailing the introduction by Member States of measures to protect public policy or consumers, may justify restrictions on the Treaty principles governing the award

of concessions. It would therefore be appropriate to exclude from the scope of this directive concessions of gambling activities granted to an operator based on an exclusive right enjoyed by this operator under the national law in force or an administrative act in accordance with the Treaty and the case-law of the Court of Justice, since an exclusive right of this kind would make it impossible to pursue a competitive procedure for the concession. For this reason, the EESC believes that Article 8(5) of the proposal, concerning the exclusion from the application of the directive of concessions for certain services, should include 'gambling activities that entail wagering a stake with monetary value in games of chance, including lotteries and betting transactions'.

5.10 In the proposal for a directive, aspects such as the definition of concessions, the transfer of risk to private operators, the modification of concessions during their term, or their termination must be defined in such a way that they do not become obstacles to the funding and development of this type of contract. In the light of current plans for adjustment and

curtailment of public investment in the Member States, they are set to play a major role as ways of relaunching activity and creating jobs.

5.11 The methods provided for calculating the value of concession contracts should be streamlined and made simpler in order to increase legal certainty. Notwithstanding the fact that the method of calculating the value of works concessions is a well-established and familiar one, the EESC considers that only one method should apply to estimate the value of all types of concessions. In this context, the EESC calls for a method based on the estimated turnover of the concessionaire (free of taxes) for the whole duration of the particular concession in question, taking account of both the cost of the works and the estimated value of the supplies necessary for executing the works at the time of the tender.

5.12 In order to strengthen confidentiality for tenderers, it is proposed that the directive provide that contracting authorities shall be liable for any failure to comply with these obligations.

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

I. The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 39(2) of the Rules of Procedure):

a) **Point 4.21**

Replace as follows:

4.21 ~~As regards the labels referred to in Articles 41 and 55 and Recitals 28 and 36 of the two proposals, the rules are not entirely consistent as Recitals 28 and 36 refer to 'contracting authorities that wish to purchase works, supplies or services with specific environmental, social or other characteristics (...)' but further on, among the stakeholders, only environmental organisations are mentioned, and not social organisations; these should be included too. The same applies to the text of Articles 41(1)(c) and 55(1)(c), where social organisations have again been left out. We believe that if the directives offer the possibility to require specific environmental, social or other labels, despite the preconditions for their use, this could present significant obstacles for public procurement by limiting competition and adding to companies' burdens and costs.~~

Reason

Self-explanatory.

Result of the vote:

For:	77
Against:	99
Abstentions:	20

b) **Point 4.26**

Amend as follows:

4.26 Regarding the grounds for exclusion in Article 55(3) of the proposal on public procurement, the EESC welcomes the fact that the contracting authorities may exclude tenderers who fail to comply with obligations established by Union legislation in the field of social, labour or environmental law or of international provisions of social and environmental law listed in Annex XI. It is also, however, self-evident that it should be explicitly stated that they may also be excluded when they fail to comply with the national legislation of the relevant Member State in the social, labour or environmental fields, ~~and collective agreements in force in the place where the work, service or supply is performed.~~ In any event, the EESC considers that these exclusions for such reasons should be mandatory.

Reason

The compliance with the national legislation of the relevant Member State in social, labour or environmental fields is sufficient guarantee for fairness of procedure since it includes the valid general collective agreements. The formula 'collective agreements in force in the place where the work, service or supply is performed' is ambiguous and can be explained in a very extensive way. The collective agreements concluded between employers and employees in one enterprise concern these two partners and are not enforceable on outside subjects.

The opinion is also not consistent in this point. In the INT section the notion about the collective agreements was proposed as several amendment and was not accepted in point 4.38 but was accepted in point 4.26 and consequently in 1.11.

Result of the vote:

For:	78
Against:	110
Abstentions:	16

c) Point 4.32

Amend as follows:

4.32 *The EESC welcomes the fact that the criteria for selecting the most economically advantageous tender remain linked to the subject-matter of the contract, ~~although this link should be made somewhat more flexible so as to include more effective social and environmental criteria under the auspices of the Europe 2020 Strategy and commitments to more sustainable growth~~ Social or environmental criteria can only be included if there is a direct link with the subject-matter of the contract, and in this context a contribution can be made to achieving the objectives set out in the Europe 2020 Strategy.*

Reason

It is crucial to maintain the direct link between the criteria for evaluating the bid and the subject-matter of the contract, in order to ensure transparency and avoid arbitrary decisions.

Result of the vote:

For: 78

Against: 116

Abstentions: 13

d) Point 4.35

Delete:

4.35 *More specifically, the criteria linked to the subject-matter of the contract that may be used for determining the economically most advantageous tender must explicitly include (Articles 66(2) and 76(2) in the two proposals) 'those characteristics of the working conditions intended to protect workers' health or promote the social integration of disadvantaged or disabled persons amongst the persons assigned to performing the contract,' given that this is included among the Recitals (41 and 47 respectively) of the proposals for directives, but not subsequently in the text.*

Reason

Since current legislation on health and safety and the social integration of disabled persons is applicable to and mandatory for companies, there is no need to include these factors as award criteria.

Result of the vote:

For: 81

Against: 119

Abstentions: 7

e) Point 4.38

Replace as follows:

4.38 *The EESC considers that the provisions on subcontracting must be strengthened. Multiple layers of subcontracting pose difficulties in applying collective agreements, rules on working conditions and procedures on health and safety. Public authorities should be given more leeway to enable them to influence contracts as regards achieving social, environmental and quality objectives. The details of the main subcontractors should have to be declared before the contract is awarded, and the public authority should specify the responsibilities and duties of all concerned to enable effective supervision and monitoring of the contract. Machinery should be set up so that public authorities can veto and reject certain subcontractors if there is any cause for concern. In turn, care must be taken with regard to the subcontracting rules, since the option for the contracting authority to transfer due payments directly to the subcontractors could lead to an increase in problems between companies and with the contracting authorities themselves. EU legislation on public procurement should not be used to regulate matters concerning the performance of contracts.*

Reason

EU legislation on public procurement should not be used to regulate matters concerning the performance of contracts, given that they should be dealt with at the national level. Furthermore, it is not appropriate for legislation on public procurement to be used to establish rules on subcontracting.

Result of the vote:

For:	80
Against:	114
Abstentions:	21

f) Point 1.15

Replace as follows:

1.15 ~~The EESC considers that the provisions on subcontracting must be strengthened. Multiple layers of subcontracting pose difficulties in applying collective agreements, rules on working conditions and procedures on health and safety. Public authorities should be given more leeway to enable them to influence contracts as regards achieving social, environmental and quality objectives. The details of the main subcontractors should have to be declared before the contract is awarded, and the public authority should specify the responsibilities and duties of all concerned to enable effective supervision and monitoring of the contract. Machinery should be set up so that public authorities can veto and reject certain subcontractors if there is any cause for concern. EU legislation on public procurement should not be used to regulate matters concerning the performance of contracts.~~

Reason

EU legislation on public procurement should not be used to regulate matters concerning the performance of contracts, given that they should be dealt with at the national level. Furthermore, it is not appropriate for legislation on public procurement to be used to establish rules on subcontracting.

Result of vote:

For:	80
Against:	114
Abstentions:	21

II. The following Section Opinion point was modified in favour of the amendment adopted by the assembly but obtained at least one-quarter of the votes cast (Rule 54(5) of the Rules of Procedure):

a) Point 5.8

5.8 *Strict rules should be consequently applied to concessions awarded to associated companies in order to prevent this system from being abused, thus excluding from the market concession contracts which should be awarded entirely competitively.*

Result of the vote:

For:	126
Against:	71
Abstentions:	22

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 — Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law’

COM(2011) 573 final

(2012/C 191/17)

Rapporteur: **Mr DE LAMAZE**

On 20 September 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law

COM(2011) 573 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 March 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April 2012), the European Economic and Social Committee adopted the following opinion by 131 votes, with 2 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the communication's objective of providing for the exercise of the EU's competence in the field of criminal policy, conferred on it by Article 83(2) of the Treaty on the Functioning of the European Union (TFEU), in new harmonised sectors. This could provide the EU with an effective tool for improving and strengthening the implementation of its policies, as a continuation of the case-law advances of the Court of Justice of the EU in 2005 and the two directives of 2008 and 2009 aimed at establishing an environmental criminal law.

1.2 The Commission's communication undoubtedly represents progress since, for the first time, the EU is proposing to put in place a policy to govern its actions in criminal matters. The EESC believes that this policy should be given strong political impetus.

1.3 In relation to the aforementioned legal developments, the EESC would point out firstly that the desire to ensure the implementation of Union policies is not in itself sufficient justification for recourse to criminal law, since increasing the scope of European criminal law is subject to respect for the principles of subsidiarity and proportionality.

1.4 Given the punitive and controversial nature of criminal sanctions, the criminalisation of States by the Union for a particular form of conduct should be a last resort ('ultima ratio'). The difficulties faced by Member States in the implementation of an EU policy, compromising the effectiveness of that policy, should not in themselves be sufficient to justify recourse to criminal law. The conduct in question must also constitute a serious violation of an interest which is considered to be fundamental.

1.5 The EESC believes that the Commission's project first requires a clear identification of what the concept of a general interest defined at European level could cover. This concept does not currently exist in law, but is necessary in order to justify imposing criminal sanctions defined at EU level on European citizens. Consumers' interests alone cannot be sufficient to justify recourse to such measures.

1.6 The EESC would call, more broadly, for an examination of how fundamental rights, including social rights, could, in the future, be protected by criminal sanctions defined at EU level, and consideration should be given to how the latter can be harmonised in the different Member States. Given that the definition of offences and sanctions can vary amongst Member States to the point of prejudicing fundamental rights by violating the principles of proportionality and legal certainty, the EESC believes that harmonisation in criminal matters would be necessary in these cases.

1.7 The decision to adopt new criminal measures at European level must first be justified by means of an impact analysis carried out in cooperation with experts from the different Member States, which includes a comparative law-based study into the systems responsible for the implementation of the regulations in question in the Member States, and an analysis of the need to improve the rule of law, demonstrating that this new provision must be enacted at the European level.

1.8 In other words, the analysis must be able to demonstrate the need for European criminal legislation in light of the principles of subsidiarity and necessity and of the proportionality (the ultima ratio requirement) of the criminal sanction. The EESC is pleased that the Commission intends to take this approach in relation to extending EU action in the field of criminal law.

1.9 The EESC believes that the effectiveness and impact of criminal law laid down at European level on fundamental rights should be subject to an independent scientific evaluation, as an essential counterpart to the prior impact assessment.

1.10 The EESC considers it crucial to stipulate the content of a harmonisation policy in the criminal field, particularly in relation to whether it is intended to harmonise definitions of sanctions and violations.

1.11 The EESC believes that the minimum rules established at EU level must not interfere with national authorities' definition of categories of offences, which furthermore is linked to their legal system, and that it should be left to them to draw up their own enforcement strategies, in strict compliance with the principle of subsidiarity.

1.12 The EESC would stress that, in any event, the progressive harmonisation of substantive criminal law rules can only be carried out at the institutional level, on the basis of close cooperation between the prosecuting authorities (justice ministers and public prosecutors) and between judicial authorities. This cooperation should be guaranteed by means of a specific budget. This harmonisation would not however put an end to the heterogeneity of national criminal procedural rules, particularly in terms of the specific guarantee of rights to defence (e.g. appeals). Furthermore, procedural matters do not fall within the scope of the communication. The criminal procedures and practices of the different enforcement systems therefore lead to variations which the European regulator is not providing for. For this reason, the EESC considers it particularly important for the future European public prosecutor to be responsible for overseeing, within the limits of his powers, the progressive harmonisation of national criminal legislations, on the basis of which judicial proceedings will be brought.

1.13 Furthermore, the EESC believes that consideration should be given to the criminal liability of legal persons, which has not yet been accepted by all Member States. Given this inequality before the law, consideration of this issue should be a priority, since many significant offences in the economic, social and environmental fields are committed by industrial and commercial enterprises.

1.14 Extending the European scope in criminal matters first requires a discussion of subjects such as:

- the preference for criminal law over all other systems of prevention and remedy, such as administrative sanctions, including fiscal sanctions, and the possibility of class action, as well as mediation;
- identification of the appropriate level of sanction, to be defined at European level, without which criminal law would have less of a deterrent effect in many of the legislations it supersedes;
- the role of Eurojust and the role of the future European public prosecutor.

1.15 Finally, the EESC believes that the discussion on the principle of extending European criminal law should go hand in hand with a discussion on respect for rights of defence, which are less well protected outside of the judicial framework provided by criminal proceedings. If the extension of a European criminal area is to be effective, rights of defence must be reinforced, particularly where Eurojust and Europol are concerned. These rights must be effectively guaranteed in practice, and for every EU citizen. Only in this way will European criminal law meet the requirement to respect fundamental rights laid down in the Treaties (Article 67(1) and Article 83(3) TFEU).

2. Content of the communication

2.1 The Commission maintains that EU action in criminal matters is recognised as necessary for underpinning the effective implementation of EU policies in the financial sector and in protecting the EU's financial interests in terms of safeguarding the euro and combating counterfeiting.

2.2 It calls for assessing the appropriateness of extending such action to the following areas: road transport, data protection, environmental protection, fisheries policy, internal market policies (counterfeiting, corruption, public procurement). The list is not exhaustive.

2.3 The stated legal basis for this EU action is Article 83(2) TFEU, which stipulates: 'If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.'

2.4 While the Lisbon Treaty provides a legal basis facilitating the adoption of directives on criminal law, these directives must rigorously comply with the fundamental rights guaranteed by the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the fundamental principles of subsidiarity and proportionality, with recourse to criminal law being sought as a last resort ('ultima ratio'), as stipulated in the communication.

2.5 By virtue of the principle of subsidiarity, as explained in the communication, it is only if the Member States are unable to enforce EU law, or if significant differences in this area were to emerge between the Member States leading to inconsistencies in its implementation, that the EU can act.

2.6 In accordance with the requirements of last resort ('ultima ratio'), the Commission states that the choice between criminal or administrative sanctions will be based on a detailed impact assessment. A group of experts will help it with this task and also provide an interpretation of certain basic concepts of criminal law ('effective, proportionate and dissuasive sanctions', 'minor cases', 'aiding and abetting', etc.).

2.7 The Commission assesses the added value of EU action in the criminal sphere in terms of four basic objectives:

- encouraging the free movement of persons and cross-border purchases (through minimum standards governing procedural rights);
- preventing the existence of ‘safe havens’;
- strengthening mutual trust between judiciaries and cooperation between law enforcement authorities;
- preventing and sanctioning serious offences against EU law (environment, combating illegal employment, etc.).

2.8 The communication does not touch upon the measures which may be adopted, pursuant to Article 83(1) TFEU, to combat the limited list of offences referred to as ‘eurocrimes’ because of their particular seriousness and cross-border dimension⁽¹⁾.

3. General comments

3.1 The goal of this communication is particularly sensitive, since criminal policy has derived from sovereign power since States were first created, and enforcement rules directly affect the individual freedoms and rights of every citizen.

3.2 Whilst there is undoubtedly a desire for the EU to pursue criminal action in certain areas, particularly in combating human trafficking and the sexual exploitation of women and children, which are covered by Article 83(1) TFEU, the EESC is not convinced that there is a similar desire as regards those areas governed by Article 83(2) TFEU.

3.3 *The bases of European criminal legislation*

3.3.1 The need for a sufficient legitimate interest

3.3.1.1 The new features introduced by the Lisbon Treaty are an achievement that the EESC welcomes. They facilitate the adoption of directives on criminal matters and provide greater guarantees for protecting fundamental rights.

3.3.1.2 Nevertheless, the EESC would like to remove some possible confusion from the outset: Article 83(2) TFEU must not give rise to the idea that the desire to ensure implementation of EU policies is enough, in itself, to legitimise recourse to criminal law.

3.3.1.3 The ‘economic recovery’ – to which the Commission refers in contemplating broadening the scope of EU action in criminal matters (page 10) and which is universally acknowledged as an essential goal and priority – cannot in itself constitute sufficient legitimate interest to justify recourse to criminal law. This goal depends on much more than combating ‘the illegal economy and financial criminality’, to which, moreover, the Commission thinks EU action in criminal matters could not be restricted.

⁽¹⁾ Terrorism, trafficking in human beings, sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment and organised crime.

3.3.1.4 The EESC believes that the Commission’s project first requires a clear identification of what the concept of a general interest defined at European level could cover. This concept does not currently exist in law, but is necessary in order to justify imposing criminal sanctions defined at EU level on European citizens. Consumers’ interests alone cannot be sufficient to justify recourse to such measures.

3.3.1.5 The EESC would call, more broadly, for an examination of how fundamental rights and social rights could, in the future, be protected by criminal sanctions defined at EU level, and consideration should be given to how the latter can be harmonised in the different Member States. Given that the definition of offences and sanctions can vary amongst Member States to the point of prejudicing fundamental rights by violating the principles of proportionality and legal certainty, the EESC believes that harmonisation in criminal matters would be necessary in these cases.

3.3.2 The ‘metaprinciple’ of subsidiarity and the requirement of ‘ultima ratio’

3.3.2.1 The EESC places much importance on respecting the principle of subsidiarity when it comes to European criminal legislation: it is of particular relevance in as much as the social values protected by criminal law are closely linked to the social structure and the very identity of Member States’ societies. This identity is enshrined in the TFEU, which points out that the Member States should not hesitate to use their prerogatives and pull the ‘emergency brake’ if they feel that the proposed legislation affects fundamental aspects of their criminal justice system (Article 83(3)).

3.3.2.2 The EESC believes that the minimum rules in criminal matters established at European level must not interfere with national authorities’ definition of categories of offences, which furthermore is linked to their legal system, and that it should be left to them to draw up their own enforcement strategies, in strict compliance with the principle of subsidiarity.

3.3.2.3 The EESC would point out that the communication indicates that, in accordance with the principle of subsidiarity, EU action in criminal matters is only justified if all or a majority of Member States are not able to ensure compliance with EU law by means of their own legislative capacities. The issue of EU intervention deserves to be raised in the event that one or a small number of Member States are in that situation.

3.3.2.4 Because it is likely to interfere with the rights of the individual, any European criminal legislation must be founded on the principle of proportionality, and in particular on the ultima ratio requirement, which presupposes that the absence of any less coercive means of achieving the desired objective be first proved.

3.3.2.5 The communication stresses the importance of applying these principles, which means that assessments should be carried out taking account of all possible alternative measures.

3.3.2.6 The EESC is aware of the Commission's desire to undertake such studies. The Commission states that it will 'develop plans to collect further statistical data and evidence to deal with the areas covered by Article 325(4) and Article 83(2)' (point 2.2.2).

3.3.2.7 Regarding implementing the 'ultima ratio' requirement, it states that the legislator must use impact studies as a basis and include an 'assessment of whether Member States' sanction regimes achieve the desired result and difficulties faced by national authorities implementing EU law on the ground' (point 2.2.1).

3.3.2.8 It has to be recognised that there are few assessments to date of how Member States will transpose and implement European legislation. Similarly, there is little comparative research into the different legal systems. The first task will be to undertake such studies. The EESC feels that it is only in the light of their findings that it will be possible to determine whether harmonisation is 'essential'.

3.3.2.9 The EESC would stress that it is necessary to illustrate both the shortcomings in Member States' legal frameworks and the nature of the difficulties raised at EU level by the differing views of criminalisation, sanctions and the effectiveness of law enforcement.

3.3.2.10 The EESC believes that the European criminal law instrument too should be subject to an independent scientific assessment of its effectiveness and impact on fundamental rights. Only by means of an assessment such as this can the truly effective measures be enhanced and others abandoned. For this purpose, Member States should have a specific financial instrument to enable the necessary financial resources to be allocated within their budgets. It also means drawing up a common European methodology stipulating the main indicators and measuring tools.

3.3.2.11 The EESC is aware that the debate surrounding the principle of subsidiarity in the sphere of criminal legislation is still in its early stages. The case law is still being created. In this respect, it stresses the need for further consideration in order to better define this concept. More generally, it calls for the principles underpinning any European criminal legislation to be examined in greater detail.

3.3.2.12 The EESC considers that the reasons put forward in the communication to highlight the added value of EU action in criminal matters (page 4) require further consideration.

3.3.2.12.1 In particular, while – in the view of the EESC – the reasoning relating to the differences between sanctions within the EU above all raises the issue of discrimination between EU citizens in terms of fundamental rights, it should

however be qualified: firstly, because of the discretionary powers of the judge in many countries, and secondly, because the deterrent effect depends primarily on the effectiveness of enforcement agencies.

3.3.2.12.2 The EESC would stress that, in any event, the progressive harmonisation of substantial criminal law rules can only be carried out at the institutional level, on the basis of cooperation between national judicial authorities, and this cooperation must be guaranteed by means of a specific budget. The Committee would point out that the desired harmonisation cannot entirely eliminate the differences in criminal procedures, particularly as regards the concept of the adversarial process and the rights of the defence.

3.3.2.12.3 Since action on criminal law would seem essential, the EESC consequently draws attention to the need for seeking harmonisation in collecting evidence.

3.3.2.13 Finally, the EESC would like to point out that, by virtue of the ultima ratio requirement, the option of preventive measures, particularly via actions in the social field, should be explored. This might be effectively combined with criminal sanctions.

3.3.3 Other principles

3.3.3.1 The EESC would note that, in accordance with the Charter of Fundamental Rights and the Convention for the Protection of Human Rights, the legislator has an obligation to ensure that charges are clear and accurate, which simply reflects a general obligation to ensure legal certainty. The EESC believes that this obligation should extend to secondary offences such as attempted crimes and aiding and abetting, which are defined differently from one State to another.

3.3.3.2 As the Commission points out, the plan to harmonise legislations should not result in increasing the levels of sanctions applicable in the Member States. The EESC points out that, by virtue of the principle of (vertical) consistency, the minimum penalties envisaged by the EU should not lead to an increase in the possible maximum penalties within a Member State, which would be contrary to that country's legal system (Article 67(1) TFEU). It calls for a distinction to be made between the concepts of severity and effectiveness when assessing a penalty.

3.3.3.3 Since they are approved by the EU, the EESC believes that, for the sake of consistency across the board, account should also be taken of the levels of sanction already laid down in European legislation.

3.4 Legal concepts to be clarified

3.4.1 The Commission clearly wished to open a discussion before even defining certain basic concepts, hence a certain lack of clarity in the communication. Whilst the EESC is aware of the political scope of the document, it regrets that the discussion could not begin on the stable basis it would have

wished. It particularly emphasises the complexity of the necessary distinction between the concepts of criminal sanctions and administrative sanctions and questions what is to be understood by 'serious breaches' of EU law.

3.4.2 The work carried out by the group of experts should help to dispel some ambiguities. The EESC will ensure that these experts are actually chosen from legal professionals, lawyers, magistrates, criminologists, etc. as stated.

3.5 *To which sectors should EU action in criminal matters be extended?*

3.5.1 The communication rightly refers to alternatives to criminal law, but does not, in the Committee's view, pursue all the implications: in its opinion, the EU reaction to criminal financial, social and economic conduct should include the economic option itself, i.e. administrative and civil sanctions (a ban on exercising a profession, for example).

3.5.2 The absence of an overall strategy for criminal policy at European level means that there is no rigorous justification for the list of sectors in which the Commission might envisage implementing initiatives.

3.5.3 The EESC believes that EU action should be based on three criteria: the degree of seriousness (to be defined), the cross-border dimension of offences, and the common criterion of the degree to which they violate the law, in line with the significance of the interests affected.

3.6 *What degree of harmonisation?*

3.6.1 The EESC takes note of the communication's goal of setting minimum standards. The Treaty makes no provision for going further and rules out full harmonisation. Nevertheless, minimum rules may reflect a desire for a more or less ambitious level of harmonisation. The Committee deems it important to define precisely the level of harmonisation sought, according to the sector in question. While the European Parliament will be able to provide the necessary political impetus and a guarantee of democratic legitimacy, it is essential for parliaments at national level to address the issue and express an opinion in line with their new responsibilities in order to strengthen trust in European criminal law.

3.6.2 This is all the more relevant given that the huge and never-ending task of harmonising the definitions of offences and sanctions – even if it is conceived on a minimum basis – cannot fail, in the Committee's view, to impact on the identity of each national legal system.

3.7 *Rights of defence*

3.7.1 The EESC draws attention to the fact that, according to the case law of the European Court of Human Rights, the criminal or administrative penalty influences the corresponding guarantees for the person subject to legal proceedings (implementation of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms), whereas in reality,

there may be differences in the level of protection of defence rights depending on the type of sanction chosen. The Committee believes that this *de facto* situation argues for a clear and *a priori* definition of what is covered by administrative sanctions and what is covered by criminal sanctions.

3.7.2 With a view to better protecting rights of defence in the event of administrative sanctions, the EESC would support the establishment of principles aimed at bringing such sanctions within the jurisdiction of the courts.

3.7.3 The EESC wishes to stress that the question of the rights of defence is also relevant to cooperation between judicial and law enforcement services (principally Eurojust and Europol).

3.8 *Subsidiary questions*

3.8.1 The question of the system of liability (criminal or non-criminal) to be applied to legal persons.

3.8.1.1 The fact that certain States do not currently recognise the criminal liability of legal persons creates a gap between the effectiveness of the possible enforcement methods and the referral to the competent judges (criminal or civil, according to the designation rules of private international law, hence the risk of forum shopping). For example, in the case of large-scale cross-border pollution, it goes without saying that a criminal response against the companies which are generally responsible is more effective than proceedings exclusively against company directors or their staff. This is an issue that requires further consideration, particularly the issue of the power to delegate responsibility within a company, otherwise there will be no equivalence in enforcement or hence in the deterrent effect of preventive measures.

3.8.1.2 Since the harmonisation of criminal company law is problematic due to the conceptual differences between Member States, action against the violation of the fundamental rules ensuring the establishment of European standards remains exclusively of an administrative nature, whether at the instigation of the Commission, the Member States, and/or their independent authorities. It is important that the rights to defence of legal persons brought before these bodies with powers to impose sanctions are guaranteed just as they are before a criminal court.

3.8.2 *Other issues raised by the communication:*

3.8.2.1 Should EU legislation contain a definition of serious negligence?

3.8.2.2 In line with the principle '*nulla poena sine culpa*' ['no penalty without a law'], the EESC believes that if EU legislation were to provide a definition of intentional conduct, the Member States alone would, by contrast, be competent for establishing sanctions to deal with serious negligence (to be discussed).

3.8.3 Should confiscation measures be included in EU legislation?

3.8.3.1 Whilst, in principle, there seems to be nothing against including the penalty of confiscation (as distinct from the seizure of assets) in European legislation, particularly with regard to drug trafficking, the issue may call for more in-depth discussion if there are plans to include a measure for the general confiscation of assets, which is not part of many legal systems, and may raise the question of the proportionality and uncertainty of the penalty.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and the Regulation on administrative cooperation through the Internal Market Information System’

COM(2011) 883 final — 2011/0435 (COD)

(2012/C 191/18)

Rapporteur-General: **Mr METZLER**

On 19 January 2012 the European Parliament and, on 27 January 2012, the Council decided to consult the European Economic and Social Committee, under Articles 46 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the recognition of professional qualifications and the Regulation on administrative cooperation through the Internal Market Information System

COM(2011) 883 final — 2011/0435 (COD).

On 17 January 2012 the Bureau of the European Economic and Social Committee instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

In view of the urgency of the work, the European Economic and Social Committee decided at its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April) to appoint Mr METZLER as rapporteur-general, and adopted the following opinion by 164 votes to 1, with 3 abstentions:

1. Conclusions and recommendations

1.1 Recognition of professional qualifications from other Member States is a key instrument for promoting the mobility of EU citizens and thereby implementing the Single Market. It will strengthen the competitiveness of Member States, support sustainable growth and reduce unemployment. National economies will benefit from the varied professional experiences acquired by their citizens while working in different Member States.

1.2 The potential offered by EU citizens interested in working in another Member State has not yet been exhausted. This is a result of various obstacles to recognition of professional qualifications obtained in other Member States. EU citizens see the existing procedures as protracted and unclear.

1.3 That is why in principle the EESC welcomes the proposal to amend Directive 2005/36/EC, which should eliminate these problems recognising professional qualifications by simplifying procedures and making them more transparent for EU citizens. The proposal makes a real contribution to achieving the targets for increasing EU citizens' mobility set by Agenda 2020.

1.4 The EESC welcomes the European Professional Card as a clear simplification of procedures. However, it considers that certain stipulations could end up putting the safety and health of consumers and patients at risk. The proposed rules for the European Professional Card, in particular, should therefore be revised:

— The generic and main criteria and procedural rules governing introduction of the European Professional Card should be determined in the Directive itself.

— Abuse of hard copy cards should be ruled out by placing limits on their validity and taking special steps to protect against forgery.

— The EESC has strong reservations about any provision that sees a European Professional Card deemed valid when a host country fails to issue a decision on the matter. Other forms of legal recourse against unmet deadlines, such as the right to an official decision or compensation, are preferable.

1.5 In view of the multitude of systems for recognising qualifications in Europe, the EESC is concerned about overlaps, conflicting regulations or even contradictions. The Directive therefore necessitates clarification of the order of priority of the Directive on the Recognition of Professional Qualifications vis-à-vis the instruments of the European Qualifications Framework and European standards. Moreover, implementation of the European Credit Transfer and Accumulation System (ECTS) needs to be taken further.

1.6 The EESC welcomes the increased opportunities for automatic recognition on the basis of common training principles. However, the procedural requirements, the procedures and the criteria used by the Commission to determine common training principles should be stipulated in the Directive. The quorum must be raised to 50 % of Member States + 1.

2. Gist of the Commission document

2.1 Mobility of qualified professionals is too low in the European Union. There is a great deal of unexploited potential for mobility. Recognition of professional qualifications is key to making the basic freedoms of the Internal Market work effectively for EU citizens. At the same time, mobility should not come at the expense of consumers, for example at the expense of patients who expect adequate language skills from health professionals.

2.2 Updating the Directive would also respond to the needs of Member States facing increasing shortages of skilled labour. Mobility of EU citizens within the single market is an important issue in this regard. Labour shortages are projected to not just persist but increase in future, especially in the health and education sectors, and also in growth sectors like construction and business services.

2.3 The proposed updating of the existing provisions is driven by the following objectives:

- reducing the complexity of procedures through a European Professional Card which would further exploit the benefits of the already successful Internal Market Information System (IMI);
- reforming the general rules for establishing in another Member State or temporarily moving there for employment;
- updating the system of automatic recognition, notably for nurses, midwives, pharmacists and architects;
- offering a legal framework in the Directive for partially qualified professionals and for notaries;
- clarifying safeguards for patients whose concerns over language skills and risks of malpractice should be better reflected in the legal framework;
- creating the legal requirement for provision of user-friendly and content-driven information on the rules governing the recognition of qualifications, underpinned by comprehensive e-government facilities for the whole recognition process;

- launching a systematic screening and mutual evaluation exercise for all regulated professions in the Member States.

3. General comments

3.1 Agenda 2020 ⁽¹⁾ sets the objective of facilitating and supporting labour mobility within the European Union. In the *Agenda for new skills and jobs: A European contribution towards full employment* ⁽²⁾, the European Commission identified skills shortages as an obstacle to sustainable growth. Skills shortages in areas of persistent high growth coexist with areas of persistent high unemployment. Geographical mobility is therefore crucial to alleviating regional unemployment. In the *Single Market Act, Twelve levers to boost growth and strengthen confidence* ⁽³⁾, the Commission also recognised mobility as one such lever. Increased mobility of skilled labour could make the European economy more competitive. Moreover, in times of skills shortages, opportunities should be increased for bringing employers and skilled labour from different Member States together. The EESC therefore expects the Directive to be a substantial fillip for growth.

3.2 The current Professional Qualifications Directive still has a number of shortcomings. There are different ways open to EU citizens of having professional qualifications recognised. However, it is difficult for EU citizens to find out which procedures they are entitled to make use of, which authorities they can turn to and which documents they need to provide. These shortcomings in the current Professional Qualifications Directive impede the mobility of EU citizens and with it implementation of the Single Market ⁽⁴⁾. Lengthy recognition procedures mean that, often, EU citizens are not able to respond quickly to job offers because they must wait to have their qualifications recognised. Therefore, procedural reform and a more transparent approach to recognising professional qualifications are both needed. Finally, the common platforms have shown themselves to be impractical and ineffective. Not a single common platform has been agreed since they were introduced.

3.3 The EESC therefore welcomes the proposal to amend Directive 2005/36/EC. Simplifying procedures for the mutual recognition of professional qualifications and increasing transparency will further promote freedom of establishment, freedom to provide services and the Single Market. The proposal will help to meet the targets laid down by the Commission in Agenda 2020 and in the follow-up documents.

⁽¹⁾ See 'EUROPE 2020 A strategy for smart, sustainable and inclusive growth', Communication from the Commission, COM (2010) 2020 final, 3.3.2010.

⁽²⁾ Communication from the Commission, 23.11.2010, COM (2010) 682 final, point 2.

⁽³⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the *Single Market Act, Twelve levers to boost growth and strengthen confidence*, 'Working together to create new growth', COM (2011) 206 final, 13.4.2011.

⁽⁴⁾ Communication from the Commission, EU Citizenship Report 2010: *Dismantling the obstacles to EU citizens' rights*, COM (2010) 603, 27.10.2010.

3.4 In general, the EESC considers the simplification of procedures through reform a suitable way of promoting EU citizens' mobility within the European Union. This could unleash a new dynamic offering more growth and mobility and creating new jobs following the recent crises.

3.5 Younger working people in particular are interested in gaining professional experience in different Member States. In doing so, they bring a variety of professional experiences to other Member States and have an influence on professional practice both in their host country and, following their return, in their home country.

3.6 The advantages of mobility outweigh any disadvantages in the form of a 'brain drain'. Even if the risk of a 'brain drain' cannot be ruled out, previous experience has shown that it occurs on a much smaller scale than expected, and that EU citizens often return to their home countries following a period of professional mobility due to cultural and family ties.

3.7 Professional mobility across Member States must not undermine social security standards. In particular, any temporary migratory pressure in one Member State must not be taken advantage of to put pressure on social security standards in another.

3.8 The European Professional Card will lead to a welcome simplification of procedures. Applicants can refer to the authorities of their country of origin, who are generally better placed than the authorities of other Member States to assess the documents provided. Once checked and added to the IMI file, documents will be available for other verification procedures. However, the safety of consumers and patients must continue to be safeguarded through recognition of the European Professional Card by host countries.

3.9 The EESC welcomes the Directive's focus on the IMI. Nevertheless, there are already the underpinnings of national professional cards in the Member States. These structures should be included in the process of issuing European Professional Cards in order to avoid needless administrative burden, cost and red tape. In particular, the possibility of using existing national professional cards to issue a recognised hard copy European Professional Card should be looked into. In particular, the directive should specify the criteria in line with Article 58 (Article 4(a)(vi)) as well as the procedures followed by the Commission to determine which professions are eligible for coverage by the European Professional Card. The same applies to responsibility for translation of necessary procedures and documents.

3.10 The Bologna Process and the European Qualifications Framework promote transparency and comparability of national educational qualifications, particularly degrees. They must not create overlaps with the provisions of the Professional Qualifications Directive, however. Therefore, the Professional Qualifications Directive must make clear that a professional qualification can only be recognised in accordance with the provisions

of the Directive or with those of special directives. The European Qualifications Framework must not make it any easier nor any more difficult to have a professional qualification recognised. The same holds true for the relationship between the Professional Qualifications Directive and European standards.

3.11 The Professional Qualifications Directive refers exclusively to professional qualifications obtained in a Member State. In the *Agenda for new skills and jobs: A European contribution towards full employment* ⁽⁵⁾, the European Commission made better integration of immigrants in the labour market an objective. This objective should be pursued not least by dismantling obstacles to employment in the form of failure to recognise skills and qualifications. The European Commission is called upon to take steps to simplify recognition of professional qualifications obtained in third countries.

4. Specific comments

4.1 European Professional Card

4.1.1 The EESC welcomes the creation of a European Professional Card as proposed in Articles 4a to 4e. The creation of a European Professional Card in connection with the Internal Market Information System will significantly simplify and speed up the procedure for mutual recognition in many cases.

4.1.2 Article 4a(7) enables the levying of fees when issuing the European Professional Card. The Commission is empowered to set criteria for the calculation and distribution of fees in a procedure laid down in Article 58a. However, the costs must not be so high as to act as a disincentive to using the application procedure.

4.1.3 The EESC has strong reservations about the condition proposed in Article 4d(5), according to which a European Professional Card shall be deemed valid if no decision is made by the responsible authority within the time limit set in Article 4d(2) and (3). This very tight time limit amounts to one month in most cases, or two months if compensation measures are needed. This may prompt the responsible authorities to refuse recognition if they are not in a position to make a proper judgement due to a backlog of applications or a lack of further information. This will not actually speed up the approval process, but rather protract it because of the legal recourse made available for contesting such a decision.

4.1.4 Should there actually be a large number of cases in which European Professional Cards are recognised as valid on the basis of Article 4d(5), the safety and health of consumers and patients will be at risk, because it cannot be ruled out that this mechanism would see some applicants issued with a card inappropriately. It would also be difficult to later invalidate a card having realised that the decision to validate was wrong.

⁽⁵⁾ Communication from the Commission, 23.11.10, COM (2010) 682 final, point 2.5.

4.1.5 In order to satisfy the interests of both applicants and consumers, the Committee proposes a right of appeal under national law. The Directive should oblige the Member States to adopt an appeals procedure of this kind. Possible instruments include the right to an official decision, and the right to compensation. These rights should only obtain if the responsible authorities culpably fail to issue a positive decision or prescribe a compensation measure within the set time limit.

4.1.6 In addition, the time limits for decisions should be set in a way that ensures that the process as a whole (assessment of the application in the country of origin and recognition in the host country) does not exceed four months. If the responsible authority in the host country sends a request for information to the country of origin the time limit should, contrary to Article 4d(3)(3), be removed.

4.1.7 According to Article 4e(5), the holder of a European Professional Card is to be reminded of his rights under Article 4e(5) every two years after the issuance of the card. This reminder will lead to additional administrative burden without benefiting the holder in any way. It is enough to inform the holder once.

4.1.8 In order for these procedures and time limits to be adhered to, the IMI system must function smoothly. Given that the number of applications is expected to be large, this capacity must be guaranteed when the Directive takes effect. A failure of the IMI system could be dealt with much more easily under the system of legal protection proposed here than under the deemed validation system proposed by the Commission, which should be rejected as incompatible with the overall scheme.

4.1.9 The European Professional Card should not only be made available as a file in the IMI system. Upon recognition, applicants should also receive a hard copy version of the card. These hard copies could be used as proof of recognition in legal proceedings, which is why they should be made to meet minimum standards to protect against forgery.

4.1.10 In addition, hard copies of the European Professional Card should not remain valid indefinitely. Otherwise they may be abused, even when professional activities have been prohibited on the basis of information shared between Member States under the first paragraph of Article 56(2) or by way of the alert mechanism described in Article 56a. The hard copy of the card should therefore remain valid for only ten years, and in the case of health professions for only five years, with holders required to reapply. However, these conditions should not affect the electronic copy of the European Professional Card in the IMI system, which may remain valid indefinitely. If a card holder is prohibited from practising a profession, the hard copy of the card should also be withdrawn.

4.2 Partial access

4.2.1 The codification of partial access in Article 4f adopts the conditions imposed by the European Court of Justice in case C-330/03. Any restriction of this would contravene Articles 45 and 49 of the TFEU.

4.2.2 The scope for practical application of partial access is limited. Codification must not lead to social dumping.

4.3 Effective measures must also be taken to prevent abuse in the cases mentioned in Article 5(1)(b). To this end, the EESC proposes a more rigorous monitoring mechanism.

4.4 The fifth paragraph of Article 7(4) retains the provision from the previous Directive, according to which a service may be provided if the competent authority fails to respond. As with Article 4d(5), other legal remedies are preferable as a way of encouraging a decision from the authorities (see point 4.1.3 et seq. above).

4.5 Article 11 defines five levels of qualification subject to the Professional Qualifications Directive. These levels have no connection with the European Qualifications Framework (EQF) or the European Credit System for Vocational Education and Training (ECVET). The definition of the minimum requirements provided in Chapter III of Title III makes reference to ECTS points. In order to ensure greater transparency for applicants and responsible authorities, the Commission should come up with a procedure that makes it possible to integrate the five qualification levels into the EQF, the ECVET, the European Quality Assurance in Vocational Education and Training (EQAVET, previously EQARF), the Bologna Process and the Copenhagen Process, and to eliminate discrepancies and overlapping.

4.6 In the case of an aptitude test as per Article 14(1), Article 14(7) says that the Member States are to carry out the test at least twice a year. This obligation could place a burden upon smaller Member States, in particular, and in general upon professions with very few applicants. Preferable to this would be a provision obliging the Member States to guarantee that no applicant waits more than six months to take part in an aptitude test after being instructed to undergo one.

4.7 The amendment to Article 31(1) makes a general education of 12 years obligatory for training of nurses responsible for general care. The same applies for training of midwives under Article 40(2). The EESC notes that this must not lead to younger, less qualified people being denied access to training. It calls on the European Commission to take care to ensure that the high levels of quality required are commensurate with the demands of the profession in question.

4.8 Article 24(2) shortens the minimum period of basic medical training by a year from six to five years, whilst leaving the minimum number of training hours at 5 500. Even though the minimum number of training hours is left unchanged, shortening the minimum period to five years will force the training to be streamlined, which means that students will acquire less theoretical and practical knowledge. For the protection of patients, therefore, the minimum period of training should be left unchanged. Dentists consider five years and 5 000 hours to be appropriate.

4.9 *Chapter IIIA – Automatic recognition on the basis of common training principles*

4.9.1 Recognition on the basis of a common training framework or a common final examination is to be welcomed, because it promotes the mobility of service providers whilst also guaranteeing the quality of services by way of a uniform level of training.

4.9.2 In accordance with a procedure laid down in Article 58a, the Commission will specify a common set of knowledge, skills and competences as well as the qualifications which can be obtained under the common training framework (Articles 49a(3) and 49b(3)). However, this must not amount to lowering the level of qualifications to the lowest common denominator in the Union. The procedural requirements, the procedures and the criteria used by the Commission to determine the common set of knowledge, skills and competences must be stipulated in the Directive.

4.9.3 The quorum of Member States with which the set of knowledge, skills and competences must correspond (Article 49a(2)(c)), which is currently set at a third of Member States, is too small. It carries the risk that the minimum standards for the duration and quality of training will fall to

the lowest common denominator. The quorum should be raised to at least 50 % of Member States + 1. This will eliminate the risk of a minority of Member States forming a relative majority, and ensure that the common training principles are accepted.

4.9.4 In contrast with the previous system of common platforms, the Commission has an exclusive right of initiative in the process specified in Article 58a. The right of initiative for the common training principles should remain with the Member States or with professional associations or organisations representing their members at national or European level.

4.9.5 Article 55a makes it easier to have a remunerated traineeship completed abroad recognised in the trainee's country of origin. The EESC welcomes this provision, which will promote graduate mobility between Member States.

4.10 Under Article 57a(4), all time limits commence at the point when an application has been submitted to the point of single contact. Given the tight deadlines set in the Directive (see point 4.1.3 above), it seems that it will be very difficult for the responsible authorities to properly process applications. However, the EESC recognises the desire for compliance with the Services Directive.

Brussels, 26 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights and Citizenship Programme'

COM(2011) 758 final — 2011/0344 (COD)

(2012/C 191/19)

Rapporteur-general: **Mr BOLAND**

On 9 February 2012 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights and Citizenship Programme

COM(2011) 758 final — 2011/0344 (COD).

On 29 February 2012 the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr BOLAND as rapporteur-general at its 480th plenary session, held on 25 and 26 April 2012 (meeting of 26 April), and adopted the following opinion by 127 votes, with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes the proposal to continue the rights and citizenship programme and recommends that it receive the fullest support from all of the stakeholders involved in its implementation.

1.2 It recommends that the title of the programme should include the word 'equality'. This will ensure that the programme protects the rights of people affected by discrimination due to inequality. It is also recommended that the objectives of the programme should include combating violence, particularly domestic violence.

1.3 The Committee recommends that the programme include in its objectives a stronger, specific mention of issues of equality, gender equality, combating violence and implementation of the UN Convention on the Rights of Persons with Disabilities.

1.4 The EESC welcomes the fact that a budget is proposed for this programme. However it strongly recommends a realistic increase in that budget to an amount that reflects the additional aspects added to the programme.

1.5 The Committee recommends that DG Justice ensure that it has the information necessary to measure impacts accurately and that it develops fair and objective sets of indicators that will allow proper analysis of the programme.

1.6 The Committee notes the change in administration of the programme from DG Employment, Social Affairs and Inclusion to DG Justice. While this is done for good reasons, it should be understood that there could be risks in relation to overall management associated with this change. The

Committee recommends that a proper risk analysis be done so that difficulties arising from the switch from Employment to Justice are minimised.

1.7 The Committee recommends that the programme be implemented across the European Union in a manner that is consistent with the Charter of Fundamental Rights.

1.8 The Committee is of the view that each of the programmes implemented is properly supported in each of the annual plans. In this regard, the Committee recommends that funds be earmarked so that no programme is disadvantaged. The Committee recommends that a sentence be added to the Commission proposal that ensures that each annual work programme provides for an appropriate and fair distribution of funds between areas and that sufficient funding levels are maintained for all areas.

1.9 The addition of the consumer strand to the programme is of huge concern to stakeholders. The concern is mainly that it may displace existing programmes and/or weaken their funding support. While the Committee understands the need to include the consumer strand based on the fact that it is the responsibility of DG Justice, it strongly recommends that the budget allocated to the programme should not be reduced as a result of including this additional strand.

1.10 In this regard, it is important to note that programmes which aim to improve the situation of people affected by discrimination in terms of equality and human rights are in many cases dealing with instances of poverty. The Committee accepts that other programmes are also in place to fight poverty and exclusion; but it strongly believes that this programme should fully take into account the role played by poverty in causing discrimination.

1.11 There is concern that adherence to a strict definition of citizenship could exclude some of the 'persons' referred to in the objectives of the programme. The EESC believes that this concern would be reduced if the implementation programmes were encouraged to support inclusion principles in their plans. It is recommended that it be made clear to applicants that the use of the term 'persons' in the general objectives is designed to ensure full inclusion.

1.12 The EESC strongly supports the work done by existing networks that support and direct information programmes which help grant recipients and policy makers at national and EU level. It is vitally important that networks applying for funding under the new programme should not be disadvantaged by disregarding their experience of human rights and equality work. The Committee also believes that proper evaluation of this work is being done, so that learning from the programme is available for future work in equality and human rights.

1.13 There is widespread concern that any gap between the end of the current programme for 2007-2013 and the new programme for 2014-2020 would be detrimental to the overall programme and would lose vital learning. The Committee is clear that such gaps must be avoided.

2. Background

2.1 The Commission proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014 to 2020 the Rights and Citizenship Programme⁽¹⁾ was adopted on 15 November 2011. The proposal sets out the changes proposed for the new programme based on the learning outcomes of the current programme for the period 2007-2013.

2.2 Following adoption of the proposal, the European Economic and Social Committee was asked to draw up an opinion to be adopted at its 480th plenary session, to be held on 25 and 26 April 2012.

2.3 The proposal is based on Articles 19(2), 21(2), 114, 168, 169 and 197 of the Treaty on the Functioning of the European Union.

2.4 The financial envelope for the implementation of the Rights and Citizenship Programme for the period 1 January 2014 to 31 December 2020 is to be EUR 439 million (at current prices).

2.5 It is available in all EU countries.

2.6 The participation of third countries is limited to EEA, accession and candidate countries and potential candidates. Other third countries, particularly countries where the European Neighbourhood Policy applies, may also benefit.

2.7 All of the stakeholders are of the view that the new programme should not be delayed and should be fully operational at the beginning of 2014.

3. The Commission's proposal

3.1 The Commission's proposal gives a detailed outline of the proposed programme for the period 2014-2020.

3.2 It sets out a framework which aims to simplify and rationalise the Rights and Citizenship Programme, which is to be the successor of three current programmes.

3.3 Those three programmes are: (a) Fundamental Rights and Citizenship (b) Daphne III (c) the 'Anti-discrimination and Diversity' and 'Gender Equality' sections of the Programme for Employment and Social Solidarity (PROGRESS).

3.4 Following an impact assessment of the current programme for the period 2007-2013, the Commission decided to merge the current six programmes into two. This will allow for a comprehensive funding approach and a more efficiently managed programme.

3.4.1 The aim of the programme is to contribute to the development of an area, where the rights of persons, as enshrined in the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union, are promoted and protected.

3.4.2 It has five specific objectives, which are:

- to enhance rights deriving from citizenship of the European Union;
- to promote effective implementation of the principle of non-discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, including equality between women and men and the rights of persons with disabilities and of the elderly;
- to ensure a high level of protection of personal data;
- to enhance respect for the rights of the child;
- to empower consumers and businesses to trade and purchase with confidence within the internal market.

⁽¹⁾ COM(2011) 758 final – 2011/0344 (COD).

3.5 The proposal gives details of the mid-term evaluation and recommends improvements.

4. General comments

4.1 The EESC shares the Commission's view that the development of an area of freedom, security and justice remains a priority for the European Union. However it also is concerned that there is uneven implementation of the Charter of Fundamental Rights across the European Union.

4.2 The new programme is essentially concerned with the provision of funding in the amount of EUR 439 million over the period 2014-2020. This represents a slight reduction in the previous budget and it is the view of the EESC that this represents a weakening of the European Union's commitment to improving the situation of people experiencing discrimination.

4.3 The Committee is concerned that the growth of 'extremist tendencies' may harm the implementation of basic human rights⁽²⁾ and it is therefore important that adequate resources be made available to groups working to improve this situation. While it is true that a budget is available to continue this work, the Committee is very clear that the budget proposed is below the level of support needed to maintain continuity of the work set out in the previous programme.

4.4 The Committee is concerned that the prioritisation of annual programmes adopted by the Commission in line with Article 8 of the Commission's proposal may disadvantage certain elements or strands of the project. This could be corrected by ensuring that all work programmes are funded to the level necessary for ongoing work to continue.

4.5 There is a need to maintain high visibility of programmes, so that they are seen to be effective in the promotion of anti-discrimination in all of the areas covered.

4.6 The Committee is concerned that the ability of DG Justice to measure impacts is undermined by its statement that it does not have enough information.

4.7 The Committee is concerned that the additional strand regarding consumer rights could put unnecessary extra pressures on the programme. These include the displacement of programmes that directly deal with basic human rights and the danger that valuable funding will be diverted from human rights and justice programmes.

4.8 The Committee is concerned that the title of the programme does not represent the full content of the programme. In particular, it views the absence of the word 'equality' in the title as weakening programmes on equal rights.

4.9 The EESC is concerned that the objectives of the programme should include combating violence, particularly domestic violence.

4.10 The Committee is concerned that the definition of citizenship as outlined in one of the five specific objectives of the programme will exclude people living in the EU, but who may not have citizenship. The fact that the general objectives of the programme refer to 'persons' is welcome. However the EESC would ask that the objectives be strengthened, so that the programme is fully inclusive.

4.11 There is widespread concern that existing networks involved in the support and provision of information concerning the programme should not be disadvantaged in applying for participation in the new programme. The Committee accepts that they have a high level of experience of human rights and equality work. It equally accepts that the role of networks should be properly evaluated, as with all parts of the programme.

4.12 The need to adapt programmes based on learning from other experiences, such as the Good Friday Agreement, in terms of re-evaluating rights with a view to their improvement in changing circumstances, should play an essential part in the development of the programme.

4.13 The EESC notes that there is always a balance to be struck in pursuing rights and equality, so that the rights of the general community are recognised. It is equally clear that everyone should have access to processes that ensure that discrimination is never practised.

Brussels, 26 April 2012.

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

⁽²⁾ Staffan Nilsson, 'Europe's snail syndrome', 10 May 2011; <http://www.eesc.europa.eu/?i=portal.en.news.18276>.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE)'

COM(2011) 874 final

(2012/C 191/20)

Rapporteur: **Mr NARRO**

On 15 December 2011 and 23 January 2012 respectively the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 192 and Article 304 the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE)

COM(2011) 874 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 April 2012.

At its 480th plenary session of 25 and 26 April 2012 (meeting of 25 April) the European Economic and Social Committee adopted the following opinion by 127 votes to 2 with 4 abstentions.

1. Conclusions and recommendations

1.1 The LIFE Programme is a successful EU programme which, in conjunction with other funds and initiatives, has produced very positive results over the last 20 years. It should therefore be maintained and strengthened to ensure that protection of the climate and environment in the European Union can be taken forward strategically and coherently.

1.2 The budget increase proposed for the LIFE Programme (2014-2020) is a positive sign, although much still needs to be done to include the environment effectively in European policies. The EESC calls on the Member States, who are embroiled in a serious economic crisis, to give firm support for investment in the climate and environment in order to mitigate their effects.

1.3 Establishing a Climate Action sub-programme may create a positive instrument to raise the profile of those initiatives aimed at adapting and mitigating climate change. For its part, the Environment sub-programme must continue to help protect biodiversity and to finance the Natura 2000 network as a priority, but without reducing the contribution from other funds such as those making up the European Agricultural Fund for Rural Development (EAFRD).

1.4 Launching a new kind of large-scale project, the 'Integrated Projects', must be achieved by guaranteeing the involvement of NGOs and SMEs, ensuring that 'traditional projects' are continued and improving coordination between national and EU bodies. In this respect, the EESC suggests that the Commission should include in the proposal for a regulation a clear budgetary allocation for both types of project, stipulate which criteria are to be used for establishing the

geographical distribution of the integrated projects and make clear how the multi-annual programmes are to be drawn up without impairing the programme's flexibility.

1.5 The EESC is in favour of projects being distributed on the basis of merit rather than geographical criteria. Nevertheless, it acknowledges that many countries have a very limited involvement in the LIFE Programme because they are either lacking in experience or the necessary means to participate actively. It is therefore essential for the Commission to give them easier accesses by providing more advice and through better institutional coordination.

1.6 Increasing the level of co-financing for traditional and integrated projects can under no circumstances justify VAT and staff costs no longer being considered as eligible costs. Not including these costs would essentially harm small civil society organisations whose contribution is very valuable but whose involvement could be limited or non-existent.

1.7 The introduction of lump-sum payments is a good simplification measure. The EESC feels that the Commission should go further by improving advisory services, simplifying financial forms and introducing a prior assessment stage for traditional projects.

1.8 The EESC deems it essential to retain the Community and European added value aspects of the LIFE Programme. In this respect, the Commission should make clear in advance which measures are to be adopted via delegated acts, the role of the Member States in the LIFE Committee and the new powers of the Executive Agency for Competitiveness and Innovation.

1.9 Despite the LIFE Programme's notable success, the European Commission must make further efforts to increase awareness of the Programme and the active involvement of civil society organisations. In this respect, it is essential for projects to be better publicised and more transparent as regards their selection and for people to be made more aware of the importance of an EU instrument such as the LIFE Programme and the added value it can bring to society.

2. Background

2.1 On 12 December 2011 the European Commission published the Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE). The total financial envelope for the LIFE Programme for the period 2014-2020 expressed in current prices is EUR 3 618 million.

2.2 The LIFE Programme is part of the Commission proposal on the multi-annual financial framework for 2014-2020, which lays down the budgetary framework and main guidelines for the Europe 2020 strategy. The Commission has decided to treat the environment and climate action as an integral part of all instruments and action.

2.3 Since it began in 1992 the LIFE Programme has been one of the EU's main sources of environmental financing. The new regulation proposed by the Commission is intended to replace the current Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+).

2.4 The proposal for a new LIFE regulation takes the form of a LIFE Programme with two sub-programmes, one for the Environment and one for Climate Action. The sub-programme for the Environment has three priority areas: 1) Biodiversity; 2) Environment and Resource Efficiency, and finally 3) Governance and Information.

2.5 The Environment sub-programme will have a budget of EUR 2 713,5 million. Half the resources allocated to targeted action for projects will go to support for conserving nature and biodiversity. The Climate Action sub-programme will have a budget of EUR 904,5 million and will consist of three specific priority areas: Climate Change Mitigation, Climate Change Adaptation and Climate Governance and Information.

2.6 The European Economic and Social Committee has always stressed the great importance of the LIFE Programme for developing and configuring EU environmental policy. The three most recent EESC opinions on the LIFE project have reiterated its valuable but limited contribution to defending the European Environment ⁽¹⁾:

⁽¹⁾ OJ C 80, 30.3.2004, p. 57, OJ C 255, 14.10.2005, p. 52; OJ C 132, 3.5.2011, p. 75.

3. General comments

3.1 Budget

3.1.1 The budget assigned to LIFE in the proposal for a multi-annual financial framework is significantly increased compared with the funds available in 2007-2013. The LIFE budget will increase from EUR 2 143 to 3 200 million at 2011 prices (EUR 3 618 million at current prices). The Environment sub-programme will receive EUR 2 713 million (half for biodiversity and nature actions) and the Climate Action sub-programme EUR 904,5 million.

3.1.2 The funds account for 0.3 % of the total EU budget. The increased budget is a positive signal regarding environmental concerns, although the effect of the economic crisis on opportunities for financing by private bodies and local government, particularly for large-scale and capital-intensive projects, will need to be assessed. At all events, the EESC emphasises the need for supporting environmental and climate protection to mitigate the effects of the crisis and advocates that the financing of LIFE must not have a negative impact on other funds that might possibly operate in the same area, such as the EAFRD and the Structural Funds.

3.1.3 The Commission should prioritise the need for additional funding for communication and publicity initiatives and knowledge transfer. The specific financing of training and advisory measures will not only help to make the Programme easier to manage, but will primarily boost its effectiveness and optimise resources.

3.2 Main innovations of the proposal

3.2.1 Having consulted stakeholders and conducted impact assessments, the Commission has decided to make three major changes to the existing arrangements in order to improve their structure, simplify their operation, increase their flexibility and define objectives and strategies more clearly. The changes are:

- 1) More specific priorities.
- 2) Two sub-programmes: Environment and Climate Action.
- 3) A new type of project: Integrated Projects.

3.3 Priority setting

3.3.1 One of the questions most discussed in the prior consultation carried out by the European Commission was the appropriateness of laying down defined priorities for the new programme. The Commission firmly rejected the establishment of fixed annual priorities which might prevent applicants from planning, preparing and presenting proposals effectively. In the end the Commission opted for the drafting, jointly with the Member States, of work programmes of at least two years'

duration, without providing any detailed information however. The EESC is not currently in a position to address the question of work programmes due to the lack of precise information on the proposal for a regulation being examined in this opinion. Despite the lack of information, the framing of work programmes must comply with the basic principles of the LIFE Programme with respect to its flexibility and adaptability to change.

3.3.2 The EESC supports the concentration of effort on specific political priorities and areas of activity related to the environment and the climate. The Commission should provide more information on the operation of the Committee for the LIFE Programme, and the use of the delegated acts to establish the criteria governing admissibility for projects and geographical balance in the case of Integrated Projects.

3.4 *Sub-programme for Climate Action*

3.4.1 The establishment of a specific sub-programme to deal with climate-related issues and their three priorities (mitigation, adaptation and governance) should give an impetus to improving implementation of Community climate legislation, strengthening governance and consolidating new networks and platforms. The new sub-programme is essential in attempting to achieve the objectives set out in the Europe 2020 strategy⁽²⁾ and in the Roadmap for moving to a competitive low-carbon economy in 2050⁽³⁾.

3.4.2 Despite its limited funding, the new sub-programme should focus on a range of specific objectives to improve grass-roots knowledge of climate-related questions and make this priority an integral part of the raft of EU instruments and measures. The synergies between environmental and climate objectives are clear. As the Commission points out in its proposal for a Regulation, projects involving the climate can achieve a multiplicity of goals.

3.4.3 The EESC considers that the decision to upgrade the former 'climate change' thematic strand under the Life and Environment Policy and Governance component is welcome and appropriate. It is not merely a question of raising its profile, but of appreciating its strategic and multidisciplinary value.

3.5 *Integrated Projects*

3.5.1 An Integrated Project is a traditional LIFE project but covering an area larger than a region, in which the applicant attempts to generate the necessary capacity to manage a specific sector, making use of financing from LIFE but also from other EU, national, regional or private-sector funds.

3.5.2 These will generally be large-scale projects (EUR 5-10 million of Community co-financing) aimed at resolving environmental problems and improving implementation and the integration of the environment into other policies. The priority areas for action are appropriate (Natura 2000 network, water, air, waste, etc.) although the Commission should not marginalise the role of a number of traditional projects that have generated innumerable benefits at a minimum cost. The Integrated Projects will provide a new multi-purpose implementation mechanism for enforcing environmental and climate legislation, but there are reasonable doubts as to whether they might make management more complex in practice and create difficulties in coordinating the various funds that will operate simultaneously.

3.5.3 The Integrated Projects will be subject to a geographical distribution, still to be determined. The Commission will set geographical criteria by means of delegated acts, but it would be a good idea for the basic regulation to include certain basic guidelines for how to motivate countries that have traditionally not been very active in the LIFE context to be more involved in the programme. To this end, it will be necessary to provide these countries with additional advice and improve coordination with the relevant national bodies. The EESC believes that merit criteria should take precedence over geographical or similar criteria when it comes to selecting an Integrated Project. Co-financing increased to a maximum of 80 % of eligible costs may not be sufficient to encourage the participation of public and private-sector operators in the context of a crisis, in which it is very difficult to mobilise sufficient funds for such ambitious projects.

3.5.4 The Integrated Projects should do more to involve civil society organisations to facilitate their development and implementation on the ground, preventing them from becoming instruments used purely by government. It is essential to empower civil society organisations to take part and to encourage the formation of networks to enable the exchange of good practices and to pass on knowledge between their members.

4. **Specific comments**

4.1 *Simplification*

4.1.1 The Commission stresses greater simplification by the use of flat rates and lump sums. This is a positive measure and could eliminate unnecessary red tape.

4.1.2 However, the EESC cannot support the proposal for a revision of eligible costs to exclude VAT and permanent staff costs (which generally account for around 30 %). If these costs are excluded, this will create additional difficulties for projects which are mainly developed by smaller civil society or local actors. Simplification should focus on substantial changes to forms, better advice during the drafting phase, flexibility in ex-post budget changes and a prior evaluation phase (screening). The EESC believes that some simplification measures specifically

⁽²⁾ COM(2010) 2020 final.

⁽³⁾ COM(2011) 112 final.

framed for the Integrated Projects should be extended to traditional projects, as in the case of creating two phases for selecting projects.

4.1.3 The proposal for a regulation substantially improves the complementarity between financial instruments as regards the confused wording of the current Article 9. The EESC supports the principle whereby the LIFE Programme should complement other EU funding programmes (European Regional Development Fund, Cohesion Fund, European Agricultural Fund for Rural Development, etc.), improving coordination with a view to preventing double funding.

4.1.4 The new measures for simplifying the Programme's operation and management must be accompanied by more transparent project selection criteria and a reinforcement of the existing instruments for providing advice and guidance to potential beneficiaries.

4.2 *Community objective/activities outside the Union*

4.2.1 Indicative national allocations (Article 6 of the current regulation) will be replaced solely by as yet undefined geographical balance criteria in the Integrated Projects. The national allocations did not yield the expected results and did not provide incentives to smaller states or those with less experience of managing these funds. This change seems logical and is balanced by the Commission's introduction of geographical criteria for larger projects (Integrated Projects). Italy, Germany and Spain are currently the major beneficiaries, but states with less experience or technical preparation should be actively encouraged to participate.

4.2.2 The broadening of LIFE Programme's geographical scope seems appropriate but should not water down the LIFE Programme's Community character. Exceptions to the general rule should be limited to very specific cases and areas, such as marine or migratory species and international cooperation between organisations. The EESC agrees that a minimum of 15 % of the programme's funding should be provided through transnational projects.

4.2.3 Managing LIFE has hitherto been the Commission's sole responsibility, but it is not clear what role is to be assigned in the new proposal to the executive agencies, and the European Agency for Competitiveness and Innovation in particular in the context of traditional projects. In this connection it would be appropriate to ask the European Commission what powers the Executive Agency will have in selecting projects and what instruments will be used to strengthen the national contact points.

4.3 *Natura 2000 network*

4.3.1 The contribution of LIFE to the financing of the development of the Natura 2000 network is a priority which has yielded significant results. In the next period the LIFE Programme must continue to help improve the take-up of the Natura 2000 network by local stakeholders and government. It is therefore a matter of priority that LIFE should help consolidate common criteria for the management and administration of Natura 2000 areas. This task should be carried out with coordination from the European Commission and focus on those countries where introduction is most recent.

4.4 *Co-financing*

4.4.1 The maximum financing percentage for LIFE projects will be 70 % of eligible costs (previously 50 %). For Integrated Projects this can rise to 80 %, a percentage which will also apply to specific projects in support of particular needs for the development and implementation of Union policy or legislation, in consideration of the strategic value of those projects. This increase in co-financing is to compensate for the non-eligibility of certain very significant costs like VAT and permanent staff costs which were previously eligible. However, in the current period some projects in the area of biodiversity already benefit from 75 % co-financing. It would therefore be appropriate for the Commission to assess whether this level of co-financing is sufficient compensation, or whether a fixed, rather than maximum, co-financing percentage should be set.

4.5 *Eco-innovation*

4.5.1 In the current period most environmental policy or governance projects have been aimed at the application of innovative business or management methods. The impact assessment is very positive on advances in eco-innovation. However, the Commission is proposing limits to private-sector innovation, as it is already covered by other specific instruments like Horizon 2020.

4.6 *Encouraging the participation of SMEs and NGOs*

4.6.1 The new LIFE Programme has abandoned the previous purely bottom-up approach, and instead opts for a flexible top-down approach. The design of the Integrated Projects is the result of this philosophy. The EESC does not reject the Commission's new vision but would like to stress the importance of encouraging projects developed at local or regional level, which involve small firms and NGOs but which can produce major results at minimum cost.

4.6.2 The EESC agrees that projects funded by the LIFE Programme should effectively encourage the use of ecological public contracting.

4.7 *Financing of environmental NGOs*

4.7.1 The European Commission uses the LIFE instrument to finance environmental NGOs which participate in the European decision-making process. Traditionally around 30 organisations have benefited from this funding, with very positive results according to the Commission's analysis. The EESC acknowledges the work of these organisations, but feels that it would be appropriate to adapt the selection criteria for the granting of funds, so that other organisations making a major contribution to the environment and climate may benefit.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the

'Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy'

COM(2011) 625 final — 2011/0280 (COD),

the 'Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation)'

COM(2011) 626 final — 2011/0281 (COD) (A-21),

the 'Proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)'

COM(2011) 627 final — 2011/0282 (COD),

the 'Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy'

COM(2011) 628 final — 2011/0288 (COD),

the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013'

COM(2011) 630 final — 2011/0286 (COD)

and the 'Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards the regime of the single payment scheme and support to vine-growers'

COM(2011) 631 final — 2011/0285 (COD)

(2012/C 191/21)

Rapporteur: **Dilyana SLAVOVA**

Co-rapporteur: **Franco CHIRIACO**

The Council and the European Parliament decided, on 14 November and 25 October 2011, respectively, to consult the European Economic and Social Committee, under Articles 43(2) and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy

COM(2011) 625 final — 2011/0280 (COD)

Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation)

COM(2011) 626 final — 2011/0281 (COD) (A-21)

Proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)

COM(2011) 627 final — 2011/0282 (COD)

Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy

COM(2011) 628 final — 2011/0288 (COD)

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 as regards the application of direct payments to farmers in respect of the year 2013

COM(2011) 630 final — 2011/0286 (COD)

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards the regime of the single payment scheme and support to vine-growers

COM(2011) 631 final — 2011/0285 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 132 votes to 14 with 21 abstentions.

1. Conclusions and recommendations

Change for the EU agricultural model

1.1 The European Economic and Social Committee greets the Commission's legislative proposals with interest, and notes that some – although far from all – recommendations made in its past opinions have been taken into account. Most importantly, the Committee has repeatedly stated, in its opinions NAT/449 and NAT/481, that the future CAP must be driven by a determination to defend the European agricultural model, which is based on the principles of food sovereignty, sustainability and responsiveness to the real needs of farmers and consumers.

1.2 The EESC notes the considerable efforts made by the Commission regarding the future of the CAP in order to propose a profoundly European project based on the concept of inclusive diversity. Reflecting the Commission's efforts to build a new partnership between Europe and its farmers, the EESC considers that, although the proposals have the right focus, they still need significant adjustments in a number of areas.

1.3 The present financial and economic crisis and extreme climate changes require a fundamental change in the approach to closing the gap between promises and the reality of day-to-day farm life. Farmers are under increasing pressure from markets, leading to the abandonment of entire regions. More than ever before, the European agricultural model is indispensable. The EESC considers it vital for the CAP 2014-2020 to help to overcome the huge obstacles to the development of the agricultural sector. However, the Committee regrets the absence of a clearer commitment on the part of the Commission in favour of the European agricultural model.

1.4 The EESC welcomes the Commission's intention to improve the competitiveness of multifunctional agriculture in Europe consistent with the European agricultural model, through various activities such as research, development and guidance and remuneration for the services provided to society which are not, as yet, reflected in consumer prices.

However, the Committee believes that the proposed approach is far from sufficient to ensure continued growth in output and employment and to help meet the ever increasing demand for food in the world. The EESC notes that the future CAP must take into account the fact that one sixth of all jobs in Europe are related directly or indirectly to agricultural production, this figure being much higher in some Member States. The CAP should play a role in guaranteeing employment in the EU, especially in rural areas, although at present it instead contributes to reducing employment. When agricultural and forestry production disappears in one region, then the related jobs in the upstream and downstream sectors – including the food and wood processing industry – disappear too. The future CAP must focus on improving the economic performance of farming families and cooperatives to help them gain better market access and better market their products.

1.5 The new CAP should contribute to improving socio-economic conditions, employment and the safety of workers in the agricultural sector by ensuring full compliance with social clauses, laws and employment contracts in the allocation of aid. This should take place in a context that places farm and agri-food businesses at the heart of the system in order to reward the real economy, promote research, innovation and generational renewal and encourage food production, including by building on regional added value.

1.6 The EESC renews its call to the European Parliament, the Council and the Commission for a robust CAP budget to be maintained at least at the same level as in the current budget period. There are particular problems at present in relation to the development of Pillar II, since it appears that many Member States are no longer willing and able to provide the necessary co-financing. This will lead to an unacceptable weakening of rural development policy, including environmental measures, which are financed through Pillar II.

1.7 The EESC considers that one of the prime concerns throughout the CAP reform process must be simplified procedures and **flexible** implementation to reflect the

diversified agricultural conditions in the Member States and to reduce bureaucracy for farmers and difficulties for the bodies administering payments.

Direct payments

1.8 The EESC supports the move away from historical reference periods as the basis for determining the amount of support for farmers in each country or region. However, the EESC believes that a flat per-hectare payment is not always the most efficient policy tool, especially when the argument for income support is taken into consideration (see point 4.3.2). Therefore, this **internal convergence** within each country or region should allow flexibility, a longer transition period and progressive change throughout the period.

1.9 The EESC welcomes the effort to close the gap between the level of support received by farmers in the different Member States. The main features for the future CAP in terms of the redistribution of financial resources among Member States should be balance, fairness and pragmatism, bearing in mind the agricultural diversity across the EU. Consideration must thereby be given to the cost and revenue structure of farming activities in the various Member States. It is important that the redistribution process should reflect sensitively the problems of farmers both from old and new member states. That is why the EESC recommends redistribution of national direct payment envelopes based on objective, non-discriminatory criteria and a **balanced and appropriate transition period for the planned fair convergence away from the historical reference principles**. The goal is to ensure that no country's direct payments would be under 90 % of the average of the 27 EU Member States at the end of the financial framework for the period 2014-2020.

1.10 The EESC endorses the decision to introduce a simplified support scheme for small farmers, but doubts whether the support rates proposed by the Commission will be high enough to promote the development of small agricultural holdings. It also asks the Commission to clarify the requirements for the identification of small farmers. The scheme could be voluntary depending on Member States' conditions.

1.11 The EESC endorses the principle underpinning the Commission proposals that CAP payments under Pillar I should be targeted at active farmers. Clear definitions of agricultural activity, eligible land and active farmer, as well as better links between payments and activity should be established in order to avoid a limited budget being consumed by unfarmed land and non-agricultural activities (unless this is land duly registered as set-aside). Whether it is possible to ensure the effective application of this principle is something that must be clarified with the Member States. Furthermore, the definition of the active farmer should not exclude beneficiaries of less than EUR 5 000.

1.12 The EESC supports a phased-in reduction by capping direct payments, and, as stated in previous opinions, further urges the Commission to adopt an implementation method that takes into account the specific characteristics of businesses made up of cooperatives and farm producer associations⁽¹⁾. Unused direct payments should remain in the Member State's envelope and be used to support weaker agricultural sectors at national level through Pillar I or Pillar II to be decided at MS level. The EESC proposes that funds transferred in this way should not require co-financing.

1.13 The EESC considers that a double gate entry to the basic payment scheme should be created based on existing farming activity in 2011 and occupation of eligible land at the 2014 start date. The Committee feels that the activation of one payment entitlement under the single payment scheme in 2011 does not constitute a fair criterion.

1.14 The EESC welcomes the flexibility between pillars proposed by the Commission. It is of primary importance that Member States in which the level of direct support remains lower than 90 % of the EU average should be given the opportunity to transfer funds allocated for rural development to their Pillar I envelope as well. This possibility should also be available for Member States with a disproportionately small Pillar I or which suffer from natural handicaps. The EESC proposes that such choices be possible within a limit of up to 10 %.

1.15 The EESC has constantly underlined the role that farmers should, and could, play in soil preservation, biodiversity, natural landscapes and the environment, but which they are unable to perform adequately because of the current circumstances. It has therefore supported 'targeted direct payments' (see NAT/449); the greening component is precisely a step in this direction. The EESC calls on the Commission to assess the implications of the new measures to ensure that any harm they do to the economic balance of farms is compensated for. When possible, greening measures should be based on win-win solutions for both the environment and growth. The EESC refuses to accept a situation where the EU increases costs of compliance for European farmers on the one hand, and on the other accepts, through trade agreements, cheap imports that need not comply with the same rules.

1.16 The greening component of Pillar I is a way of creating a stronger and more visible link between direct payments and the environmental public goods produced by farming. The EESC believes that this system should be kept simple, and should ensure environmental outcomes from all farmers across the EU. It should be possible to take into account the specific features of Less Favoured Areas when determining payments. The measure for 'ecological focus areas' should be implemented

⁽¹⁾ OJ C 132, 3.5.2011, p. 63.

in a manner that avoids agricultural land being taken out of production. Agro-environmental measures taken to date should be recognised under the new environmental requirements (Pillar I), as is also the case for organic farming generally.

1.17 The EESC welcomes the opportunity offered to Member States to use a voluntary coupled support scheme, in order to respond to specific situations. However, in the interests of greater flexibility and subsidiarity, the EESC suggests abolishing the closed list of sectors and productions eligible for coupled support and allowing Member States to decide which sectors and productions are eligible.

Market instruments

1.18 The EESC considers that the Commission proposals are insufficient to meet the challenge of increasing market volatility and the problems resulting from it. The CAP objective of stabilising agricultural markets, as set out in the Lisbon Treaties, is not addressed by the legislative proposals.

1.19 The EESC strongly believes that supply management tools can also be effective in some agricultural sectors. The EESC therefore recommends a thorough analysis of market developments when examining the possibility to postpone the abolition of the vine planting rights system, and the possibility to maintain sugar quotas for a longer period.

1.20 It is vital to strengthen the position of farmers and their organisations in the food supply chain, in order to secure a better return from the markets. The EESC welcomes the extension of product coverage for recognition of producer organisations, their associations, and inter-branch organisations. In view of the different structures and traditions in the Member States, the new arrangements should be made voluntary. The Committee also supports the Commission proposals for the milk sector, but recommends that the Commission provide a clear definition of the term 'producer organisation'. It is also of paramount importance for EU competition rules to be adjusted to allow producer organisations and cooperatives to strengthen their positions on the market. In order to strengthen the bargaining power of farmers within the food production chain, the EESC also considers it necessary to create conditions for developing short supply chains managed directly by farmers.

Rural development

1.21 The EESC welcomes the proposed closer alignment of the CAP with the EU's 2020 strategy and the sustainability strategy for rural development, with particular emphasis on research, innovation and training. There should be particular focus on training of the most vulnerable groups (immigrants and unskilled agricultural workers), and of young people and women - these are key factors in professionalising and boosting

the competitiveness of agriculture. It is therefore important to improve quality, accessibility and use of information and communication technologies in rural areas. Rural development policies should be geared primarily towards the innovation and competitiveness of farm businesses in keeping with the European agricultural model, especially in order to support farm investments, promote generational renewal, support the development of supply chain integration measures and integrated regional projects, improve relations between farm businesses and the food processing industry, support environment and climate-friendly measures and processes and consolidate the process by promoting and upskilling farm jobs.

1.22 One very positive element in the Commission proposal is the introduction of European Innovation Partnerships to help improve links between researchers, farmers, foresters and advisors, to secure a knowledge-based agriculture and forestry that makes use of professional extension services. Such research should also include the improvement of rural economic activities, including tourism, crafts and other activities that can create jobs in rural areas.

1.23 The EESC welcomes the move from the 'axis' approach to a thematic approach under the Rural Development Policy proposals. We think this will give Member States and regions more flexibility to take account of their own specific conditions. However, it is necessary to ensure that important aspects of Pillar II cannot be completely disregarded. The principle of earmarking 25 % of funds for environmental protection measures and climate change measures is therefore important. A minimum amount should also be earmarked at least for the LEADER approach.

1.24 The EESC deems it crucial that the Member States provide the co-financing required for Pillar II in good time. The Committee disagrees on the desirability of including risk management measures under Pillar II. The Member States should ensure adequate national co-financing ⁽²⁾.

1.25 The EESC considers that a new, separate measure to raise the profile of organic farming is needed, for which the co-funding rate should be equal to that proposed for less developed areas (85 %). The EESC would also encourage the promotion of integrated production and conservation farming, stressing their positive environmental impact.

1.26 Taking into consideration the serious conditions facing agricultural activities in mountain and island regions, the EESC proposes that the Commission extend the 85 % co-funding rate not only to less developed regions but to mountain and island regions as well. This is implicit in the philosophy of the proposal but not specified directly. The proposed redefinition of 'other areas' in the context of less favoured areas requires further revision.

⁽²⁾ OJ C 132, 3.5.2011, p. 63, point 4.2.

1.27 The EESC reminds the Commission, the Parliament and the Council that water scarcity and droughts are already a serious problem in many European regions and that the situation is expected to worsen as a consequence of climate change. The EESC stresses the importance of integrated planning and sustainable development to address water use, water scarcity and drought, based on the integration of sectoral policies and the importance of territorial planning in areas traditionally affected by water scarcity and drought. At the same time, however, account should be taken of the additional costs incurred in northern Member States for draining agricultural land.

1.28 The EESC calls for a balanced, predictable, viable, less bureaucratic, flexible and transparent future CAP to attract younger generations to this sector.

2. Introduction

2.1 Agricultural policy has a pivotal role to play in the EU – not just because farmland and forests account for more than 90 % of land-use and play a major role in the sustainable use of resources and the conservation of natural habitats, but in particular because agriculture, by the way of the CAP can help Europe to meet major challenges such as: economic and financial crisis, climate change, protecting the environment, preserving the vitality of rural areas, and providing consumers with safe, affordable, high-quality food.

2.2 The coming years will be crucial in laying the foundations for a strong agricultural and forestry sector that is able to deal with climate change and international competition, while meeting public expectations. Europe needs its farmers and foresters, and its farmers and foresters need the support of Europe. Additionally, in a context of economic crisis, the issue of employment is becoming more crucial than ever. This is the reason why the Commission has proposed a new partnership between European citizens and its farmers and foresters to meet the challenges of food security, the sustainable use of natural resources, growth and employment.

2.3 The EESC has expressed in previous opinions its views on the challenges the European agriculture is likely to face, what the CAP objectives should be and how it should be reformed accordingly. The Commission communication, published in 2010, reflected most of the recommendations made in the earlier EESC opinion on the matter - NAT/449 ⁽³⁾. Following this Communication, further proposals were made in EESC opinion NAT/481 ⁽⁴⁾. Additionally, the EESC has recently addressed some specific issues within the CAP, such as the challenges facing young farmers ⁽⁵⁾, and areas with natural

handicaps ⁽⁶⁾. The EESC points out that in preparing its proposals, the Commission has chosen a completely different approach to that proposed by the EESC. The Committee suggested that, first, the objectives of the CAP should be clearly defined; then the instruments for implementing those objectives should be identified; and after that the funding needs should be determined. It considered that fixing an amount of funding and then dividing up the funds in some way was the wrong approach. However, that is exactly what the Commission has done and is now creating difficulties.

2.4 The EESC would like to emphasise the importance of the agricultural sector for employment. The EU agriculture and agri-food sector employs around 40 million people in rural Europe, forming the backbone of these areas and ensuring high-quality food for 500 million consumers. And yet, European farmers' incomes are generally only half of EU average earnings. According to Eurostat data from September 2011, the total farm labour force in the EU-27 is the equivalent of 11.7 million full-time workers, of which 10.8 million (92 %) are permanent workers. Agriculture remains very much a family-oriented activity in the majority of Member States; four fifths (80 %) of the total agricultural labour force are farm holders or members of their family. Just over one third (34 %) of permanent agricultural workers in the EU-27 are women. Among EU-27 agricultural holders, relatively few (6 %) are under the age of 35, while a relatively high proportion (34 %) is aged 65 years or over. In addition, a very significant part of the 30 million migrant labour force in the EU are seasonal workers in agriculture ⁽⁷⁾.

3. Background

3.1 The legislative proposals are based on the budgetary framework for the CAP set out in the Commission's multi-annual financial framework (MFF) proposal for the 2014-2020 period. This proposal kept the overall budget available for the CAP at the same level as in 2013 at current prices, representing **in real terms a budget decrease for the CAP**.

3.2 The MFF proposal suggests that a significant part of the EU budget should continue to be dedicated to agriculture, which is a common policy of strategic importance. Thus, in current prices, it is proposed that the CAP focus on its core activities, with EUR 317.2 billion allocated to Pillar I (76 %) and EUR 101.2 billion to Pillar II (24 %), totalling EUR 418.4 billion over the 2014-2020 period.

3.3 The EESC notes that agreement within the Commission on this budget allocation for agriculture was only possible by including references to the need for greening of agriculture. This must now be reflected in actual policy.

⁽³⁾ OJ C 354, 28.12.2010, p. 63.

⁽⁴⁾ OJ C 132, 3.5.2011.

⁽⁵⁾ OJ C 376, 22.12.2011 p. 19-24.

⁽⁶⁾ OJ C 255, 22.9.2010, p. 87.

⁽⁷⁾ Eurostat - Farm Structure Survey.

3.4 The legislative proposals envisage supplementing Pillar I and Pillar II funding with additional funding of EUR 17.1 billion, including EUR 5.1 billion for research and innovation, EUR 2.5 billion for food safety and EUR 2.8 billion for food support for the most deprived individuals under other headings of the MFF, and EUR 3.9 billion in a new Crisis Reserve for the agricultural sector, thus bringing the total budget to EUR 432.8 billion over the 2014-2020 period.

4. General comments

4.1 The European Economic and Social Committee welcomes the Commission's reform objectives of enhancing competitiveness, improved sustainability and greater effectiveness.

4.2 The EU budget and financial resources for the CAP

4.2.1 The EESC renews its call to the Parliament, the Council and the Commission for the EU budget allocated to the CAP to be maintained ⁽⁸⁾. This is needed to support the European agricultural model and the different services delivered by the farming and forestry activities to society, such as safeguarding viable rural communities and infrastructure, balanced regional development and rural employment, maintenance of traditional landscapes, national heritage and traditions, biodiversity, protection of the environment, and highest standards of animal welfare and food safety. These services reflect the concerns of European consumers and taxpayers. As European farmers and foresters provide these multifunctional services for the benefit of society as a whole, often incurring additional costs without a compensating market return, it is necessary and justified to reward them through public intervention. The aim of the greening component is to define these services so as to justify and legitimise the new payment entitlements that agriculture can claim from society.

4.2.2 The implications and future impacts of the financial and economic crisis that is shaping the European and world economy as well as the decisions taken concerning the new stability pact, are putting all aspects of public budgets under the microscope. The EESC repeats that the European agricultural model cannot operate at world market prices and conditions and does not come free of charge. Any policy that promotes this agricultural model thus requires sufficient financial resources. It is therefore particularly important that every instrument (such as direct payments) that costs money is clearly justified. However, in the current proposals concerning the Union budget for the 2014-2020 period ⁽⁹⁾, the resources earmarked for the CAP would be clearly reduced in constant price terms. Although the Commission acknowledges the strategic role of the common agricultural policy in the light of the Europe 2020 Strategy's sustainable growth objective, CAP spending as a share of the Union budget will fall from 39.2 % in 2014 to 33.3 % in 2020. **This choice on the part of the Commission disregards the EESC's call for at least a guarantee of confirmation of the budget quota so far allocated by the EU to the CAP.**

⁽⁸⁾ OJ C 132, 3.5.2011, p. 63, point 1.10.

⁽⁹⁾ COM(2011) 500 final - A Budget for Europe 2020.

4.3 Direct payments

4.3.1 The EESC has previously agreed with the Commission that, within each Member State, we should move away from the historical reference period as the basis for determining the amount of support for farmers, since the significant individual differences in the level of support per hectare are no longer justifiable ⁽¹⁰⁾ not least because they distort competition within the single market.

4.3.2 However, the EESC believes that there are three good arguments for granting direct payments in future: the provision of services in order to establish the European agricultural model (e.g. via the greening component); the possibility of partial transfer payments and compensation for higher European standards. Flat per-hectare payments are not always the most efficient policy tool for that purpose: why, for example, should a 1 000 hectare farm receive 1 000 times the transfer payment, while a 25 hectare farm receives only 25 times? Transfer payments should be linked to jobs or individuals, not to land area. Nor can disadvantages faced by European livestock farmers be compensated for through per-hectare premiums that non-livestock farmers also receive. Ways of differentiating payments on the basis of additional criteria could be explored and allowed at the national level. Also, in some Member States, where historical payments are still in use, the convergence between national envelopes in addition to internal convergence will create difficulties. **In these cases internal convergence will require flexibility, a longer transition period and progressive change throughout the period ⁽¹¹⁾.**

4.3.3 One of the important tasks for this reform is to propose a path towards **a fairer distribution of envelopes between Member States**. The EESC welcomes the efforts to close the gap between the level of support received by farmers in the different Member States. It wishes to see a revision of the rural development envelopes on the basis of more objective criteria towards the better targeting of the policy objectives and welcomes the flexibility of funds transfer between pillars.

4.3.4 The EESC recognises the unequal situation that exists in terms of distribution of direct payments between the old and new Member States. According to the EESC, it is in fact necessary to support the competitiveness of the agri-food sector in the same manner in all Member States in order to preserve the coherence of the European agricultural model. Any redistribution of direct payments should take account of the cost and revenue structure of farming in the Member States.

4.3.5 The EESC would like to avoid further distortion of competition which has social implications for a number of Member States, especially the Baltic countries, taking into account not only farmers' interests, but also the needs of consumers and of the public in general. The EESC recommends

⁽¹⁰⁾ OJ C 354, 28.12.2010, p. 35, point 5.6.11.

⁽¹¹⁾ OJ C 132, 3.5.2011, p. 63, point 1.4.

redistributing Pillar I direct payments among Member States in such a way as to ensure that **no country would be under 90 % of the EU average at the end of the budget period.**

4.3.6 The greening component of Pillar I is a way of creating a greater and more visible link between direct payments and the environmental public goods provided by farmers. It is also an important step in solving the problems in the area of biodiversity that result from farming. The EESC welcomes such an approach, but makes the following recommendations:

- Efforts have been made by the Commission to keep this system simple: only three measures, which would be easy to monitor by satellite. The implementing rules should however ensure that these measures do not impose any additional administrative burden to farmers.
- It is important for the greening measures to be applicable by all farmers across the EU in a similar way, in order to ensure broad environmental effects and to avoid distortions between farmers of different regions. However some flexibility might be needed in the application at national or regional level. Agro-environment measures that correspond to the greening component should generally be taken into account.
- There are concerns about the risk of overlapping between the greening measures and the second pillar agro-environmental measures⁽¹²⁾. A clear distinction needs to be made in order to ensure that farmers that are already engaged in agro-environmental programmes can efficiently continue benefiting from this policy tool without suffering a loss of income. Farmers engaged in agro-environmental programme measures, which pursue the required goals of the greening component, may be seen as fulfilling the greening component. Agro-environmental measures taken to date (Pillar II) should be recognised under the new environmental requirements (Pillar I), as is also the case for organic farming generally.

4.3.7 The greening measures should be adapted and implemented as follows:

- The proposal to use 7 % of land for 'ecological focus areas' would not be acceptable if important amounts of arable land were taken out of production. It would also be counter-productive, in view of the global increase in demand for food. The Commission should present the draft list of features that are recognised as 'ecological priority land' as soon as possible. In so doing, it should make it clear that it primarily covers features that are important for maintaining or improving biodiversity, which clearly includes existing trees, terraces, riparian

zones, flower pastures etc. These items should be considered as eligible areas, including in countries where national regulations had excluded them from the definition of farmland. A suitable list would also quickly make it clear that the frequently expressed fears that the Commission wishes to completely set aside 7 % of land are unfounded. Finally, it should be made possible to effectively calculate the main permanent crops as 'ecological focus areas' in order to promote their considerable environmental and ecological value.

- The Commission must make it clear that the crop diversification measure should not penalise in particular farmers with little arable land, livestock holdings without pastures, and farmers under agro-climatic and soil conditions where no other crop can be produced. The EESC recommends in such cases some flexibility in the implementation, which should be proposed by the Member States and accepted by the Commission.

4.3.8 The EESC notes that the situation in relation to biodiversity varies greatly not only between Member States but also from region to region. To begin with, therefore, a fixed percentage of 7 % priority land in all EU regions appears rather bureaucratic and inappropriate. However, if the measures are selected in such a way that all existing structures on agricultural holdings that make a positive contribution to species development can be taken into account, farmers in regions that are rich in structures (with a high level of biodiversity) will have much less difficulty with adjustment and implementation than farmers in 'cleared' regions (with low biodiversity). It is precisely for this reason that the right approach for the Commission to take in promoting the European agricultural model is to introduce these measures at farm level only (except for small farms).

4.3.9 The EESC agrees with the Commission's proposal to retain the option for Member States to grant payments to farmers in mountain areas or other areas facing specific or other natural constraints covered by Pillar II measures. The EESC similarly welcomes the possibility to be given to the Member States also to grant additional payments to areas facing natural constraints under Pillar I direct payment arrangements. The EESC urges the Commission to ensure simplified procedures allowing all the potential beneficiaries to make use of these new opportunities. The proposals to redefine less favoured areas ('other areas') remain incomplete and require revision. However, it is critical of the Commission's proposals to use eight biophysical criteria to develop a new delimitation of 'other less-favoured areas' and the proposed minimum of 66 % of utilised agricultural area. In their current form, these rules would put certain regions that are less favoured due to a combination of several factors in a worse position with no objective justification. The new regulatory framework should be designed to take appropriate account of the interaction between these factors.

⁽¹²⁾ OJ C 132, 3.5.2011, p. 63, point 3.4.3.

4.3.10 The EESC is in favour of capping direct payments on the basis of the country's and the specific region's agricultural structure. The EESC agrees that capping of payments should be applied in a flexible way, while respecting the principle of subsidiarity. The proposed progressive capping scheme is to be welcomed, provided that the reduced amount is directed towards the weaker agricultural sectors in each country. The amount referred to in the proposal should be calculated by subtracting maximum 50 % of the salaries actually paid and declared by the farmer in the previous year, including taxes and social contributions related to employment. Family labour should also be taken into account.

4.3.11 The EESC, being well aware of the difficulties involved in defining the concept of the active farmer, proposes that such a definition should include among its requirements the production and marketing of agricultural products, including through direct local marketing, and the creation of public goods and services of social interest⁽¹³⁾. It should also bear in mind the disadvantaged status of the region and the necessity of part-time farming in order to maintain an average family income. The EESC considers that greater flexibility is needed for individual Member States to make decisions on the definition of the active farmer in order to establish who should receive direct payments. This should be based on the eligible area. Furthermore, the definition of the active farmer should not exclude beneficiaries of less than EUR 5 000.

4.3.12 The EESC supports the Commission's proposal to consider the establishment of young farmers as one of the Union's rural development priorities, in part through the implementation of thematic sub-programmes within rural development programmes. The EESC also very much welcomes the proposal to introduce income support for young farmers starting agricultural activity under Pillar I. The EESC urges the Commission to ensure simplified procedures allowing all potential beneficiaries to make use of these new opportunities.

4.3.13 With a view to strengthening their rural development policy, Member States are given the possibility of transferring funds from their direct payments envelope to their rural development envelope. At the same time, Member States in which the level of direct support remains lower than 90 % of the European average should be allowed to transfer funds from their rural development envelope to their direct payments envelope. Such choices should be made, within certain limits, once and for the entire period of application of this regulation. The EESC recommends that the Commission increase from 5 % to 10 % the flexibility for transferring funds from Pillar II to Pillar I.

4.3.14 The EESC calls on the Commission to review the planned extension of eco-conditionality. Extending eco-conditionality to cover all the obligations and restrictions relating to the Natura 2000 areas and the Water Framework Directive could result in a flagrant and unjustifiable unequal treatment of farmers. While eco-conditionality should cover certain basic obligations, it should not cover the obligations on farmers in water protection areas or other specific protection areas. These obligations should be covered by a specific payment under the second pillar.

4.4 Market instruments

4.4.1 The main proposal on market management policy is a budgetary one (the creation of the Crisis Reserve) and a governance one (the Commission will have more power). There is little innovation as far as the instruments themselves are concerned. The EU should focus its economic research on this topic in order to find modern instruments to combat price volatility. These instruments should be applied to the EU market, but also to the regulation of international markets, which is a major challenge, as emphasised in the G20 conclusions of June 2011.

4.4.2 The EESC reminds the Commission, the Parliament and the Council that the extreme price volatility experienced in recent years points to the need for more effective market management instruments. The EESC considers that the proposed market instruments are insufficient and calls for better supply-demand coordination and rebalancing of market power along the food supply chain. Under the treaty, one of the aims of the CAP is to stabilise markets. Stable markets are important. For this reason, the EESC believes that the market instruments tool box should be much more ambitious, in order to avoid strong price fluctuations.

4.4.3 The Commission proposed to continue the phasing out of supply management tools started in 2009. The EESC, however, believes that it would be a mistake to do away with these tools. Their purpose is to secure greater stability for prices and farm incomes by matching supply more closely to demand. They have proved effective in numerous cases. There is a wide variety of supply management tools: ex-ante control (e.g. granting production rights), ex-post control (e.g. crop destruction), input control (e.g. planting rights), framing of premium rights (e.g. national ceilings), etc.

4.4.4 The EESC recommends that a proper analysis of the implications of postponing the termination of the sugar quotas scheduled for 2015 is carried out. Concerning the vine plantation rights that will expire no later than 2018, the EESC, while in favour of maintaining plantation rights, welcomes the decision of the Commission to set up a High-Level Group (HLG) for the purpose of discussing the measures needed in

⁽¹³⁾ OJ C 132, 3.5.2011, p. 63, point 1.5.

the wine sector and highlights the need to maintain vine plantation rights beyond 2018 to improve management of the market. Recommendations from this HLG are expected before the end of 2012.

4.4.5 Since 77 % of the EU-27 food market is already controlled by only fifteen commercial chains, the Committee feels that efforts are needed to balance commercial supply against the power of the distribution market and that consideration should be given to whether competition law is enough to prevent the emergence of market dominance and questionable contractual practices. It is important that all stakeholder groups be involved in this exercise⁽¹⁴⁾. This should lead to changes in EU competition laws governing the agri-food sector to ensure that account is taken of its specific characteristics, adapting these laws to those in the countries with which the EU competes on the global markets, as concluded by the HLG on Milk.

4.4.6 The high price volatility in recent years has prompted questions about the future CAP regarding the possible benefits of more risk management tools and a more global approach to the functioning of the whole food chain.

4.4.7 With a view to strengthening the power of producers in the food chain, the Commission should also provide the tools and financing for a better, more transparent and updated knowledge of the markets and margins in all sectors. In its previous opinions, the EESC has underlined the need to promote written contracts, adapt competition rules, outlaw unfair and anti-competitive practices, improve the marketing capacity of producers' organisations and bolster inter-professional organisations⁽¹⁵⁾. More strenuous efforts than hitherto should be made to foster local and regional initiatives, farmers' markets, short marketing circuits (including in relation to canteens, mass catering etc.) and direct sales.

4.4.8 In order to ensure the necessary flexibility in responding to unexpected emergencies, the Commission proposes the creation of a reserve for agricultural sector crises with a budget of around EUR 500 million. It would be appropriate for the Commission to incorporate this instrument into the MFF and clarify better the workings of this new tool while specifying the procedures for activating measures to oppose market disruption. It is imperative that this tool is flexible enough to respond in a rapid and timely manner.

4.4.9 The Commission promotes the role of producers', operators' and trade organisations by extending their operations to all products covered by the CMO. The EESC - also bearing in mind past comments by the European Court of Auditors⁽¹⁶⁾ - considers it necessary to clarify in detail the Commission's guidance on the requirements for recognising such bodies and

the measures for monitoring their activities. Thus, consideration should also be given to how far the proposal to authorise collective, across-the-board agreements would undermine individual farmers' freedom to take decisions for themselves.

4.4.10 The EESC agrees with the proposal from the Commission to make use of written contracts between the parties. Cooperatives and similar structures might be however exempted. According to the Commission, this step is required only for dairy products while for other kind of products it may be activated by the Member States on an optional basis. The EESC believes that it would be appropriate for the Commission to extend this requirement to all other agricultural products covered by the CMO including perishable goods.

4.4.11 The EESC has reservations about the possibility of using the European Globalisation Fund (EGF) to provide support to farmers who are suffering from the effects of international trade agreements. The EESC recalls that the EGF should be used primarily to provide support for workers made redundant as a result of major structural changes in world trade due to globalisation, when these redundancies have a significant adverse impact on the regional or local economy⁽¹⁷⁾. In order to ensure that EGF action has maximum impact, the EESC believes that the fund should not be used to support European agriculture.

4.4.12 According to the latest estimates, approximately 16.3 % of EU citizens live at or below the poverty line. The EESC recalls the contribution of the European programme to distribute food to the needy, under which tens of millions of meals are distributed to the neediest each year (in 2009, over 18 million people benefited from the programme). The EESC is pleased that in the 2014-2020 budgetary proposals, the European programme of aid for those in greatest need is clearly identified outside the first and second pillars. However, its working mechanisms need to be improved in the light of the comments made by the European Court of Auditors⁽¹⁸⁾. The EESC considers that solidarity with disadvantaged groups is a value which the EU has always upheld, across its various policies, and it must continue to do so.

4.5 Rural development

4.5.1 The EESC considers Pillar II to be the key tool to ensure the preservation of the European agricultural model. The serious financial situation of several Member States will mean that many measures can no longer be co-financed adequately, or even at all, which will seriously weaken it. This is a fundamental problem that must be addressed in the context of the negotiations on the financial programming for 2014-2020.

⁽¹⁴⁾ OJ C 354, 28.12.2010, p. 35.

⁽¹⁵⁾ OJ C 48, 15.02.2011, p. 145.

⁽¹⁶⁾ European Court of Auditors, Growing success? The effectiveness of the European Union support for fruit and vegetable producers' operational programmes, Special Report No 8.,

⁽¹⁷⁾ Regulation (EC) No 1927/2006 of the Parliament and the Council of 20 December 2006 establishing the European Globalisation Adjustment Fund.

⁽¹⁸⁾ European Court of Auditors, European Union food aid for deprived persons: an assessment of the objectives, the means and the methods employed, Special Report No 6, 2009.

4.5.2 The move away from the principle that has applied to Pillar II so far, of having three axes (plus LEADER) supported by minimum funding proportions, towards six priority areas essentially means that the Member States will have (even) greater freedom of choice. However, the EESC welcomes the fact that environmental protection and climate change measures will in future account for 25 % of the financial envelope and proposes that there should also be a minimum proportion for LEADER. What should be avoided is that Member States take only investment promotion measures, for example, and therefore neglect support of e.g. agro-environmental measures, organic farming or bottom-up initiatives such as LEADER.

4.5.3 In order for farming to become more competitive, the Commission proposes linking the CAP to the EU's strategy for growth and jobs, with the focus on training, innovation and research. The EESC encourages this approach.

4.5.4 The EESC agrees with the introduction of the European Innovation Partnership in the context of rural development policies. The EESC believes this tool will primarily promote and support research activities designed to foster the productivity and sustainability of agriculture and forestry, to ensure the efficient use of environmental resources, to enhance the contribution of agriculture and forestry to the struggle against climate change, to improve quality and safety at work in agriculture and forestry, to ensure the safety and health of consumers, to encourage the testing of innovative farming and forestry techniques, to improve transport and logistics of food products and to single out eco-friendly food products packaging. In the EESC's opinion, the European Innovation Partnership in agriculture and forestry will ensure cross-border synergy and cooperation in Europe between the various public and private entities committed to it, by improving the efficiency of research and innovation.

4.5.5 The EESC warmly welcomes the proposals concerning rural development measures and urges the Commission to give Member States the opportunity and the freedom to create special measures for sectors of primary importance to them by offering an alternative to these regions. This is indispensable for the upkeep and conservation of our nature and the shaping of our cultural landscapes. The EESC has noted that the Commission tends to apply stricter selection criteria for access to certain measures. It would stress that these selection criteria must not obstruct the growth of farming businesses that have already reached a certain level of competitiveness.

4.5.6 The EESC agrees with the strengthening of the risk management tools implemented in the CAP. The Committee believes that these tools should help reduce the fluctuation of income and market instability. The strengthening of insurance products and the creation of mutual funds should help farmers facing higher market volatility, greater exposure to new animal and plant diseases as well as more frequent poor weather conditions. The Committee agrees with the inclusion of risk management under the Pillar II, but considers that the Member States should first settle the issue of national co-financing.

4.5.7 The EESC welcomes the decision to continue the policy for areas with natural handicaps. Nevertheless, it regrets that the recommendations it set out in its opinion⁽¹⁹⁾ on Communication COM(2009) 161 - Towards a better targeting of the aid to farmers in areas with natural handicaps - have been ignored with respect to the delimitation of these areas. The eight bio-physical criteria proposed by the Commission do not adequately meet the requirements of a relevant and legitimate redefinition, acceptable throughout the EU.

4.5.8 The EESC has already declared that maintaining biodiversity is an essential, key task which not only represents an ethical and moral obligation but is also of strategic importance in the long term. There are sufficient economic reasons to act more quickly and more effectively.

4.5.9 The EESC highlights the fact that the 2012 reviews constitute a unique opportunity for integrating water scarcity and extreme events, such as drought, into a common policy framework for water resource management.

4.5.10 The EESC considers that Pillar II should reflect the huge problem of drought, soil erosion and desertification in the southern and Mediterranean regions of the EU and recommends drafting a special measure to address this issue. At the same time, however, account should be taken of the additional costs incurred in northern Member States for draining agricultural land.

4.5.11 The EESC urges the Commission, the Parliament and the Council to consider framing an integrated EU protein strategy in order to safeguard the supply of animal feed and reduce dependence on protein imports.

4.5.12 Food waste is an increasingly important issue for food security and resource efficiency. The EESC recommends that the Commission review best food waste reduction practices in countries such as Germany and support them with legislative measures at EU level.

4.5.13 Relocalisation of the economy is a key issue in the years to come, and in agriculture the added value should be kept within the territories whenever possible. Furthermore, according to the European Court of Auditors, local action groups under the LEADER programmes are not sufficiently focussed on achieving the goals of their own local strategies⁽²⁰⁾. It would therefore be useful for the CAP for 2014-2020 to adopt corrective measures through a new policy tool that allows accompanying the emergence of territorialised projects at a larger scale than with the LEADER approach.

⁽¹⁹⁾ OJ C 255, 22.9.2010, pp. 87–91.

⁽²⁰⁾ European Court of Auditors, Special Report No 5/2011.

4.5.14 The EESC believes that the CAP must be a primary instrument for forging alliances with consumers, encouraging provision of relevant information on how food has been produced throughout the value chain or life cycle. Products must be clearly traceable by the consumer, who could be the best ally in achieving more sustainable European agri-food production which respects the environment and creates better jobs.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX I

to the Committee opinion

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussion:

Point 1.25

Insert:

The EESC considers that a new, separate measure to raise the profile of organic farming is needed, for which the co-funding rate should be equal to that proposed for less developed areas (85 %). ~~The EESC would also encourage the promotion of integrated production and conservation farming, stressing their positive environmental impact.~~

Result of the vote

For 75

Against 81

Abstentions 8

Point 4.3.6

Insert:

The greening component of Pillar I is a way of creating a greater and more visible link between direct payments and the environmental public goods provided by farmers. It is also an important step in solving the problems in the area of biodiversity that result from farming. The EESC welcomes such an approach, but makes the following recommendations:

- *Efforts have been made by the Commission to keep this system simple: only three measures, which would be easy to monitor by satellite. The implementing rules should however ensure that these measures do not impose any additional administrative burden to farmers.*
- *It is important for the greening measures to be applicable by all farmers across the EU in a similar way, in order to ensure broad environmental effects and to avoid distortions between farmers of different regions. However some flexibility might be needed in the application at national or regional level. Land subject to agro-environmental measures that have a particularly positive impact on biodiversity (e.g. pollinator strips) correspond to the greening component should in future be recognised as 'ecological priority land' generally be taken into account. The resulting costs for farmers over and above preparing the land (e.g. for sowing, upkeep) should be offset under the first pillar.*
- *There are concerns about the risk of overlapping between the greening measures and the second pillar agro-environmental measures. ⁽¹⁾ A clear distinction needs to be made in order to ensure that farmers that are already engaged in agro-environmental programmes can efficiently continue benefiting from this policy tool without suffering a loss of income. ~~Farmers engaged in agro-environmental programme measures, which pursue the required goals of the greening component, may be seen as fulfilling the greening component. Agro-environmental measures taken to date (Pillar II) should be recognised under the new environmental requirements (Pillar I), as is also the case for organic farming generally.~~*

Result of the vote

For 71

Against 90

Abstentions 11

Point 4.3.7

Insert:

The greening measures should be adapted and implemented as follows:

- *The proposal to use 7 % of land for 'ecological focus areas' would not be acceptable if important amounts of arable land were taken out of production. It would also be counter-productive, in view of the global increase in demand for food. The Commission should present the draft list of features that are recognised as 'ecological priority land' as soon as possible. In so*

⁽¹⁾ EESC opinion on the Future of the CAP (OJ C 132, 3.5.2011, p. 63, point 3.4.3).

doing, it should make it clear that it primarily covers features that are important for maintaining or improving biodiversity, which clearly includes existing trees, terraces, riparian ~~zones~~ buffer strips, flower pastures etc. These items should be considered as eligible areas, including in countries where national regulations had excluded them from the definition of farmland. A suitable list would also quickly make it clear that the frequently expressed fears that the Commission wishes to completely set aside 7 % of land are unfounded. Finally, it should be made possible ~~to for only 3,5 % of effectively calculate the main~~ permanent crops to be as 'ecological focus areas' ~~in order to promote their considerable environmental and ecological value.~~

- The Commission must make it clear that the crop diversification measure should not penalise in particular farmers with little arable land, livestock holdings without pastures, and farmers under agro-climatic and soil conditions where no other crop can be produced. The EESC recommends in such cases some flexibility in the implementation, which should be proposed by the Member States and accepted by the Commission.

Result of the vote

For	64
Against	88
Abstentions	14

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information'

COM(2011) 877 final — 2011/0430 (COD)

(2012/C 191/22)

Rapporteur: **Ms CAÑO AGUILAR**

On 17 and 18 January 2012, the European Parliament and the Council respectively decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on re-use of public sector information

COM(2011) 877 final — 2011/0430 (COD).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 April 2012.

At its 480th plenary session, held on 25-26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 133 votes to 2 with 2 abstentions.

1. Conclusions

1.1 The EESC welcomes the review of Directive 2003/98/EC of the European Parliament and of the Council, of 17 November 2003, on re-use of public sector information ⁽¹⁾ (the PSI Directive), insofar as it makes it considerably easier for public data to be used more efficiently and is one of many actions designed to achieve the goals of the Europe 2020 strategy.

1.2 The Committee would highlight that the amendment to the PSI Directive is needed as a result of the digital revolution, the growing volume of information held by the authorities and the economic importance of this matter, which is estimated to total EUR 140 billion. There is also a need to remedy shortcomings identified in current regulations and to incorporate the principles adopted by the OECD in 2008.

1.3 The new regulation - which includes aspects proposed by the EESC in its previous opinion - is part of the package of measures forming the Digital Agenda, which is one of the EU's key strategies.

1.4 Upholding the right of access to public information as a sole and exclusive competence of Member States, the new regulation introduces a sea-change by establishing re-use as an obligation for the Member States.

1.5 The Committee considers that the re-use of public information should be regulated by means of a regulation in order to standardise Member State legislation and to overcome

the differences identified in the transposition of the PSI Directive.

1.6 The reform extends the scope of re-use to cover museums, libraries and archives, while also improving practical arrangements to facilitate data searches.

1.7 In the EESC's view, the reform of the PSI Directive is also justified by the enormous potential - as yet insufficiently exploited - of public information in three key areas, since it helps to:

— boost the internal market, strengthening European businesses and creating jobs;

— promote consistency with other EU policies;

— foster government transparency, efficiency and accountability.

1.8 The new charging rules reject the idea that searches must be free of charge. It will be up to each Member State to decide whether or not to apply charges. If they decide to do so, charges should not exceed marginal costs, although there are exceptional cases in which higher charges may be applied. The principle of cost recovery currently in force is upheld on a residual basis. The EESC welcomes the changes in this area.

⁽¹⁾ OJ L 345, 31.12.2003, p. 90.

1.9 With regard to establishing an independent authority to rule on appeals against decisions not to authorise re-use, the EESC believes that such a body does not necessarily need to be created from scratch; an existing authority could be appointed to undertake this task, provided that impartial and independent decision-making can be guaranteed.

1.10 The new regulation contains a reference to the economic or moral rights of employees of public sector bodies, to cover specific situations in certain EU Member States.

1.11 The Committee endorses the need to strengthen the text of the proposal on the protection of personal data, which would require a thorough assessment on a case-by-case basis, striking a balance between the right to privacy and the right to public access.

2. Background

2.1 Directive 2003/98/EC (the PSI Directive) marked a major step towards promoting the re-use of the increasing amount of information held in the public sector, by laying the foundations for a European legal framework to harmonise the basic conditions for re-use and removing any barriers that could hamper re-use.

2.2 Article 13 of the PSI Directive required the European Commission to carry out a review of the directive by 1 July 2008, addressing ‘in particular ... the scope and impact of this Directive, including the extent of the increase in re-use of public sector documents, the effects of the principles applied to charging and the re-use of official texts of a legislative and administrative nature, as well as further possibilities of improving the proper functioning of the internal market and the development of the European content industry’. This review was presented in Communication COM(2009) 2012, which suggested that despite the progress that has been made, major barriers still exist, including attempts by public sector bodies to maximise cost recovery, as opposed to benefits for the wider economy, competition between the public and the private sector, practical issues hindering re-use, such as the lack of information on available PSI, and the mindset of public sector bodies failing to realise the economic potential.

2.3 Other factors that, in the Commission's view, justify the review of the directive are:

- the huge increase in data volume;
- the continuous digital revolution, which raises the value of the public sector's assets in the field of information and content;

- the growing economic importance of PSI in terms of total, direct and indirect economic gains, based on PSI applications and usage in the economy of the EU 27, is estimated to be in the order of EUR 140 billion annually ⁽²⁾;

- the fact that considerable potential for re-using PSI still exists. Although some Member States have made considerable progress, much remains to be done, given, amongst other things, the increase in PSI re-use in certain international contexts.

2.4 The most important aspects it is proposed to amend with this draft directive concern: the scope, the general principle applicable to re-use, the economic or moral rights of employees of public bodies, the principles of charging and the practical arrangements for facilitating searches.

3. General comments

3.1 PSI and the Digital Agenda

3.1.1 The EESC considers that the proposed reform is broadly appropriate as regards remedying recognised shortcomings in the PSI Directive. As well as meeting the demands of EU stakeholders, who have highlighted serious problems in the current legislation, the amendment incorporates principles set out in the OECD recommendation Seoul, 17-18 June 2008 ⁽³⁾ for enhanced access and more effective use of public sector information.

3.1.2 The EESC also wishes to emphasise that the review is part of a package of measures forming the Digital Agenda, which consists of three lines of action: adapting the legal framework for the re-use of public data, mobilising financing instruments and improving coordination across the Member States ⁽⁴⁾.

3.2 The right to re-use

3.2.1 The new regulation marks a significant change, by establishing re-use as a right. Under the current system, the decision as to whether or not to authorise re-use falls to each Member State. The fact that the link between the right to access

⁽²⁾ The ‘Vickery report’ contains an in-depth analysis of this matter. See ‘Review of Recent Studies on PSI Re-Use and Related Market Developments’ - Final Version - Graham Vickery, 2010. http://ec.europa.eu/information_society/digital-agenda/index_en.htm.

⁽³⁾ Adopted in Seoul, 17-18 June 2008.

⁽⁴⁾ Commission Communication on Open data - An engine for innovation, growth and transparent governance, COM(2011) 882 final, Brussels, 12.12.2011.

and the right to re-use is explicit in some national legislation but insufficiently clear in others gives rise to a degree of legal uncertainty.

3.2.2 The EESC therefore wishes to highlight and support the proposed changes in this area, which are that:

- the **right to access** public information remains the sole and exclusive competence of the Member States and does not fall within the scope of the PSI Directive ⁽⁵⁾;

- when information is public and accessible in line with national legislation, the **re-use** of public information for commercial or non-commercial purposes – with the exceptions expressly provided for – becomes an **obligation** for Member States, with the new wording of Article 3 stating that these ‘shall ensure that documents ... shall be re-usable’. This is an essential step towards developing a homogeneous European framework.

3.2.3 The right to re-use builds on the approach set out by the EESC in its previous opinion ⁽⁶⁾, to the extent that the obligation to re-use data does not mean ‘*just passively making them available but a duty of active promotion*’.

3.2.4 Given the differences in the PSI Directive’s transposition, the EESC considers that closer harmonisation is needed, which would require a proposal for a regulation.

3.3 Extension of the scope

3.3.1 As the EESC proposed in its opinion on the PSI Directive, the new regulation will include documents held in museums, libraries and archives. It will also apply to university libraries, except in respect of documents protected by intellectual property rights (the new wording of Article 1(2)(e)). This would bring a substantial amount of information within the directive’s scope, thereby making it more effective.

3.4 Improving search arrangements

3.4.1 The EESC considers the proposed regulation of practical arrangements facilitating information searches (Article 9) to be appropriate insofar as it includes metadata,

the provision of information in ‘machine-readable format’ and portal sites that are linked to decentralised asset lists.

3.5 Need for reform due to the potential of public information

3.5.1 The documentation stored in public bodies has applications in many fields related to knowledge, social conditions, science, economics and culture, among others. These include geographical, meteorological, environmental and economic information, information on traffic and transport, tourism, agriculture, legal journals and case law, statistical publications, social data, etc. ⁽⁷⁾. As a result, their exploitation contributes to economic growth, development of the internal market, strengthening businesses and job creation.

3.5.2 Greater use of public information is in line with other EU policies, such as competition policy, the Integrated Maritime Policy, the common transport policy, the need to encourage open access to scientific information and policy on digitisation and cultural heritage.

3.5.3 Promoting re-use will also help foster transparency, efficiency and accountability in government.

4. Specific comments

4.1 Charging ⁽⁸⁾

4.1.1 The most controversial aspect of the current regulation is the price that people wishing to access information are obliged to pay. Excessive charges and the lack of transparency in the way these are set have led to complaints from users and form a serious barrier to promoting the re-use of public information.

4.1.2 The proposed reform rejects the idea put forward by certain stakeholders of searches having to be free of charge (the zero cost option). It opts instead for new charging principles, according to which:

- each Member State will decide whether or not a charge should apply;

- if it decides to apply a charge, this should be limited to the **marginal costs** incurred for their reproduction or dissemination;

⁽⁵⁾ Article 1.3.

⁽⁶⁾ EESC Opinion on Commercial exploitation of public sector documents, OJ C 85, 08.4.2003, p. 25.

⁽⁷⁾ The Vickery report identifies 13 fields, which in turn cover a number of different subject areas.

⁽⁸⁾ See Deloitte Pricing of PSI Study, Luxembourg 2011. http://ec.europa.eu/information_society/policy/psi/docs/pdfs/minutes_psi_group_meetings/presentations/15th/03_01_study_economic_deloitte.pdf.

- the principle of marginal cost is not universally applicable, which means that higher charges may be imposed in the exceptional cases provided for in the new Article 6(2), in particular where public sector bodies generate a substantial part of their operating costs from the exploitation of their intellectual property rights. This exception is subject to strict requirements: charges must be set 'according to objective, transparent and verifiable criteria, provided this is in the public interest and subject to the approval of the independent authority' as provided for in the reform of the directive;
- charges over and above marginal costs could also be set for 'libraries (including university libraries), museums and archives';
- the burden of proving that charges comply with the requirements of the directive lies with the public sector body providing users with information.

4.1.3 The proposal thus introduces the general principle of **marginal cost** and upholds the principle of **cost recovery** in the current Article 6 on a residual basis, despite deeming it to be '*inadequate for incentivising activities based on the re-use of public data*' (3. Legal elements of the proposal; 3.2 Subsidiarity and proportionality, paragraph 5).

4.1.4 The EESC, which welcomes this change, believes that the wording of the proposed amendment to the charging principles set out in Article 6 needs to be clarified, expressly stating the exceptional nature of the principle of cost recovery.

4.1.5 In the EESC's view, it would be feasible to establish the principle that information should be entirely free of charge, at least in certain cases of re-use for non-commercial purposes.

4.2 An independent authority

4.2.1 For situations in which a request for re-use is turned down, the new regulation establishes that means of redress should include the '*possibility of review by an independent authority that is vested with specific regulatory powers regarding the re-use of public sector information and whose decisions are binding upon the public sector body concerned*' (added to Article 4(4)).

4.2.2 The proposal does not specify the characteristics or membership of this 'independent authority', quite rightly leaving these aspects to the discretion of each Member State. The EESC considers that such a body does not necessarily need to be created from scratch; an existing authority could be appointed to undertake this task, provided that impartial and

independent decision-making can be guaranteed. Nevertheless, on the basis of experience since the entry into force of the PSI Directive – in some cases the interpretation of the system for accessing and disseminating public information has been restrictive – the new paragraph should also include, following the words 'public sector information', '*... especially as regards the scope of the general principle set out in Article 3 and whose decisions ...*'.

4.2.3 In any event, the EESC would emphasise that account should be taken of the opinion of the European Court of Justice on the concept of independence, which excludes not only any influence that bodies being supervised might exert, but also any outside direction or influence, whether direct or indirect, which could hamper such independent authorities in exercising the functions entrusted to them ⁽⁹⁾.

4.3 Intellectual property and the economic or moral rights of employees

4.3.1 In line with national and international intellectual property legislation, the proposal for a revision preserves '*the economic or moral rights that employees of public sector bodies may enjoy under national rules*' (paragraph added to Article 1(5)). This is an aspect overlooked by the PSI Directive and its inclusion reflects specific situations in some Member States concerning the ownership of rights to data held in the public sector.

4.3.2 The complexity of issues relating to intellectual property and the principles of subsidiarity and minimum intervention suggest that the resolution of any disputes that may arise should be left to the legal and judicial systems of each country, as is rightly proposed in the text addressed in this opinion.

4.4 Protection of personal data

4.4.1 The PSI Directive includes the processing of personal data (Article 4(4)), pointing out that it '*leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter the obligations and rights set forth in Directive 95/46/EC*' ⁽¹⁰⁾.

⁽⁹⁾ Judgment of 9 March 2010 (C-518/07).

⁽¹⁰⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. OJ L 281, 23.11.1995, p. 31.

4.4.2 This provision is valid, but the importance of the matter and constant technological innovation require greater emphasis, given that it raises a number of issues such as the legitimacy of public dissemination, special protection for sensitive data, transfers to third countries and the principle of purpose. The EESC considers that, as indicated by the Working Party on the Protection of Individuals with regard to the Processing of Personal Data, the text should contain the requirement for public bodies to carry out *'a careful and case-by-case assessment in order to strike the balance between the right to privacy and the right to public access'* ⁽¹⁾.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ http://ec.europa.eu/justice/policies/privacy/docs/wpdocs/2003/wp83_en.pdf.

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 — The global approach to migration and mobility’

COM(2011) 743 final

(2012/C 191/23)

Rapporteur: **Mr PARIZA CASTAÑOS**

Co-rapporteur: **Ms KING**

On 18 November 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The Global Approach to Migration and Mobility

COM(2011) 743 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2012.

At its 480th plenary session, held on 25 and 26 April 2012 (meeting of 25 April), the European Economic and Social Committee adopted the following opinion by 125 votes to 1 with 7 abstentions.

1. Conclusions

1.1 The EESC supports the Global Approach to Migration and Mobility (GAMM), which closely links immigration and asylum policies to the EU's external policy.

1.2 The EESC would like to see EU external policy fully committed to the drive for global governance of international migration, under the United Nations umbrella and on the basis of, among other applicable international legal instruments, the Universal Declaration of Human Rights, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (which the Committee has proposed ⁽¹⁾ that the EU ratify), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO conventions.

1.3 The EESC urges the European Commission to draw up a report on the state of play of the EU debate on the UN convention. The Commission must create the conditions for its ratification, and the EESC can contribute by drawing up a new own-initiative opinion.

1.4 The Committee proposes that the EU play a highly active part in carrying forward the UN High-level Dialogue on International Migration and Development.

1.5 The main aim of the EU's migration and mobility dialogues with third countries should be to make it easier for migration to take place in a legal, orderly fashion, to uphold international asylum law, to reduce irregular immigration and to act against criminal human trafficking networks.

1.6 The Mobility Partnerships (MPs), which are joint declarations of policy, should be turned into international agreements. The EESC believes that the EU can bring great added value to the negotiations with third countries.

1.7 The Committee emphasises the importance of fostering dialogue with regional institutions, broadening the content of the current agreements to include mobility and migration.

1.8 The Committee considers that MPs should incorporate the four pillars of the Global Approach: organising and facilitating legal migration and mobility; preventing and reducing irregular migration and trafficking in human beings; promoting international protection and enhancing the external dimension of asylum policy; and maximising the development impact of migration and mobility.

1.9 The greatest challenge concerns agreements on labour mobility, in which the social partners, from both Europe and the third countries, must be involved. The Committee supports the ILO's non-binding principles and guidelines for a rights-based approach to labour migration ⁽²⁾, and proposes that they be taken into account in the MPs.

⁽¹⁾ EESC own-initiative opinion of 30 June 2004 on the *International Convention on Migrants* (rapporteur: Mr Pariza Castaños), OJ C 302, 7.12.2004.

⁽²⁾ ILO, *Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach*, 2006.

1.10 The EESC proposes that the gender dimension be included in the MPs, since immigrant women sometimes find themselves in more vulnerable situations, and they frequently suffer abuse, discrimination and severe exploitation. Migrant women also play a very significant role in the economic and social development of the countries of origin ⁽³⁾.

1.11 To ensure that migration does not have a negative impact on the economic and social development of the countries of origin, the European Union should pay particular attention to the detrimental effect of the brain drain and should establish compensation arrangements.

1.12 The EU must give its backing to diaspora organisations, and the EESC proposes the introduction of a support service for them.

1.13 Border controls and prevention of irregular immigration must be in step with the protection of human rights. Frontex must be given more resources, and its work must be subject to evaluation by the Fundamental Rights Agency (FRA) and the democratic scrutiny of the European Parliament.

1.14 The EU must adopt an open policy towards admitting immigrants, with a medium-term approach that looks beyond the current economic crisis and takes account of the demographic situation. Labour immigration procedures must be legal and transparent, and cooperation between the social partners in the EU and the countries of origin must be made easier.

1.15 The EESC considers that European and national immigration legislation must guarantee the principle of equality of labour and social rights. Circular immigration systems cannot be used in a discriminatory way to undermine equal treatment.

1.16 It should be an agreed part of the MPs that return procedures are based primarily on voluntary return with support systems put in place ⁽⁴⁾. When, under exceptional circumstances, forced return procedures are implemented, they must fully respect people's human rights, in the light of the Council of Europe's recommendations ⁽⁵⁾.

1.17 The EESC calls for the EU to adopt a common asylum system with a high level of legislative harmonisation. It also supports the EU working together with third countries in order to improve their asylum systems and comply with international standards. Agreements between the EU and third countries must contain procedures guaranteeing an effective right to international protection for any person who may request it.

⁽³⁾ EESC exploratory opinion on *Health and Migration*, OJ C 256, 27.10.2007, p. 22.

⁽⁴⁾ In cooperation with the International Organisation for Migration.

⁽⁵⁾ *Twenty guidelines on forced return* CM(2005)40.

1.18 The third countries with which MPs are signed must be signatories to the Geneva Refugee Convention, must have asylum structures in place and must be safe countries from the human rights point of view. They must also have ratified the United Nations Convention against Transnational Organized Crime and the Protocols Thereto on trafficking in persons and smuggling of migrants ⁽⁶⁾.

1.19 The EU must strengthen integration policies and step up the fight against racism, xenophobia and discrimination against immigrants and minorities. The EESC proposes that the EU institutions play an active part in tackling xenophobia, racism and discrimination, especially when such behaviour is promoted by those in Member State governments and legislatures ⁽⁷⁾.

1.20 The EESC, in cooperation with the European Commission, will continue to support the work of the European Integration Forum, as it considers that in the coming years integration will constitute a strategic challenge which must be met in the interests of Europe, people of immigrant origin and the public as a whole.

2. General comments

2.1 The communication represents a new initiative on the part of the European Commission, intended to bring a more global approach to migration that is more consistent with other EU policies, especially external policy.

2.2 The EESC takes a positive view of this approach, which reflects the proposals made by the Committee over recent years. A number of opinions relate directly to the present communication ⁽⁸⁾.

2.3 The Committee has proposed that the EU adopt a common asylum policy with harmonised legislation, and a common immigration policy with legislation permitting legal

⁽⁶⁾ Palermo protocols, 2000.

⁽⁷⁾ On the basis of the European Convention on Human Rights and the Charter of Fundamental Rights.

⁽⁸⁾ OJ C 248, 25.8.2011, pp. 135-137, EESC opinion of 15 June 2011 on the *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Communication on migration* (COM(2011) 248 final), rapporteur-general: Mr Pariza Castaños.
OJ C 120, 16.5.2008, pp. 82-88, EESC opinion of 12 December 2007 on *Migration and development: opportunities and challenges* (own-initiative opinion), rapporteur: Mr Sharma.
OJ C 48, 15.2.2011, pp. 6-13, EESC opinion of 15 September 2010 on *The role of legal immigration in the context of demographic challenges* (exploratory opinion), rapporteur: Mr Pariza Castaños.
OJ C 44, 16.2.2008, pp. 91-102, EESC opinion of 25 October 2007 on *EU immigration and cooperation policy with countries of origin to foster development* (own-initiative opinion), rapporteur: Mr Pariza Castaños.
OJ C 128, 18.5.2010, pp. 29-35, EESC opinion of 4 November 2009 on *Respect for fundamental rights in European immigration policies and legislation* (own-initiative opinion), rapporteur: Mr Pariza Castaños.

immigration by means of common, transparent procedures, taking into account the interests of Europe and of the countries of origin as well as respect for fundamental rights.

2.4 Since 2006, a new international approach to dealing with migration has been progressively put in place, in particular through the United Nations' High-level Dialogue on International Migration and Development⁽⁹⁾. The EESC has attended the Global Forum on Migration and Development's intergovernmental conferences, in which a number of different civil society organisations also take part⁽¹⁰⁾. The Committee proposes that the EU play a highly active part in carrying forward the UN High-level Dialogue.

2.5 It is surprising that the EU Member States have still not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly in Resolution 45/158 of 18 December 1990, which has been in force since 1 July 2003. In an earlier own-initiative opinion⁽¹¹⁾, the EESC urged the EU and its Member States to ratify this convention. The EESC urges the European Commission to draw up a report on the state of the EU debate and the position of the Member States, in order to create the conditions for its ratification.

2.6 The EESC proposes that, in the field of external policy, the Commission, Parliament and EU Council promote an international legal framework for migration, based on the applicable legislation and in particular the Universal Declaration of Human Rights, the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. This international legal framework should also encompass:

- the Convention on the Elimination of All Forms of Discrimination against Women
- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Rights of the Child
- the ILO conventions on migrant workers (C 97 and C 143)
- the ILO Convention on equal remuneration for men and women (C 100)
- the ILO Convention on domestic workers (C 189)

⁽⁹⁾ 14 and 15 September 2006.

⁽¹⁰⁾ Brussels, Manila and Athens conferences.

⁽¹¹⁾ EESC own-initiative opinion of 30 June 2004 on the *International Convention on Migrants* (rapporteur: Mr Pariza Castaños), OJ C 302, 7.12.2004.

— the ILO Declaration on Fundamental Principles and Rights at Work

— the ILO Multilateral Framework on Labour Migration

— the Durban Declaration and Programme of Action from the 2001 UN World Conference against Racism.

2.7 The EU's common immigration and asylum policy has been developing in recent years, but its legislative and policy tools remain insufficient. The Member States have their own policies, which sometimes run counter to EU approaches and agreements. The EESC calls upon all the Member States to engage with the common policy as defined in the Treaty and the Stockholm Programme.

2.8 A medium-term approach is required: in spite of the current economic crisis and rising unemployment, the EU needs a more open admission policy for new immigrant workers, as pointed out by the EESC in its exploratory opinion⁽¹²⁾ on *The role of legal immigration in the context of demographic challenges*, requested by the Belgian EU Presidency. In the communication, the European Commission also argues that new immigrants will have to be taken in, given demographic and labour market conditions.

2.9 The EESC does not believe that the EU can cope with this new phase with restrictive, incoherent migration policies such as those implemented by the Member States in the past. A European immigration policy must break away from old constraints and match current needs.

2.10 The European Commission's communication proposes a Global Approach to Migration and Mobility (GAMM) in keeping with a broader and more coherent policy, which must be implemented in cooperation with the immigration source countries and with transit countries.

2.11 The central element and added value of the communication lie in the MPs between the European Union and third countries or groups of countries from certain regions, such as the Southern Mediterranean, Eastern Europe, the ACP countries or Latin America, with which the EU has neighbourhood and partnership links.

2.12 In an earlier opinion⁽¹³⁾ the Committee made a number of proposals that must be taken into account in the MPs in areas such as visa flexibility, legislation that is more open to admission, recognition of professional qualifications, preventing the brain drain, and social security entitlements.

⁽¹²⁾ OJ C 48, 15.2.2011, pp. 6–13.

⁽¹³⁾ OJ C 120, 16.5.2008, pp. 82–88.

2.13 The EESC supports the Global Approach, because it is convinced that there is a need to forge a closer link between the internal and external dimensions of migration and mobility policy. Moreover, the Global Approach's operational priorities include coherence between the EU's immigration and asylum policies and its development cooperation policies.

2.14 Migration and mobility are distinct concepts. With regard to the EU's external borders, the mobility of third-country nationals does not necessarily entail labour immigration. Most people crossing these borders do so as visitors, tourists and for business purposes; in other words, for short stays that do not involve any migration plans. Economic immigration necessarily entails access to the labour market.

2.15 The Committee agrees that the visa dialogues forming part of the GAMM should be stepped up. The visa dialogue that the EU pursues with third countries, together with the EU common visa policy, concerns both short stays and migration.

2.16 It has so far proved easier to reach agreement on short-stay visas, with difficulty concerning agreements on visas for migration (for residence and work purposes), responsibility for which remains with the Member States. An agreement was recently reached in the Council and Parliament on the Single Permit Directive that will bring a degree of legislative harmonisation to admission procedures. Legislation is also being introduced regarding specific categories of migrant (seasonal workers and posted workers).

2.17 Little progress would be made with the Global Approach if the former situation were to continue. The danger is that the Mobility Partnerships will serve only to improve the management of short stays, with little impact on improving labour migration procedures.

2.18 The existing bilateral migration agreements with third countries (which include admission of workers, prevention of irregular immigration, readmission, etc.) are agreements signed between the governments of the Member States and of the countries of origin. The EU has also set up a number of pilot projects. The EESC hopes that implementing the Global Approach will bring progress towards bilateral frameworks between the EU and third countries.

2.19 The EESC considers the regional dimension to be crucial, and consequently proposes that existing regional institutions, particularly those with which the EU has concluded association or cooperation agreements, should also be involved in the Global Approach. Some regional bodies from South America, Asia and Africa are implementing internal agreements on freedom of movement, immigration and mobility which may also make it easier to organise migration in Europe.

2.20 The Committee supports the Commission's geographical priorities, and agrees that the regional dialogues should be based on the EU's neighbourhood policy, in particular the Southern Mediterranean and Eastern Partnerships. The EU-Africa Partnership and that with the 19 Prague process countries should also be a priority, as should relations with the 27 Rabat process countries and with the Horn of Africa.

2.21 The EESC proposes that the dialogue with the ACP countries on migration and mobility be stepped up, and that dialogues also be established with the countries of Central and South America.

The bilateral dialogues with the candidate countries of Turkey and those in the Balkans must be strengthened, as must those with Russia, India and China.

The dialogue with the United States, Canada and Australia is of a special nature.

2.22 The four pillars on which the Global Approach is based in the Commission's proposal are:

- organising and facilitating legal migration and mobility
- preventing and reducing irregular migration and trafficking in human beings
- promoting international protection and enhancing the external dimension of asylum policy
- maximising the development impact of migration and mobility.

2.23 The EESC agrees that these are the pillars on which a Global Approach should be built that is consistent with other policies: protection of human rights, asylum, development cooperation, combating trafficking and smuggling of human beings, etc.

3. Organising and facilitating legal migration and mobility

3.1 The main aim of the MPs with third countries should be to make it easier for migration to take place in a legal, orderly fashion. The immigration offered by the EU must be credible and procedures must be transparent, in order to foster the view in the countries of origin that legal migration is possible, and that irregular procedures are to be rejected.

3.2 The current dialogues with third countries are highly limited, as competence for admitting new immigrants lies with the Member States. The Committee proposes that the Member States and the Council grant the European Commission greater capacity in these matters, since the EU contributes considerable added value.

3.3 The admission of third-country workers is currently highly restricted by national laws. European legislation is being drawn up amidst numerous political difficulties. The directives that have been adopted must be transposed into national legislation, and others are still in the process of being negotiated between the Council and Parliament.

3.4 In another opinion ⁽¹⁴⁾ the Committee concluded that in the light of some national differences, the EU needs to have open legislation allowing immigration for employment purposes through legal, transparent channels for workers in both highly-qualified and less-qualified jobs. Many immigrants will have long-term permits, while others will be temporary. The MPs must reflect this state of affairs.

3.5 Support systems should be introduced for immigrants from the moment they leave their country of origin until they are integrated in the host country, both socially and in terms of employment. These support systems should be run not only by the public authorities but also by trade unions, employers' organisations, diaspora organisations and other civil society bodies. They should include information and advice at all stages of the migration process and courses on the country's language, working and social conditions, laws and customs.

3.6 The EESC would repeat the call made in other opinions for improvements to the arrangements for recognising the qualifications of immigrant workers and the validation of diplomas and skills, which must be included in the MPs.

3.7 As the Committee has proposed in previous opinions, the portability of immigrants' social security rights must be effectively guaranteed within the EU and in the countries of origin: social security affairs should therefore be covered by the MPs. Although European immigration laws limit social security rights, many problems can be settled through these agreements. This is a further argument in favour of MPs becoming legally binding instruments.

3.8 The EESC draws attention to the importance of integration policies. The Committee is strongly committed to the drive for integration and to the role of civil society organisations. The European Integration Forum, which meets every six months at the EESC, is a key instrument for the EU institutions. The European Integration Fund is a key financial instrument that should be expanded.

3.9 Integration policies involve both immigrants and the host societies, promote equal rights and duties and an intercultural, interethnic and interreligious dialogue, and are linked to the protection of fundamental rights and action against racism, xenophobia and discrimination. The Committee

underlines that European immigration legislation must guarantee equal treatment in the employment and social spheres for immigrant workers ⁽¹⁵⁾.

3.10 Through its opinions, the EESC has advocated the inclusion in European legislation of the labour and social rights of immigrant workers so that decent working conditions are guaranteed and labour exploitation is prevented.

3.11 Conditions are particularly harsh for undocumented immigrants. Labour inspectorates must monitor compliance with labour standards, in cooperation with the social partners. The EESC would point to the report of the Vienna agency (FRA) on the situation of migrant workers with irregular status in the EU ⁽¹⁶⁾.

3.12 The Committee has proposed that the Family Reunification Directive, which is inadequate, be amended. The Commission has published a green paper on which the EESC is currently drawing up an opinion ⁽¹⁷⁾.

3.13 Recent years have seen a series of events, declarations and political decisions that the Committee is watching with mounting concern, as an ancient and familiar disease among Europeans is again on the rise across Europe – xenophobia and a form of nationalism that excludes others. Minorities and immigrants are belittled, insulted and targeted by aggressive, discriminatory policies.

3.14 In past years, xenophobia and populism were promoted by political groups that while extremist, were in the minority. Today, however, such policies are on the agenda and programmes of several European governments, who brandish anti-immigrant and minority policies as an electoral weapon. The EESC urges the EU institutions to prevent the European agenda being polluted by xenophobia and populism.

4. Preventing and reducing irregular migration and trafficking in human beings

4.1 The EESC agrees with the Commission on the importance of preventing irregular immigration.

⁽¹⁵⁾ EESC opinion on the Proposal for a Decision of the European Parliament and of the Council concerning the European Year of Intercultural Dialogue (2008), OJ C 185, 8.8.2006, p. 9.

⁽¹⁶⁾ Report of the EU Agency for Fundamental Rights (FRA) on Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States (July 2011), www.fra.europa.eu.

⁽¹⁷⁾ Green Paper on the Right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC) and EESC opinion on Green Paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC) – not yet published in the OJ.

⁽¹⁴⁾ OJ C 48, 15.2.2011, pp. 6–13.

4.2 Undeclared work must be combated and the directive imposing penalties on employers who exploit immigrants with irregular status must be applied effectively in national legislation⁽¹⁸⁾. Immigrants who are staying illegally are highly vulnerable to labour exploitation, and should be seen as victims. The social partners should work together to reduce irregular employment and labour exploitation, in cooperation with labour inspectorates.

4.3 The Committee has already argued⁽¹⁹⁾ that the EU needs a credible and effective external borders policy that is legitimate and subject to democratic scrutiny and independent evaluation. The Member States must give Frontex more operational powers and more autonomy in terms of its work and resources (technical equipment).

4.4 Joint operations coordinated by the Agency and their repercussions on fundamental rights and administrative safeguards as laid down in the Borders Code must, however, be subject to democratic scrutiny by Parliament and the FRA. This must be accompanied by ongoing evaluation, especially regarding Frontex's activities and agreements with third countries, the effectiveness of joint operations and the quality of its risk analyses.

4.5 The EESC considers it crucial that Frontex should fulfil its obligations concerning access to international protection for asylum seekers and the principle of *non-refoulement*.

4.6 In its communication, the Commission indicates that 'without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility'⁽²⁰⁾. The EESC would however point out that these situations are closely related.

4.7 The EESC has already stated in various opinions⁽²¹⁾ that there is a clear link between legal and illegal immigration, because where adequate, transparent and flexible channels for legal immigration do not exist, irregular immigration flourishes.

4.8 Although most people under irregular circumstances in Europe enter legally, others are the victims of criminal networks. The EU must include the fight against criminal human trafficking and smuggling networks in the MPs. Victims must be guaranteed protection.

⁽¹⁸⁾ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168 of 30.6.2009, p. 24.

⁽¹⁹⁾ OJ C 248, 25.8.2011, p. 135–137.

⁽²⁰⁾ Communication COM(2011) 743 final, p. 5 of the English version.

⁽²¹⁾ OJ C 157, 28.6.2005, p. 86–91.

4.9 The dialogues must also cover return and readmission procedures, which must always be based on respect for human rights. The Committee hopes that the FRA will draw up a strict code of conduct for forced returns, based on the twenty principles for forced return drawn up by the Council of Europe's Committee of Ministers⁽²²⁾.

4.10 Regarding the detention of immigrants with irregular status, the Committee agrees with the Commission's view that 'measures should be taken to ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention'⁽²³⁾. The EESC considers that people with irregular status are not criminals, and regrets that some national actions misuse the Return Directive, which the Committee believes must be amended in order to provide proper safeguards for fundamental rights.

4.11 The EESC vehemently rejects the idea that minors should be held in the same detention centres as adults: minors must live in an open social environment and, whenever possible, with their families.

4.12 Priority must be given to combating people-trafficking, and it should be included in all the dialogues. Before signing any MP with the EU, these countries must be required to ratify the UN Convention against Transnational Organized Crime and the Protocols Thereto on trafficking in persons and smuggling of migrants and to apply them in their legislation.

4.13 The EESC demands that the authorities step up the fight against criminal organisations that feed on human trafficking and the smuggling of migrants. People who fall into their hands should be seen as victims who must be protected.

5. Promoting international protection and enhancing the external dimension of asylum policy

5.1 Asylum seekers are often unable to submit their applications on European territory because the controls set up to stop irregular immigration do not allow them to enter Europe. This gives rise to a glaring contradiction between the measures to stop irregular immigration and the right to asylum.

5.2 The principle of *non-refoulement* at the border must be guaranteed, and all persons requiring international protection must be able to submit an application in the EU. Such applications must be processed by the competent national authorities.

⁽²²⁾ *Twenty guidelines for forced return*, CM(2005)40.

⁽²³⁾ Communication COM(2011) 743 final, p. 16 of the English version.

5.3 The Committee supports the Commission's efforts to improve European asylum legislation ⁽²⁴⁾, which must achieve a high level of harmonisation with a single status and transparent, effective procedures. People in the EU who are receiving protection or requesting asylum must be able to join the labour market, under equal conditions.

5.4 The EESC also supports cooperation with third countries in order to strengthen their asylum arrangements and increase their compliance with international standards.

5.5 In addition, the third countries with which MPs are signed must be signatories to the Geneva Refugee Convention, must have set up asylum structures and must be safe countries from the human rights point of view. The EU must work together with them in order to improve their asylum systems.

5.6 The EESC supports the implementation of the Regional Protection Programmes, and considers that improving asylum structures in third countries must not prevent those asylum seekers who need to submit an application in a European country from doing so.

5.7 The Mobility Partnerships should not entail the European partners charging the full cost of asylum procedures to persons passing through their territory. The EU must cooperate by means of the Asylum Fund.

5.8 The EU must remain a place of reception and asylum and must reinforce solidarity between the Member States and step up resettlement programmes.

6. Maximising the development impact of migration and mobility

6.1 The EU must cooperate so that migrants' countries of origin can offer decent job opportunities to all, thereby facilitating voluntary migration. For most people, migration is at present not a voluntary choice. The Committee supports the work of the ILO to promote decent work.

6.2 The EESC welcomes the fact that the Commission has established a clear link between admission policy for highly-qualified workers and development cooperation policy with the aim, among other things, of preventing a brain drain and loss of human capital in the countries of origin.

6.3 The Committee would however like this commitment to be increased. The Commission highlights the need for 'efforts to mitigate brain drain', but in connection with admissions policy calls for 'special efforts to attract highly skilled migrants in the global competition for talent'. These two objectives are frequently contradictory. The communication, however, fails to set any limits on attracting 'talent' in order to achieve its aim of mitigating the brain drain. There is a single reference to this dilemma, in the context of health personnel: the communication expresses support for the WHO Code of practice, and backs circular migration of health staff.

6.4 However, the brain drain does not affect only the health sector: a broader code of practice is therefore needed, restricting the intake of highly-qualified workers from specific countries and occupations. The EESC proposes that the brain drain be limited by the MPs, so that migration is a positive factor for both sides.

6.5 The EU must establish compensation arrangements for countries whose human capital is depleted due to emigration to Europe. Among other measures, compensation should include support for their education systems and for the development of labour institutions in order to create jobs and improve working conditions.

6.6 The Committee has proposed that the Directive on the status of long-term residents be made more flexible, to facilitate the circular mobility of many professionals between the EU and their countries of origin, without loss of permanent residence rights, and to make it easier to maintain and strengthen links that may be highly useful to development.

6.7 Circular migration systems currently lead to the loss of human capital in the countries of origin, since most immigration occurs in a haphazard way. The EESC considers that human capital can be enhanced by means of carefully structured procedures combining training, qualifications, social rights and employment.

6.8 The EESC echoes the ILO's concern at the risk that circular immigration may be used to curtail labour and social rights and block permanent residence. For this reason, the EESC proposes that the principle of equal pay and working conditions should be upheld for seasonal immigrants.

6.9 In previous opinions ⁽²⁵⁾, the EESC has drawn attention to the importance of diaspora organisations and their role in development. The EU should back diaspora activity.

⁽²⁴⁾ EESC opinion on the *Green Paper on the future European asylum system*, OJ C204 of 9.8.2008, p. 17.

EESC exploratory opinion on the *Added value of a common European asylum system both for asylum seekers and for the EU Member States*, OJ C 44 of 11.2.2011.

EESC opinion on the *Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast)*, OJ C 24 of 28.1.2012.

⁽²⁵⁾ OJ C 120, 16.5.2008, pp. 82–88 and OJ C 44, 16.2.2008, pp. 91–102.

6.10 Equally, initiatives to lower the cost of transferring remittances and their use for development purposes should continue. The EU supports the setting-up of an annual remittances forum and the creation of a common portal.

6.11 The EESC advocates the introduction of a support service for diaspora organisations, to facilitate coordination between all organisations working for the development of a given country or region, and its coordination with international development cooperation bodies. This service should channel resources to projects. The EU should support diaspora organisations and facilitate the creation of representative platforms.

7. Funding and assessment

7.1 The future programming of the financial instruments must facilitate the implementation of the Global Approach. The Committee is currently preparing an opinion on this subject at the request of the Commission.

7.2 The EESC proposes that an independent study be carried out on the effectiveness and impact of the MPs that are currently in force. The EESC supports the Commission's initiative to ensure that MPs are equipped with an efficient assessment mechanism.

7.3 The bilateral agreements to date reveal that MPs are used to facilitate short-stay visas and readmission agreements, while the other aspects of the Global Approach remain in the background. Any assessment of the MPs must cover the Global Approach's four pillars.

7.4 Furthermore, the MPs, which are joint declarations of policy, are not legally binding on the signatory countries: the EESC therefore proposes that they be turned into legally binding international agreements.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on a European Union energy-efficiency labelling programme for office equipment amending Regulation (EC) No 106/2008 on a Community energy-efficiency labelling programme for office equipment’

COM(2012) 109 final

(2012/C 191/24)

On 26 March 2012 the Council decided to consult the European Economic and Social Committee, under Article 194 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on a European Union energy-efficiency labelling programme for office equipment amending Regulation (EC) No 106/2008 on a Community energy-efficiency labelling programme for office equipment

COM(2012) 109 final.

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 480th plenary session of 25 and 26 April 2012 (meeting of 25 April), by 144 votes with 4 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 25 April 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

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