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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

520ND PLENARY SESSION OF THE EESC ON 19 AND 20 OCTOBER 2016

Opinion of the European Economic and Social Committee on ‘A performance-based EU budget and its focus on real results: the key to sound financial management’

(own-initiative opinion)

(2017/C 034/01)

Rapporteur: Mr Petr ZAHRADNÍK

Plenary Assembly decision 21/01/2016

Legal basis: Rule 29(2) of the Rules of Procedure

Own-initiative opinion

Section responsible Section for Economic and Monetary Union and Economic and Social Cohesion

Adopted in section 05/10/2016

Adopted at plenary 19/10/2016

Plenary session No 520

Outcome of vote 139/0/3

(for/against/abstentions)

1. Conclusions and recommendations

1.1. In the EESC’s view, the EU budget can constitute an essential tool in dealing with the EU’s existing challenges and structural changes. However, there needs to be a thorough analysis and evaluation of where its funds are spent, how they are spent, how the performance of the funds thus spent is evaluated and how the results achieved are communicated (1). If this is done, the EU budget can take on the EU’s key challenges and help to restore the European population’s faith in the EU, as well as reducing its volume in both absolute and relative terms.

(1) Georgieva Kristalina, European Commission Vice-President for the Budget and Human Resources, ‘EU Budget Focused on Results’ website.
1.2. At the same time, a prerequisite for boosting the EU budget’s performance is the establishment of clearly defined priority objectives for the benefit of EU citizens, corresponding aggregated indicators and a robust reporting system with regard to the actual activities financed by the EU budget, which would maximise value for money. Some options could be, for example, ex-ante conditionalities, financial instruments, or flexibility and the capacity to cope with unexpected challenges (2). First and foremost, the quantitative aspect of the EU budget, which the EESC also considers to be so important for defining the essential priorities and their corresponding policies, must also be complemented by its qualitative dimension.

1.3. The EESC endorses an approach that recognises that not only must EU budget expenditure comply with the rules of legality and regularity, but there must also be a targeted and systematic focus on the results and performance the budget delivers in addressing the EU’s priority areas.

1.4. The EESC agrees that adopting performance culture rules in relation to the EU budget requires maintaining close linkage between the scope and nature of expenditure, on the one hand, and a comprehensive set of aggregate performance indicators for measuring results and performance, on the other hand.

1.5. At the same time, the EESC takes the view that such a performance culture is not acquired in a single step, but through a process of development that presupposes both the appropriate legal environment and the selection of tools for encouraging key actors to adopt the desired behaviour. Forthcoming discussions and implementation of a performance-based EU budget must also specify in greater detail its substance.

1.6. The EESC is convinced that a budget conceived in these terms is able to guarantee the delivery of real results and impacts in EU priority areas that bring a clearly quantifiable added value. This means that any discussion of a performance-based EU budget is also a discussion of EU political priorities capable of bringing about the necessary structural changes.

1.7. So far, pilot tests have been carried out that measure what impact the EU budget has on how the priorities and quantified objectives of Europe 2020 are met. The EESC sees this initiative as a step in the right direction, but it needs to be taken forward in a systematic and much more comprehensive manner. Tests have revealed a high degree of inconsistency between the aims envisaged and the corresponding results, as well as numerous examples of inefficient use of EU resources and the accompanying procedural failures.

1.8. The EESC supports further, better and closer integration and linkage — through impact analysis indicators and their interpretation — of the Europe 2020 strategy and the 2014-2020 multiannual financial framework or the EU budgets for the years it covers. At the same time, the question of whether the Europe 2020 strategy does actually continue to target the EU’s real development aims in the second half of this decade needs to be examined.

1.9. The EESC also supports a move to ensure that the partnership agreements and operational programmes can effectively convey the EU’s objectives and priorities into Member State operational objectives, in the form either of improvements in shared management or of procedural improvements in the programmes managed directly by the European Commission in the Member States.

1.10. The EESC recommends encouraging Member States to ensure that their partnership agreements and operational programmes include a comparable set of quantifiable results that can be achieved with support from the EU budget and can be subsequently evaluated. All partnership agreements and programmes should include common result indicators on a cross-cutting/horizontal basis, clearly identifying the contribution of each fund and the ESIF as a whole, and designed so as to enable monitoring of progress at the level of the EU, the Member States and their various regions.

1.11. The EESC views the forthcoming mid-term revision of the 2014-2020 multiannual financial framework as an opportunity for greater deployment of a performance and results-oriented approach, which should then be fully evident in the shape of the multiannual financial framework starting in 2021.

(2) See analysis: point 2.2.3.
1.12. The EESC believes that the post-2020 multiannual financial framework should act, together with a new competitiveness and development strategy and the social rights pillar currently in preparation, as a crucial medium-term strategic platform (with the same time-scale as the competitiveness strategy), with the structure and weighting of individual expenditure items adjusted to real-life needs and priorities. At the same time, it should allow for greater flexibility in addressing newly emerging needs. The EESC would also welcome an amendment to the method of handling EU budgetary resources, with the aim of achieving greater effectiveness via the wider use of repayable instruments and seeking complementarity with subsidy funds. In addition, there is still significant scope for improvement in the methods of assessing the EU budget and its effectiveness. Budgetary flexibility is an essential parameter from the point of view of the EU budget's ability to respond to new initiatives, threats and opportunities, as well as maintaining the EU's ability to take action (examples include the migration crisis, the need to manage economic shocks or changes to the number of EU members and the resulting effect on budget flows, and an adequate resource base for solidarity funds in the event of natural disasters). This not only concerns the volume and structure of EU budget expenditure, but also the revenue side.

1.13. The EESC recommends that identifying the corresponding EU budget revenues and their composition (finding a balanced link, based on solidarity, between Member State contributions and own budgetary resources) should also be reflected in EU budgetary policy after 2020.

1.14. The EESC agrees with further expanding the options for an active fiscal policy, such as the possibility of issuing EU bonds. To that end, the fiscal framework and procedures of the EU budget should ideally be improved, and the issue of the scope of EU fiscal policy in Eurozone countries, on the one hand, and other EU Member States, on the other, should be satisfactorily resolved.

2. Analysis and description of the problem

2.1. Basic facts

2.1.1. The EU budget constitutes a major and key tool for financing the EU's priorities, accounting for approximately 1% of EU GDP, and amounting to EUR 145.3 billion in 2015. The EU budget plays a fairly significant role in underpinning economic policies in individual Member States, accounting for an average 1.9% of their public expenditure, and considerably more than 10% in some cases.

2.2. Introduction to the issue

2.2.1. Given the volume of funds involved, it is important to make sure they are allocated not only legally and regularly, but also, while respecting these rules, in such a way as to above all achieve the aims and corresponding results and to comply with the principles of sound financial management and a performance culture. Identifying the real effects of the EU budget, as measured by relevant macroeconomic indicators and benchmarks, is an issue that today features in all political thinking about EU budget policy.

An effective budget means properly matching EU budget expenditure with the EU's real priorities for the period in question. A performance culture is based on three pillars: strategy, simplification and budget procedure.

2.2.2. The EU budget and how it is used should adhere to the following priorities:

— adopting an improved, performance-based and result-oriented approach, balancing the traditional view of compliance with rules (legality and regularity) with the adoption of new elements reflecting the current and future needs (see below) of EU finances;

— a sharper focus on performance and results presupposes improvements in working with data, and the accessibility and availability of data in the form needed for assessing the real benefits — the assumption being that the impact of this outweighs the additional costs;

— evaluating the quality of the regulatory framework for allocating the EU budget;
— given what kind of things the EU budget supports, it is essential to view its development not from the perspective of a single isolated year, but as a continuous medium-term process in which individual years represent a development trajectory that is required to secure the results involved;

— respecting the very close link between the EU budget and the new model of EU economic policy (3) and the EU's current economic performance over the medium term;

— the need for continuity in EU budget policy and the implementation and evaluation of its goals.

2.2.3. The EU budget includes some new elements related to the working of the 2014-2020 multiannual financial framework which are relevant from the perspective of a more performance-based and results-driven approach:

a) thematic concentration: support from EU funds should go only to priority areas and should not be focused on just anything at all; the priorities must be clearly defined and supported by quantitative analysis and feasibility plans; the amount of priorities must be strictly limited; the justified priorities must be covered by sufficient financing to achieve real results and benefits;

b) integrated and place-based approach and synergies: programmes and projects should not only yield results and benefits in themselves, but these results and benefits should mesh with those of other programmes and projects through synergies; synergies should be achieved within territorial units defined on the basis of the subsidiarity principle; for this system to work, it is important to create a management matrix to ensure appropriate conditions for integrated projects;

c) conditionalities and performance reserves: the principles of sound financial management assume that EU funding is carried out under appropriate national, macroeconomic and institutional conditions that constitute a prerequisite for carrying out allocation as such; on the other hand, a performance reserve is introduced as a bonus for those that perform well;

d) simplification: the EU funding system is extremely complex in all manner of ways, which makes it difficult to manage effectively and to measure its real results and benefits;

e) better quantified results: it is very important to properly measure the results actually achieved and to be able to draw clear and accurate lessons from the findings with a view to setting and adapting fiscal policy; to this end, it is essential to improve the data analysis system and its management and how indicators are used.

2.2.4. The aim here is for the EU to ensure that its fiscal policy and the practical operation of its budget are better aligned with its needs by establishing a more meaningful balance between the formal and procedural sides of EU budget expenditure, on the one hand, and performance-based and results-driven approaches, on the other hand. A common perception and a common understanding of this concept are also extremely necessary with regard to performance and results.

2.2.5. Non-compliance with formal rules has long been measured by the error rate indicator. This hovers around the 4 % level (i.e. about 4 % of the EU budget is not spent in accordance with the formal rules; while this is not a bad result, it nevertheless amounts to around EUR 6 billion in absolute terms). The table below tracks the overall error rate in recent years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Error Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>3.9 %</td>
</tr>
<tr>
<td>2012</td>
<td>4.8 %</td>
</tr>
<tr>
<td>2013</td>
<td>4.7 %</td>
</tr>
<tr>
<td>2014</td>
<td>4.4 %</td>
</tr>
</tbody>
</table>

(3) The Europe 2020 strategy, the European semester, the six-pack, the two-pack and country-specific recommendations (CSRs), among others; one approach might be close links to country-specific recommendations as a benchmark for efficient allocation of the EU budget.
2.2.6. The key principle for the EU budget is the soundness of financial flows and the actual programmes and projects funded by them, which makes it possible to gauge whether optimal use is being made of every aspect of EU resources. The EESC agrees with the current trend towards greater emphasis on performance and results, as demonstrated by the work of the European Commission (Budget Focused on Results Initiative (*) and the European Court of Auditors (the structure of its annual report for 2014 (*) and the special chapter on performance; the passages on shared management include the initial results of the performance evaluation programme carried out as a pilot exercise).

2.2.7. The EESC supports the approach adopted during the pilot test, which is aimed at analysing the relationship and interconnection between the 2020 strategy and partnership agreements (or operational programmes), since these are key tools for implementing EU cohesion policy, itself an important component of EU budget expenditure. This test can be regarded as the germ of a comprehensive approach to evaluating the performance and results of the EU budget (†).

2.2.8. It is vital to have a process for handling, managing and sharing data and information between bodies and institutions of the EU (mainly the European Commission) and Member States if we are to achieve a rounded monitoring of the formal and performance-related characteristics of the EU budget. The process of EU budget expenditure generates huge amounts of data and information, but this is little used in practice to ensure an objective evaluation of both the error rate and, in particular, the actual results achieved by the EU budget, and establishing procedures to improve the situation.

3. Key comments

3.1. The EESC takes the view that the main purpose of the EU budget is to benefit the people of the EU while protecting the financial interests of the EU itself; the benefits take the form of support provided in line with development and operational priorities and which is compatible with the economic policy framework and actual and expected economic performance; protecting the EU’s financial interests means using its budget appropriately in accordance with the rules and without errors or fraud. The current policy approach should help to achieve full compliance and a balance between these factors.

3.2. The EESC believes that the switch to a performance-driven EU budget cannot be achieved in one go. It is crucial that the basic legal standards and objectives of the EU budget are designed with the intention of respecting quality indicators and achieving measurable results.

3.3. A performance-driven EU budget would also be helped considerably if the budget period (the current seven-year financial framework) and that of the EU’s key development strategy (the current ten-year Europe 2020 strategy) could be made to coincide. From this perspective, 2021 will offer a unique opportunity to actually achieve this and create the conditions for optimal operation of a performance-based and results-driven EU budget.

3.4. The EESC notes and respects the findings of the European Court of Auditors’ annual report for 2014, which revealed a number of problem areas where the link between the Europe 2020 strategy and partnership agreements or operational programmes does not work as well as it might. This report states that the various tools are not designed in a way that would enable the policy objectives of the Europe 2020 strategy to be systematically translated into practical operational objectives (defined by partnership agreements and operational programmes) (⁺).

3.5. The EESC takes the view that the potential benefits of achieving synergies between the five European structural and investment funds (ESIF) under one regulatory and management framework and the partnership agreement in each Member State have so far not materialised, while the practice of different rules applying to individual funds continues. This leads to the fragmentation of programming (rather than the necessary achievement of synergies between them).

(*) The initiative was announced by European Commission Vice-President for the Budget and Human Resources Kristalina Georgieva at a conference on 22 September 2015.

(*) The annual report was published on 10 November 2015.

(*) Several resolutions of the European Parliament in the period 2013-2015 followed took a similar line, but focused on specific topics (see the Geier and Gräßle reports); the comprehensive focus on the subject in the documents of the European Parliament can be seen in the European Commission’s Discharge for 2014 and the Dlabajová report (2016).

⁺ See, for example, paragraphs 3.10 to 3.12 of the European Court of Auditors 2014 Annual Report.
3.6. In the EESC’s view, considerable scope for improving the performance-based and results-driven approach is offered by the existence of two new elements in the use of EU funds in the 2014-2020 period, namely conditionalities and performance reserves. It is precisely the application of macroeconomic conditionalities that should ensure that EU budget expenditure is allocated in Member States in an adequately sound macroeconomic environment, so that those that do not make efforts to remedy their macroeconomic problems are unable to make full use of these funds. The existence of the performance reserve should also adequately motivate Member States to work towards fulfilling the EU’s strategic objectives, supported by the EU budget.

3.7. The EESC believes that the pilot to test the performance-based and results-driven EU budget through links to the Europe 2020 strategy priorities should go further by adding other relevant areas to make the evaluation of such a budget truly coherent and comprehensive — attention should be paid, for instance, to the country-specific recommendations (CSRs) and their consistency with indicators based on the implementation of the European semester.

3.8. When considering the way that the EU budget operates, the EESC recommends that consideration be given to the notion of market failure, the eradication of which should be a target for EU budgetary resources; signs of market imperfections or failures can include, for example, information asymmetry or financial institutions making a commercial evaluation of return on investment that discourages financing for certain types of projects because it ignores positive externalities and wider social benefits since these are not relevant to the commercial case in question, though they are important in terms of the support given under EU funding.

3.9. The EESC agrees with the need for fundamental improvements in the areas of shared management between EU bodies and institutions (mainly the European Commission) and Member States. 76% of all EU budget expenditure is allocated via shared management. The more Member States meet the quantified objectives of the Europe 2020 strategy, the more the EU budget will be linked to the strategy’s objectives and the better these objectives reflect the real economic, social, territorial and environmental needs of the EU, the more favourable will be the sound financial management environment we create for a seamless connection between the European Commission and the Member States.

3.10. The EESC believes that a significant indication of the increasing importance of a performance-based and results-driven EU budget is the emphasis on greater use of financial engineering instruments (FEI) — i.e. innovative financial instruments whose very essence fundamentally alters the way public resources are used in the EU and what is expected of them. Despite the undoubted potential of FEIs, only about 65% of these funds reached final beneficiaries over the 2007-2013 period (the remaining funds were only ‘parked’ in FEIs so their use could be formally documented). The importance of this issue will increase still further after 2020, not least in connection with the need for greater complementarity with the European Fund for Strategic Investments (EFSI). This is a key strategic consideration with regard to the focus on joint EU budgetary funds from 2021 onwards.

3.11. At the same time, the EESC feels that a sharper focus on performance and results does not mean paying less attention to the legality and regularity of procedures. The importance of compliance with legal and procedural rules must not be sidelined. Given that there is a rate of error in all cases where funds should not have been released because they were not used in accordance with the rules, it is somehow automatically assumed that these rules are correct and free from internal inconsistencies or undesirable elements. This is one reason why a procedure that obeys the rules of sound financial management should include a verification of the impact of these regulations in order to test their compatibility and consistency with EU needs and objectives (8).

3.12. The EESC agrees that the practical procedures involved in EU budget expenditure are highly complex. The efforts currently being made to simplify all activities associated with the EU budget, which apply both to procedural matters and to matters of substance, also help to satisfy the requirement of sound financial management; these simplification efforts should bring about a reduction in the excessive administrative burden and limit the practice of gold-plating in individual Member States.

(8) This could be done, for example, using Regulatory Impact Assessment (RIA), which is a very effective tool for achieving genuinely sound financial management.
3.13. The EESC believes that the proposals referred to in section 1 of this opinion, leading to final conclusions and recommendations (section 1), are key elements of the considerations regarding the EU’s future budgetary policy. They can be partially applied in relation to the mid-term revision process of the 2014-2020 multiannual financial plan, but will only be fully reflected in the budgetary rules from 2021 onwards. The conceptual framework for forward planning and reform needs in relation to the budget and multiannual financial framework after 2020 can draw on — or build on — recent EESC opinions (9).

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on 'The European control mechanism on the rule of law and fundamental rights'

(own-initiative opinion)

(2017/C 034/02)

Rapporteur: José Antonio MORENO DÍAZ

Co-rapporteur: Ákos TOPOLÁNSZKY

Consultation European Economic and Social Committee, 21/01/2016

Legal basis Rule 29(2) of the Rules of Procedure

Own-initiative opinion

Section responsible Employment, Social Affairs and Citizenship

Adopted in section 27/09/2016

Adopted at plenary 19/10/2016

Plenary session No 520

Outcome of vote (for/against/abstentions) 202/1/7

1. Observations and proposals of the EESC: an EU mechanism on the rule of law, democracy and fundamental rights

1.1. The European Union is not only a common market; it is a union of common values, as stated in Article 2 of the Treaty. Furthermore, it recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU. These values on which the European Union is founded form the basis of integration and are part of the European identity. As well as being criteria for accession, they must be respected in practice by the Member States, thereafter. It is therefore essential that the Treaty procedures be applied when these values come under attack. The EESC considers that the European institutions should take a proactive and preventive approach in their political activities, in order to anticipate and avoid problems.

1.2. Like many European civil society organisations, the EESC is alarmed by the deterioration in human rights, the populist and authoritarian drift that is spreading and by the risk this poses to the quality of democracy and the protection of fundamental rights, rights that are guaranteed by both the European Court of Human Rights and the Court of Justice of the European Union and constitute general principles of EU law (1).

1.3. The values referred to above are coming under attack all across Europe. Many civil society organisations are condemning the situation in several Member States and are hoping that the EESC will adopt new initiatives so that the EU institutions respond decisively. Not only is the European Union in danger but also citizens' confidence in national and European democratic institutions. The EESC considers the risk to be very serious and systemic in nature.

(1) Article 6 TEU.
1.4. The specific content of the principles and standards that derive from the rule of law may vary at national level, depending on each Member State’s constitutional system. However, the case-law of the Court of Justice of the European Union and the European Court of Human Rights, as well as documents drawn up by the Council of Europe, in particular the Venice Commission, set out these principles and EU values. These principles include legality, which implies a transparent, responsible, democratic and pluralistic legislative process; the prohibition of arbitrariness on the part of the executive powers; independent and impartial courts; effective judicial review, including respect for fundamental rights; equality before the law; and the protection of human rights, including those of persons belonging to minorities.

1.5. Both the Court of Justice of the European Union and the European Court of Human Rights have confirmed that these principles are not purely formal and procedural requirements, but instead constitute the means to ensure compliance with and respect for democracy and human rights. The rule of law is a constitutional principle with both procedural and substantive components.

1.6. Respect for the rule of law is intrinsically linked to respect for democracy and fundamental rights: there can be no democracy and protection of fundamental rights without respect for the rule of law, and vice versa: fundamental rights are only effective if they are justiciable. Democracy is protected through the fundamental role of the judiciary, including the constitutional courts. It is worth adding that these are the rights of people, not of Member States or governments. Urgent priority should therefore be given to defending them.

1.7. In light of the work of the European Parliament’s Committee on Constitutional Affairs and taking into account the Commission reports and the European Parliament’s resolution of 27 February 2014 on the situation of fundamental rights in the European Union, the EESC believes that — in due course — Article 51 (2) of the EU’s Charter of Fundamental Rights should be amended so as to extend its scope and make sure all provisions of the Charter are applicable in the Member States (3).

1.8. There is regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced if the EU signs up to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The EESC proposes that the Commission submit, in the first half of 2017, a proposal for the EU to sign up to this convention, which is specified in Article 6(2) of the Treaty.

1.9. The obligations incumbent on candidate countries under the Copenhagen criteria must continue to apply in the Member States after joining the EU by virtue of Article 2 of the Treaty and as such the EESC believes that all Member States should be assessed on a regular basis, in order to verify their continued compliance with the EU’s fundamental values and to avoid the mutual trust breaking down.

1.10. The EESC believes that the EU institutions must strengthen the procedures and mechanisms to protect and defend democracy, the rule of law and fundamental rights in all Member States. In recent years and especially before 2014, we have noted with concern that the Commission, despite having launched infringement procedures in some cases, has failed to carry out its role as guardian of the Treaties effectively and has been unable to provide an adequate response to violations of the European principles and values that have occurred in several Member States.

1.11. The EESC encourages the Commission to take an active approach in protecting and defending the EU’s values and principles, as set out in Article 2 TEU, in all Member States and use the existing 2014 framework to the fullest extent.

1.12. The EESC proposes the adoption of a shared approach by the three main EU institutions (Commission, Council and Parliament). Dialogue and cooperation between the institutions are essential for such an important issue. The EESC recommends that the Council supports the existing Commission framework by adopting a Council decision reinforcing the framework and supporting further strengthening of the rule of law.

(2) Article 51 ‘The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.’

(3) The Convention proposal and the EESC’s opinions did not include the limitations decided by the European Council in Article 51.
1.13. Civil society organisations play a key role in the promotion of democratic values, in the proper functioning of the rule of law and the protection of fundamental rights. Given the shrinking democratic space and constraints NGOs face in the Member States, the positive grass-roots role played by NGOs is admirable. The Committee is working very actively with the social partners and NGOs on the protection of fundamental rights and the rights of minorities, refugees and immigrants.

1.14. The EESC, as a body representing European organised civil society, wishes to open a dialogue with the Council, the Commission and the Parliament, in order to improve governance and strengthen policy coordination between the EU institutions and the Member States, and to put in place an early warning system.

1.15. The EESC considers it vital to create a legally binding European mechanism, a framework actively involving the Commission, the Parliament and the Council and in which the EESC plays an important role representing civil society. This mechanism will complement the Commission’s framework and the intergovernmental dialogue launched by the Council. This mechanism could be called the ‘new Copenhagen mechanism’ (4) and would be subject to democratic and judicial oversight (5).

That mechanism should, among other things, examine aspects such as legality, the hierarchy of norms, legal certainty, equality, non-discrimination, free access to justice and due process, prevention of abuse of the law and arbitrariness on the part of public authorities, separation of powers, respect and protection for political pluralism, minorities and social and sexual diversity, etc., respect for freedom of expression and of the press, with a view to identifying current shortcomings and calling for them to be remedied.

1.16. The Committee wishes the draft report being debated by the LIBE Committee of the European Parliament to be adopted and an interinstitutional agreement to be reached on the implementation of European Union Pact on democracy, the rule of law and fundamental rights. In general, the EESC supports the proposal as it contains the basis for the implementation of an interinstitutional agreement that is legally binding and that strengthens European governance and policy coordination between the EU institutions and the Member States. The EESC should be included in this pact, enabling a civil society debate at the EESC and the EESC should have a role in the proposed DRF semester.

1.17. The mechanism should be based on indicators that are themselves based on quantitative and qualitative data:

— indicators on the rule of law;

— indicators on the quality of democracy;

— indicators on the protection of fundamental rights.

1.18. The Committee stresses the importance of Titles I, II, III and IV of the Charter for drawing up indicators, taking into account that fundamental economic, social and cultural rights are ‘indivisible’ from civil and political rights.

1.19. It is important that both Member States and the institutions, bodies and agencies of the EU respect fundamental rights, including social rights, especially in times of crisis. This should also apply to relations and agreements with third countries, not only in terms of complying with these rights but also ensuring that they are enforced.

1.20. The mechanism requires the launch of a monitoring and evaluation system using transparent procedures. The FRA should explicitly be given the mandate to assist such a mechanism. The EESC supports the Parliament’s proposal to create a group of independent experts (6) chaired by the Scientific Committee of the FRA.

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(6) Appointed by the Member States, ALLEA, ENNHRI, Venice Commission, CEPEJ, UN, OECD.
1.21. The Committee proposes that it form part of this group. It also proposes that the experts appointed by the respective governments are the ombudsmen of each Member State.

1.22. On the basis of the indicators and using transparent procedures, the group of experts will review and assess the situation in each Member State. Here, the EESC can contribute by organising missions to the Member States to review the situation in cooperation with local civil society and draw up reports.

1.23. The EESC supports the implementation of the DRF semester. Based on the experts’ reports, each year the Commission will draw up country-specific reports, including recommendations: the Parliament will hold an interparliamentary debate and will draw up a resolution; the Council will hold the annual dialogue and will adopt conclusions. The mechanism must function in the context of a new annual policy cycle with the aim of ensuring a common and coherent approach in the EU.

1.24. The Committee would like to participate in the preparation of the interinstitutional agreement, and might consider setting up a permanent group to organise hearings with civil society and draft opinions and reports in this regard.

1.25. As part of the DRF semester, in cooperation with civil society organisations it could organise an annual forum to review the situation of democracy, the rule of law and fundamental rights, and could draw up proposals and recommendations to be forwarded to the Commission, the Council and the Parliament. The Committee could also cooperate with the other institutions in the drafting of impact assessments.

2. The Treaty and related issues

2.1. The last few years have highlighted the lack of appropriate mechanisms to protect the values set out in Article 2 of the Treaty on European Union (TEU) which states that ‘the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’.

2.2. The Union is founded on these values, which include respect for democracy, the rule of law and the protection of human rights. The EU has the opportunity to verify compliance with these values in the run-up to the State’s accession to the EU under what are known as the ‘Copenhagen criteria’ or ‘accession criteria’ (7). Membership requires that the applicant country ensures the stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities.

2.3. However, there is no similar mechanism applicable after Member States’ accession. The lack of a mechanism for monitoring democracy, the rule of law and fundamental rights has been referred to as the ‘Copenhagen dilemma’.

2.4. The proper functioning of the EU is based on ‘mutual trust’ between the European institutions and Member States, as well as between the Member States themselves; trust that the laws and policy decisions adopted respect the same principles in respect of the rule of law, democracy and fundamental rights. This creates a level playing-field between Member States in respect of the free movement of persons, goods, services and capital. It also allows governments to cooperate in matters of justice and home affairs, including criminal law, asylum and immigration.

2.5. The European Union was created to ensure peace and prosperity across its Member States and improve the wellbeing of its peoples; it depends not only on the existence of free trade but also on the protection of the EU’s fundamental values. These fundamental values ensure that EU citizens can live free from oppression and intolerance with democratically elected and responsible governments that act in accordance with the rule of law.

2.6. In recent years, political and legislative decisions taken in various Member States have given rise to debates and disputes with the European institutions and with other Member States and the ‘mutual trust’ has been broken. In many cases, due regard has not been shown for the rules of democracy, the rule of law and fundamental rights, and the European Union has not been able to provide an adequate response.

2.7. The EESC notes with great alarm that in various Member States legislation is being adopted and policies implemented that suggest a serious deterioration in the quality of democracy: violation of human rights, especially those of minorities; lack of independence of the judiciary and constitutional courts; restrictions on the separation of powers; limitations on the freedom of the press, freedom of opinion, freedom of assembly; limitations on freedom of association, freedom of information, collective consultation and bargaining, and limitations on other fundamental civil and social rights. On several occasions, the European Union has been confronted by crises in some Member States due to specific issues relating to the rule of law, and the Commission has dealt with these events by exerting political pressure and opening infringement procedures.

2.8. To date, no use has been made of the preventive and penalty-based mechanisms contained in Article 7 TEU, which is the only article in the Treaties for dealing with breaches of democracy, the rule of law and fundamental rights in areas outside EU legislative competence. There are two approaches, one preventive and one penalty-based. However, in practice these have never been used due to the political impact and the strict requirements governing their implementation: only in case of a ‘clear risk’ of a ‘serious and persistent breach’.

2.9. The Commission and the Parliament can intervene in the preventive phase. In the second stage, the Council may sanction the Member State by suspending certain rights, including the voting rights of its representatives in the Council.

2.10. However, the Council enjoys a wide margin of discretion in applying this as it does not have specific and transparent criteria for activating the procedure, for the indicators it will use or what the evaluation procedures will be. The European Parliament, the European Commission and the European Court of Justice (ECJ) have a very limited mandate in these situations (8); similarly there is no provision made for consulting the EESC.

3. The actions of the European institutions

3.1. The **European Commission** adopted a Communication on ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014) 158) in March 2014. The framework will be activated in cases where Member States are taking measures or are tolerating situations which are systematic and are likely to adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law. This would include issues relating to their constitutional structures, the separation of powers, the independence or impartiality of the judiciary, or their system of judicial control, including constitutional justice.

3.2. The Commission's framework aims to address threats to the rule of law in Member States before the conditions for activating the mechanisms set out in Article 7 TEU would be met. It is the responsibility of the Commission and is designed to bridge a gap. It is not an alternative to but a mechanism that precedes and complements the Article 7 mechanisms. In cases where there is clear evidence of the existence of a systemic threat to the rule of law in a Member State, this framework would facilitate a structured dialogue between the European Commission and the Member State. The process of the exchange would entail three main stages: a Commission opinion, a Commission recommendation and a follow-up to the recommendation. The Commission may consult experts when carrying out its evaluation (9).

3.3. The Committee welcomes the Framework to strengthen the rule of law adopted by the European Commission. However, this framework presents a set of limitations.

3.3.1. The evaluation does not provide for periodical comparative analyses of the problems and disputes produced by the Member States in relation to democracy, the rule of law and fundamental rights. By definition, the framework can only be activated when the problem has become ‘systemic’, which is a high threshold. A ‘systemic’ threat can occur when the judiciary is no longer able to make sure that the government acts within the limits of the law, which is already rather late in the game.

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(8) Whereas in EU law the protection of human rights has a mechanism enabling individuals to defend their rights, Article 7 is a general legal and political mechanism that is expressly excluded from the jurisdiction of the Court of Justice.

(9) The FRA (Fundamental Rights Agency); the Network of the Presidents of the Supreme Courts of the European Union; the Council of Europe (Venice Commission); the Association of the Councils of State and Supreme Administrative Jurisdictions and the European Network of Councils for the Judiciary.
3.3.2. The way in which the Commission analyses the information must be transparent with specific indicators or objective procedures; it must also establish protocols for consulting civil society and the EESC.

3.3.3. The framework does not include any specific role for the European Parliament although the parliament is launching its own political initiatives in this regard.

3.3.4. Nor does it provide for any model for closer interinstitutional cooperation.

3.4. The EESC is concerned about the lack of follow-up in the **Council** to the framework to strengthen the rule of law.

3.4.1. At its meeting of 16 December 2014, the General Affairs Council adopted Conclusions on the role of the Council in ensuring respect for the rule of law. The Council undertook to establish an **annual dialogue** between Member States, to take place in the General Affairs Council, and to be prepared by Coreper. The Luxembourg Presidency launched this dialogue in November 2015, and it is intended to cover various specific topics which have not been made public: governments were asked to speak on any aspect of the rule of law that they wanted and to give one example of where they were doing well and one example of a challenge. The result was a series of monologues, rather than a dialogue. States did not engage with each other by providing support, help or criticism, no recommendations were issued or received and there was no commitment to take follow up steps to improve on the challenges identified. At the end of 2016, under the Slovak Presidency, the Council will carry out an evaluation of the experience.

3.4.2. The Council’s Conclusions did not take into account or refer to the Commission’s rule of law framework. The Conclusions do not provide a clear picture of the precise role that the Commission, the Parliament and the EESC will play in this dialogue.

3.5. The Juncker Commission has identified the rule of law as one of its priorities and has appointed Mr Timmermans vice-president responsible for the rule of law and fundamental rights. It is not known, however, whether the Commission will develop criteria and indicators for implementing the rule of law framework.

3.6. The Commission has, for the first time, activated this framework by opening a procedure in the case of Poland for infringing EU rules, taking into consideration a critical evaluation of the situation by the Venice Commission, a body of the Council of Europe.

3.7. The **LIBE Committee of the European Parliament** is currently debating a draft own-initiative report on ‘Recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights’ (2015/2254 (INL) — Rapporteur: Sophia in ’t Veld), which among other issues ‘requests the Commission to submit, by the end of 2016, on the basis of Article 295 TEU, a proposal for the conclusion of an EU Pact for Democracy, the Rule of Law and Fundamental Rights (DRF) in the form of an **interinstitutional agreement** laying down arrangements facilitating the cooperation of institutions of the Union and its Member States in the framework of Article 7 TEU, integrating, aligning and complementing existing mechanisms, following the detailed recommendations set out in the Annex thereto’.

3.7.1. The annex contains the **DRAFT INTERINSTITUTIONAL AGREEMENT: EUROPEAN UNION PACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS** which must be agreed between the Parliament, the Council and the Commission.

3.7.2. The pact includes a scoreboard, an annual interparliamentary debate, and arrangements for remedying possible risks and breaches and for the activation of the preventative or corrective arms of Article 7.

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3.7.3. The Parliament proposes launching an interinstitutional democracy, rule of law and fundamental rights (DRF) semester, to include the Commission framework, the Council's annual dialogue and the interparliamentary debate. The European semester shall be assisted by a secretariat and a group of experts, chaired by the chairperson of the Scientific Committee of the FRA, who will to draw up indicators and assess the situation in the Member States and the recommendations.

3.7.4. The DRF policy cycle will include the annual reports of the Commission, the Council and the Parliament, and an interinstitutional working group on impact assessments will be set up.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
1. Conclusions and recommendations

1.1. The ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by the European Union is a landmark for disability rights, for the EU and its Member States. The review of the EU by the UN CRPD Committee in 2015, concludes the first period of implementation of the CRPD. The UN CRPD committee’s concluding observations (COs) require the EU institutions to meet their obligations since they should organise and coordinate the implementation of the UN CRPD according to the COs. The COs have reconfirmed that the EU policy making on the ground of disability requires a profound transformation in the way policies have been made up to now. So far, the EU has not really undertaken a real adaptation of its policy making to this new transformation required by the UN CRPD.

1.2. The EESC calls on the EU institutions to mainstream the COs into existing and future EU law and policy making. It also asks the European Commission (EC) to report to the UN CRPD Committee by autumn 2016.

1.3. The EESC considers the UN CRPD and the committee’s COs to be a unique opportunity for the EC to present an EU overarching strategy on the rights of persons with disabilities (PWDs). The COs have created momentum that should be capitalised by the EU institutions, and which should lead to disability rights being included systematically in all EU legislation, policies and programmes.

1.4. The EESC underlines that in order to mainstream disability rights, the EC needs to undertake a cross-cutting and comprehensive mapping exercise across all its law, policies and programmes to ensure full harmonisation with the UN CRPD provisions and actively involve representative organisations of PWDs (DPOs) in this process. This mapping exercise should be accompanied by a gap analysis assessing the gaps among the current law, policy making and disability rights mainstreaming and the UN CRPD. The mapping exercise and gap analysis should be explicitly included in the revised European Disability Strategy (EDS).
1.5. The EESC reminds the EC of its obligation to proceed immediately with the revision and update of the Declaration of Competences and its list of instruments. It should also introduce a self-commitment to review and revise the Declaration of Competences at least once during its term of office.

1.6. The EESC acknowledges that the review of the EU by the CRPD Committee took place in the middle of the 2014-2020 programming period, and recognises the difficulties in mainstreaming the new disability rights agenda arising from the COs for the EU in the mid-term reviews of strategies, policies, programmes and funding instruments. However, it recommends that the EC make the utmost efforts to mainstream and include the COs in these review processes and allocate the necessary resources for the implementation of their obligations under the UN CRPD.

1.7. The UN CRPD provides explicitly that the representative DPOs must be consulted and involved in the process of the Convention’s implementation and monitoring. The EESC calls on the EC to carry out a genuine and meaningful structured dialogue with the European Disability Movement (under Articles 4.3 and 33.3). In addition, the EC should establish a capacity building programme for DPOs to empower them to fulfil their fundamental duties.

1.8. The EESC considers that the cooperation and partnership of the EU institutions in the implementation of the UN CRPD is of utmost importance. Therefore, it recommends that an interinstitutional coordination mechanism should be put in place to facilitate the swift and smooth implementation of the COs and UN CRPD, including DPOs’ consultation and involvement.

1.9. The COs require the EDS to be profoundly reviewed and revised. Therefore, the EESC asks the EC to take stock of developments in disability rights and broaden the scope of the EDS by introducing more areas of action and linking it to the review and revision of policies, programmes and funding instruments (e.g. Europe 2020, the Gender Equality Strategy, the Children Rights Strategy, EU external action commitments) with a clear implementation timeframe, budget and specific and precise benchmarks and indicators.

1.10. The EU has committed itself to implement fully the Sustainable Development Goals that are set out in the UN 2030 Agenda and needs to ensure that the COs and the UN CRPD provisions are fully taken into account by the EU, both internally and externally. Therefore, the EESC strongly recommends that the EC should include the implementation of the 2030 Agenda in the revised EDS by establishing European targets and actions in order to achieve all SDGs inside the EU also for PWDs.

1.11. The EESC strongly believes that the EU should prevent EU funding from being used for either the creation or the continuity of operation of institutionalisation structures. The EESC fully supports the use of EU funding to create community based services for PWDs in order for them to live independently in their communities. Institutionalisation of PWDs is a violation of their rights and the EESC urges the EC to promote deinstitutionalisation more systematically and effectively through specific policies, programmes and funding instruments.

1.12. The EESC calls on the EC to proceed immediately with the ratification of the optional protocol to the UN CRPD, the Marrakesh Treaty and the Istanbul Convention of the Council of Europe.

1.13. The EESC strongly proposes to the EC to establish focal points in all EC DGs, agencies and bodies, fully including and involving DPOs in the policy making process, in order to create horizontal and vertical structures that promote the full inclusion and mainstreaming of disability rights in EU law, policies and programmes.
1.14. The EESC believes that the EC should initiate the process in cooperation with other EU institutions, agencies and bodies to carefully prepare and develop the new 2020-2030 Global Disability Rights Agenda, which should be fully integrated and mainstreamed in the global social and macroeconomic strategies (e.g. the Europe 2020 and its implementing mechanisms), and recommends that a working group should be set up with the participation of all stakeholders and DPOs to carry out and implement this initiative. The EESC proposes that the EC should start the implementation of the 2020-2030 Global Disability Rights Agenda with the European Year of Disability Rights 2021.

1.15. The EESC acknowledges the EC’s positive initiatives in the field of accessibility, particularly the trilogue agreement on the Directive on the accessibility of public sectors bodies’ websites and the EC’s proposal on the European Accessibility Act (EAA), and urges the EU institutions to conclude negotiations. However, the EESC is concerned about the horizontal equal treatment directive and calls for the negotiations to be unblocked and for the COs and the UN CRPD to be taken into account in this new phase.

1.16. The EESC calls on all EU institutions to ensure that austerity measures do not affect the capacity of persons with disabilities to exercise their rights as enshrined in the CRPD, and therefore asks the EC to create the necessary social protection floors to achieve this goal and respect their right to an adequate standard of living and social protection as well.

1.17. The EESC asks the EC and Eurostat to develop statistical tools to measure the impact of the implementation of the UN CRPD on PWDs, at European and national level. It also considers that the collection of data based on a human rights approach to disability and disaggregated by disability, age and gender will have a positive influence on the development and implementation of EU law, policies and programmes.

1.18. The EESC acknowledges that the EU has competences to accompany national measures to ensure that all EU citizens are equal before the law, that not only are they not deprived of their legal capacity and rights but they are also able to take part in the European elections and all elections throughout the EU on an equal basis with others. Therefore, it calls on the EC and specifically on DG Justice to adopt a programme based on the Open Method of Coordination to facilitate the Member States’ convergence towards the principle of equal recognition before the law.

1.19. The EESC engages itself to lead by example in the implementation of the specific obligations, highlighted by the UNCRPD Committee, to be fulfilled by the EU as a Public administration by ensuring that its human resources, EESC members’ rights and communication facilities are in compliance with the UN CRPD.

2. Introduction

2.1. The EESC welcomes the COs issued by the UN CRPD Committee, as they provide a comprehensive programme for the EU to shift its policy making towards a people-centred and human rights based approach to disability.

2.2. The EESC recalls that the draft proposal for an Equal Treatment Directive was submitted by the EC before the conclusion of the UN CPRD. Moreover, the negotiations between the European Parliament and the Council of the EU have progressively introduced amendments that are not in compliance with the UN CRPD obligations. Therefore, the EESC asks the EC to introduce, in the current interinstitutional negotiations, a proposal to adapt the draft proposed directive to comply with the UN CRPD and of course with the COs on the ground of disability, and include the prohibition of multiple and intersectional discrimination, and discrimination by association.

2.3. The EESC underlines that the austerity measures have had a negative impact on the living conditions of PWDs and their families. The levels of poverty, exclusion, discrimination and inequalities have been increased as a result of the economic crisis, which has become in many Member States a human rights crisis, leaving a large number of PWDs and their families completely unprotected. Therefore, the EESC calls on the EU to establish minimum social protection floors in order to protect the rights of PWDs and their adequate standard of living and social protection. This mechanism should be included in the European Semester process.

2.4. Furthermore, the UN CRPD Committee has recommended that the EU should create an overarching UN CRPD strategy applicable to all EU institutions with specific budget allocations integrated in the Multiannual Financial Framework. The EESC therefore considers that a high-level meeting of the leaders of EU institutions and bodies is needed to initiate the process of preparing and adopting an interinstitutional UN CRPD agenda with specific goals to be achieved and targets to be met. The overarching strategy should identify responsibilities for each EU institution for CRPD implementation.

2.5. There is a need for the EU to set up a genuine and meaningful structured dialogue with European representative organisations of PWDs (DPOs), ensuring both their capacity to effectively and meaningfully participate in EU law and policy making and also to proactively carry out their advocacy CRPD campaigns. Moreover, the EU needs to ensure that the DPOs have the financial capacity to support their work. Therefore, a budget line for DPOs’ capacity building needs to be specifically established.

2.6. Overarching and transversal mainstreaming and implementation of the UN CRPD provisions by the EU and the development of a new EU CRPD agenda requires the creation of a participatory governance and partnership framework through which all main actors and stakeholders will be able to take part fully in policy making, together with the EU institutions, in an inclusive manner.

2.7. The European Commission should immediately and urgently undertake a mapping exercise and a gap analysis of all EU internal and external policies and programmes, ensuring that they comply with the CRPD provisions. In addition, all EU global strategies and policies need to comply with the COs, including the 2020 Strategy and the European Semester, European Pillar of Social Rights, the UN 2030 Agenda and funding instruments such as the ESIF.

2.8. It is of paramount importance that the implementation of the COs by the EU should be addressed at the highest political level. More specifically, the EC should include in its 2017 work programme a policy initiative specifically dedicated to this purpose. The full mainstreaming and integration of the COs in the EU policies and programmes requires that the EC draw up an overarching CRPD strategy. The EESC calls on the European Commission to initiate the process to achieve the overarching CRPD strategy as a matter of urgency with the full consultation and involvement of DPOs.

2.9. 2021 will be the 10th anniversary of the conclusion of the UN CRPD by the EU. The EESC considers that this will be an appropriate year to be the second European Year of PWDs. The EESC notes that the first European Year of PWDs was organised by the EC in 2003. Therefore, the EESC proposes that the EU institutions begin preparing immediately and take the necessary steps to declare 2021 the second European Year of Disability Rights.

3. Concluding observations — an opportunity for a more inclusive EU for PWDs

3.1. General principles and obligations (Articles 1-4)

3.1.1. Although the EU has ratified the UN CRPD, the EU has still not undertaken a cross-cutting and comprehensive review of EU legislation, policies and programmes. The EESC calls on the EC to carry out this review urgently. In addition, the EC should appoint a UN CRPD focal point in each Directorate-General, mandating to carry out this task.
3.1.2. It is regrettable that the EU has not ratified yet the Optional Protocol to the Convention. Therefore, the EESC calls on the EU to proceed without any further delay with the ratification of the optional protocol, paving the way for PWDs to make a complaint to the UN CRPD Committee in case of violation of their rights as enshrined in the Convention.

3.1.3. The human rights’ approach to disability should be fully embraced and integrated in EU law and policy making. The EESC calls on the EU institutions’ legal service to carry out a comprehensive study on the implications for the EU legal system of the ratification of the UN CRPD in order to place it as an adequate framework of law and policy making. The EU legal services are not taking sufficient account of EU obligations towards the UN CRPD.

3.1.4. The EESC calls on the EC Secretary-General to review the impact assessment guidelines and modify them to include a more comprehensive list of issues and questions in order to better assess compliance with the Convention.

3.1.5. The UN CRPD Committee has asked the EU to submit a review of the Declaration of Competences and its list of instruments by autumn 2016 taking into account the comprehensive view established in the Concluding Observation 17. The revision of the aforementioned declaration should take place at least once per term of office.

3.2. Specific rights (Articles 5-30)

3.2.1. The EC has not put in place an EU non-discrimination and equality strategy for PWDs which complies with the UN CRPD provisions and the COs, therefore the EESC calls on the EC to take immediate action regarding the horizontal equal treatment directive (see point 2.2) and also proceed to a review of the employment equal treatment directive 2000/78/EC.

3.2.2. The EC should include the perspective of women and girls with disabilities in its gender equality policy, including the data collection efforts of the European Gender Equality Institute. Moreover, the EC’s strategic engagement for gender equality 2016-2019 and its legislative and policy work on work-life balance should fully integrate the rights of women and girl with disabilities. The EESC calls on the EU to swiftly ratify the Council of Europe’s Istanbul Convention.

3.2.3. The EU should include and integrate in the renewed EU Agenda for the Rights of the Child a comprehensive rights-based strategy for boys and girls with disabilities, and mainstream the rights of children with disabilities in all EU disability policy. Children with disabilities and their families should also be involved in all EU decision-making in compliance with Article 4.3 of the UN CRPD.

3.2.4. The EU should also recognise the specific situation of young people with disabilities and the fact that they often face multiple forms of discrimination in their daily lives, specifically regarding equal opportunities for young people in the labour market and active participation by young people with disabilities in society at large. The EU should therefore assess the specific situation of young people with disabilities living in the EU and suggest relevant improvements (2). Furthermore, the EU should make sure that this perspective is included in the next EU Youth Strategy.

3.2.5. The EU should organise and carry out a comprehensive campaign to raise awareness about the Convention in cooperation with public media (including social media) in order to combat prejudice against PWDs. It is of paramount importance that PWDs themselves participate, through their representative organisations, in this campaign.

3.2.6. The EU should promote, facilitate and finance the training for transport and tourism staff in awareness and disability equality, and encourage the collaboration and the exchange of good practice among the European organisations working in the disability field and public and private bodies responsible for transport. All materials related to capacity-building, training, awareness-raising and public statements, among others, should be made available in accessible formats.

3.2.7. The EESC welcomes the EC's proposal for the European Accessibility Act (EAA), which needs to comply fully with Article 9 and other provisions of the UN CRPD, together with effective and accessible national enforcement and complaint mechanisms. It calls on the EU institutions to take on board the conclusions and recommendations of the EESC opinion (3) on the EAA and ensure the participation of PWDs, through their representative organisations, in the adoption process.

3.2.8. The EESC welcomes the interinstitutional agreement in the trilogue on the proposal for a directive on the accessibility of public sector bodies’ websites and urges the institutions to convert this into a decision and the national governments to transpose the provisions of the proposal as a matter of urgency. The EESC is also welcomes that a substantial number of recommendations adopted in its opinion (4) have been incorporated in the final text of the Directive.

3.2.9. The EU has not yet substantially included sufficient measures for PWDs in the disaster risk reduction strategies. Therefore, the EESC calls for a framework for disaster risk reduction for PWDs in Europe to be adopted by the Council of the EU.

3.2.10. The EU should put in place all the necessary measures to make the 112 emergency number accessible to all. The EESC highlights the need that equally appropriate measures guaranteeing accessibility at national emergency points should be urgently taken.

3.2.11. The EESC calls on the EU and its Member States to adopt a human rights approach to migration and refugee policies, as regards PWDs. In addition, the EESC underlines that disability can quite often be a reason for persecution and discrimination in some countries and therefore it calls on the EU authorities to develop guidelines and carry out information campaigns (accessible to PWDs) for its agencies and Member States on disability, migration and asylum and systematically mainstream disability in EU migration and refugee policies.

3.2.12. The EU should embrace a human-rights-based approach to disability in situations of risk and emergency, by adopting an implementation plan in line with the Council's conclusions of February 2015 on disability-inclusive disaster management and the Sendai Framework. In addition, there is a need for the raising of awareness and the provision of information to PWDs and officials of emergency and civil protection services on disaster-risk reduction initiatives.

3.2.13. The EC should play a leading role in the area of justice and human rights of PWDs. The EESC calls for a European conference to be held by DG Justice, targeting all justice services in the EU, including a reflection on the rights to accessing justice of PWDs and the way these rights are connected with other rights, such as legal capacity and equal recognition before the law.

3.2.14. The EC should provide the necessary funding for training the EU and national justice officials in EU legislation and UN CRPD. In addition, the EESC urges the EU and national courts to apply their internal rules and instructions in a way that facilitate access to justice for PWDs. The General Recommendations of the UN CRPD Committee should also be taken into account in the administration of justice at both EU and national level. Moreover, the EESC recommends that the DG Justice should utilise the Open Method of Coordination in order to achieve a balanced and coordinated approach by the Member States to this very important issue, thus paving the way for a European response to equal recognition before the law. The EC should create European standards and promote benchmarking in access to justice.

3.2.15. The EESC calls on the EU institutions and the Member States to abolish discriminatory guardianship laws enabling all PWDs to exercise their political rights on an equal footing with others. It notes that reasonable accommodation and accessibility in respect to voting procedures, facilities and materials is indispensable.

3.2.16. Unfortunately, an unknown number of Europeans with disabilities are deprived of their liberty and security, and are subjected to forced treatment and detention, including forced sterilisation. The EESC calls on the EC to take effective measures to stop this unbearable situation, produce through Eurostat reliable data, and put in place an efficient assessment mechanism.

3.2.17. The EESC appeals to the EU to review its ethics guidelines regarding research, and in particular to set good practice examples by developing consent forms in accessible and easy-to-read formats and to prevent substituted decision-making in this area.

3.2.18. The EU should adopt legislation to harmonise protection and combat violence, abuse and exploitation, and to ratify the Council of Europe convention on preventing and combating domestic violence against women (\(^5\)). The EU needs to take European legislative and policy action against cross-border activities in EU countries involving trafficking of women and children with disabilities, and calls for the EU to combat violence against children with disabilities by means of specific measures and accessible support services.

3.2.19. The EC initiative on the European Pillar of Social Rights should fully integrate and mainstream the CRPD provisions and create the necessary social protection floor, and effective mechanisms to prevent and alleviate poverty, vulnerability and social exclusion among PWDs and their families, with special regard to women, children and older PWDs.

3.2.20. There is a clear need for the development of an EU social security benefits coordination system in the EU, including a clear framework for portability of rights with a maximum number of days for the disability recognition procedure.

3.2.21. The EU should elaborate and implement the long awaited and much wanted European Deinstitutionalisation (\(^6\)) strategy that should first and foremost include a very strict monitoring of the use of the ESIF funding to ensure that they are used strictly for the development of support services for PWDs to live independently in local communities. The EESC also calls for the creation of a self-sustained European De-institutionalisation Fund.

3.2.22. The EESC regrets that the EC has not yet produced an analysis of the impact of the ESIF on PWDs, in line with the obligation laid down by the European Social Fund regulation regarding annual reporting on the measures taken in the area of disability. It should include strengthening of the EC’s monitoring of the use of the ESIF in line with the UN CRPD and in consultation with organisations representing PWDs, infringement procedures (suspension, withdrawal, recovery) launched by the EU for non-compliance with ex-ante conditionalities.

3.2.23. There is a need for more effective national enforcement bodies: their powers need to be harmonised and enhanced to facilitate the enforcement of passengers’ rights on all modes of transport and the complaints procedure needs to be simplified. Furthermore, the EESC calls on the EC to guarantee free travel for carers in all modes of transport, including air travel, as is already the case under Regulation (EC) No 1371/2007 (\(^7\)) and Regulation (EC) No 1177/2010 (\(^8\)).

3.2.24. The EC should give full and immediate official recognition to sign language and Braille, and undertake an assessment of its communication channels and internal processes in order to produce and present information in an accessible manner for PWDs. This should include various accessible formats such as sign language, Braille and augmentative and alternative communication, including easy-to-read format. The EU should ensure that all PWDs, regardless of their financial capacity have access to inclusive education.

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\(^5\) Council of Europe conventions.
\(^6\) OJ C 332, 8.10.2015, p. 1.
3.2.25. The EU should adopt a compulsory inclusive education exchange quality framework, establishing minimum accessible criteria to ensure mobility of all students, especially young students, with disabilities in the EU for secondary, tertiary and vocational training. All partner universities in the Erasmus student exchange programme should include accessibility to education programmes and facilities ensuring the full participation of all students, especially young students, with disabilities.

3.2.26. The EU should ratify the World Intellectual Property Organisation (WIPO) Marrakesh Treaty, facilitate and encourage its ratification at national level by Member States, thus allowing the free flow of accessible versions of printed material for persons with visual impairments and print disabilities.

3.2.27. The EESC calls on the EC to elaborate and implement a specific initiative on the application of Agenda 2030 and the Sustainable Development Goals for PWDs within the EU, and in its external policies including development cooperation and international trade.

3.3. **Specific obligations (Articles 31-33)**

3.3.1. The EESC urges Eurostat to organise a conference in order to agree on a unified mechanism for all EU Member States’ statistical offices, providing follow up to CO 71. There is a need to create a European disability statistical human rights mechanism, disaggregated by disability, gender and age to collect operational information for European and national policies targeting PWDs.

3.3.2. The EC should systematically mainstream the rights of PWDs in all the EU’s international cooperation policies and programmes. The EESC welcomes the EU pilot project ‘Bridging the gap’ and calls for the adoption of a disability EU funding programme for the rights of PWDs. This funding programme should be implemented, as is the case in some European countries, in close cooperation with European DPOs as intermediate bodies, being responsible for directing, managing and defining policy and funding priorities. It is important to make sure that European funding is not provided for projects which do not comply with the UN CRPD provisions.

3.3.3. The EC needs to fully comply with the CO 75 by creating and establishing focal points in all Directorates-General, agencies and bodies. All focal points should hold at least three meetings every year, and representatives of DPOs should attend and fully participate. On 3 December every year, the EC should issue its annual report on the implementation of the UN CRPD by the EU and its Member States.

3.3.4. The EESC welcomes the EC’s decision to withdraw from the independent monitoring framework, paving the way for the creation of a truly independent mechanism under the supervision of a governing body made up of the members of the independent framework. However, in order for the EU framework to be able to carry out its tasks effectively, financial and human resources should be allocated as a matter of urgency.

3.4. **Compliance of the EU institutions with the Convention (as public administrations)**

3.4.1. There is a very clear need for the EU institutions to revise their human resources policies and align them with the UN CRPD provisions in order to ensure that PWDs and workers with relatives with disabilities receive reasonable accommodation and support to be able to strike a proper balance between work and family obligations. The EESC calls on the EU to revise its joint sickness and insurance scheme, the pension system and the disability-related social security and social protection measures in order to ensure non-discrimination and equal opportunities for all PWDs, inter alia, by recognising disability-related health needs as being distinct from an illness and promoting independent living and working through the provision of full reimbursement of the additional cost of the necessary equipment or service.

3.4.2. It is crucial that all EU institutions proactively undertake initiatives to comply with the accessibility provisions of the Directive on access to public sector bodies’ websites with a concrete deadline, setting a good example in this fundamental area of disability rights.
3.4.3. The EESC calls on the EC and the Board of Governors of the European schools to adopt a plan and allocate the necessary financial and human resources to developing and implementing an inclusive quality education system at all levels in the European schools, ensuring reasonable accommodation, support and a non-rejection policy for all students with disabilities in primary and secondary education.

3.4.4. Since the employment of PWDs in the EU is at a low level, the EESC calls on the EU institutions to put in place a positive action employment scheme (including specific competitions) to increase the number of PWDs employed in their services by providing reasonable accommodation and support. The implementation of this policy needs to be reviewed every two years in order to evaluate whether correction measures are needed.

3.4.5. The EESC asks the EU institutions, agencies and bodies to ensure that the existing staff regulations are fully and effectively implemented in line with the UNCRPD and that internal rules and implementing provisions are developed in full compliance with the Convention’s provisions.

3.4.6. The EESC commits itself to developing a structure to implement the COs in-house, with regard to human resources policy, communication facilities with citizens and EESC members, and full inclusion and equality for EESC members with disabilities. It will also make sure that this is promoted in its relationships with the business community, trade unions and civil society. This new policy will be developed in close cooperation with its Permanent Study Group on Disability Rights.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
1. Conclusions and Recommendations

1.1. The EESC considers that public-private partnerships (1) in research and innovation are a formula for excellence and a powerful tool to address the main issues affecting Europe's competitiveness, and have the capacity to respond effectively to major socioeconomic, employment and environmental sustainability challenges.

1.2. R&I is not a one-way, linear process. The EESC believes that if the technological, environmental and social dimensions are to be fully taken on board in Horizon 2020 (H2020) public-private partnerships, a new approach is needed, based on greater transparency concerning the results and socioeconomic impact achieved.

1.3. The EESC is of the view that partnerships should adopt a broader vision of innovation, taking account of innovation in services, social innovations and the necessary upgrading of SMEs and the social economy so they can be brought in more effectively at every stage of demonstrating and developing applications.

1.4. The social legitimacy of innovation should be fostered in JTIs and cPPPs by increasing the involvement of the weaker stakeholders (trade unions, SMEs and NGOs) in the overall direction and strategic programming of R&I work, in keeping with the provisions of Regulation (EC) No 2012/1025 on standardisation, particularly where strategies and the selection of projects and their social value are concerned.

1.5. The EESC considers that PPPs need to be more market-driven, focusing attention on aspects such as interoperability, standardisation, harmonisation and transnational technology transfer, so that results are sustainable at regional level and can be disseminated across the EU.

(1) There are two categories of public-private partnerships (PPPs): JTIs are Joint Technology Initiatives under Article 187 TFEU, with a joint undertaking regulation; cPPPs are contractual joint initiatives under Horizon 2020, with memoranda of understanding.
1.6. The EESC urges that JTIs and cPPPs be put in place in order to:

— boost coherence with other partnerships and initiatives on a scene increasingly crowded with concurrent policies;

— extend the value chain with a sharper focus on the market and broader participation from the demand side in terms of both numbers of users in the countries involved and new actors throughout the value chain, making use of the synergies generated by interoperability with other initiatives;

— give greater prominence to multidisciplinary approaches, bringing in new stakeholder communities, especially at local, grassroots level;

— JTIs and cPPPs should encourage SMEs to participate actively in the innovation process at an earlier phase, so that they gradually develop their own R & D potential.

1.7. The EESC recommends that JTIs and cPPPs launch new innovative measures to boost interaction with leading investors by devising innovative business measures and progressive occupational profiles, by fostering forums that include the social partners, and by targeting support on the speedy exploitation of post-project markets.

1.8. The EESC attaches importance to more robust monitoring of JTI and cPPP capacity and coherence of action using more flexible tools that meet market requirements; and to more dynamic approaches to ensuring quality, including a full set of Key Dynamic Performance Indicators (KDPI), comparable across different initiatives, so that an annual synoptic assessment of all JTIs and cPPPs can be submitted to the European and national institutions and to European taxpayers.

1.9. The EESC calls for greater efforts to ensure internal coherence between the objectives and priorities of the EU’s FP9 and industry’s R&I strategies reflected in JTIs and cPPPs in coordination with all other forms of partnership for innovation to be found in other regional national and European policies.

1.10. The EESC proposes setting up a European Innovation Council with strong representation of industry and society, with pan-European infrastructure networks to support innovation, as a useful instrument for closer coordination of initiatives, not least with the courses of action of other European and international R&I organisations, and with comparable international partnerships (2).

1.11. The EESC urges regional and local authorities to give high priority to relevant JTI and cPPP innovation when planning and implementing measures such as smart specialisation strategies, cohesion policy operational and cooperation programmes, research and innovation programmes and projects to implement climate change adaptation plans.

1.12. The EESC is convinced that strategic, smart and timely investment in appropriate, environmental-friendly innovative solutions and in green infrastructure provide a launchpad for a sound and effective reindustrialisation process based on research and innovation and on their market applications.

1.13. The EESC draws attention to the need to ‘align research and innovation instruments and agendas in Europe’ with those under the forthcoming FP in order to ensure continued investment in those sectors where Europe has a leading position in the world (3), based on a stable outlook, which depends on regular efficiency checks.


(3) See COM(2016) 5 final: ‘A number of JTIs have signed Memoranda of Understanding with European Regional Development Funds managing authorities setting up a framework for structured cooperation’.
1.14. The EESC calls upon the Commission, the European Parliament and the Council to work together to hold an interinstitutional conference as soon as possible on the role of public-private technology partnerships in European reindustrialisation, with a view to the next R&I Framework Programme after 2020.

2. JTIs and cPPPs for research and innovation

2.1. Joint Technology Initiatives (JTIs) are public-private partnerships in key areas of European R&I established under Decision No 1982/2006/EC of the European Parliament and of the Council (4). As far back as the 7th Framework Programme (FP7) onwards, traditional instruments had proved unable to increase and improve the European economy's competitiveness. Industrial partnerships are geared to R&I and have clearly identified industrial market objectives, better financial and human resource concentration and sufficient leveraging to provide a decisive push to accelerate the transformation of scientific and technological breakthroughs into market innovations.

2.2. The current H2020 FP has introduced substantial innovations with respect to structure, leaving more space for influence and synergies with industry and Member States through various forms of PPP to support sectors that:

— create high-quality jobs;

— respond better to the need for sustainable growth and competitiveness;

— have a strong, innovative and rapid impact on the development of European businesses, especially small enterprises and start-ups;

— foster new occupational profiles in a rapidly changing world;

— can develop local and regional initiatives.

2.3. A range of initiatives have been set up to support different types of partnerships that are either geared to the industrial sector, supported by the scientific community, or steered by public authorities.

2.4. The EU institutions have given strong support to the European Technology Platforms (ETPs) set up at the initiative of industries in order to establish a bottom-up process for defining common strategic objectives and priorities.

2.5. The current 38 ETPs — plus three cross-cutting initiatives — have a strategy, mobilisation and dissemination function. In order to fulfil their role, their main activities cover:

— developing strategic R&I programmes including technology roadmaps and implementation plans;

— direct participation of industry in FP initiatives and cooperating with national networks;

— fostering networking opportunities along the value chain to address cross-sectoral challenges and promote more open models of innovation;

— promoting opportunities for international cooperation, as channels for the programming and implementation of H2020; and

— launching and consolidating public-private partnerships within the FP and creating JTI ventures for the joint management of public and private initiatives.

2.6. JTIs bring together the European Commission, Member States, academia and industry around scientific and technological sectors of high value to society, mainly by supporting cooperative research and innovation in Europe where common technological and economic objectives have been clearly identified.

2.7. The main objective of JTIs is to increase the impact of public and private investment in research activities and consolidate the European research and innovation area by helping to foster cutting-edge scientific and technological innovation in the context of the Europe 2020 strategy.

2.8. The idea behind JTIs is to be open to new participants and be able to communicate with a wide public, and to have a leveraging effect, with European economic contributions, in a clear structure that can encourage industry, SMEs, the social economy and Member States to increase their participation and their investment.

2.9. JTIs initially emerged from the work of the European Technology Platforms, on which the EESC drew up an own-initiative opinion, and which were able to define common, shared views on sectoral development, identifying problems for resolution.

2.10. The criteria for identifying the sectors for which JTIs need to be set up have been defined as follows: the strategic relevance of the sector and clear objectives; high European added value; capacity to leverage substantial, long-term investment; and appropriate and quick responses to the growth, sustainability and climate challenges.

2.11. In order to determine levels of innovation it is not sufficient to consider only the funds invested, we must also have economic performance and market indicators on this expenditure. cPPPs are required to submit annual reports on the activities undertaken, the European added value gained in real terms, the effectiveness of innovative financial leverage instruments and the qualitative and quantitative attainment of socioeconomic objectives.

2.12. The purpose of this opinion is to highlight the influence that industry’s direct participation in R&I, funded by the EU through institutional JTIs and cPPPs, has on industrial policy and industrial change and propose improvements.

3. Prospects for developing JTIs and cPPPs to secure sustainable industrial change

3.1. The EU’s R&I framework programmes have had difficulty in addressing the real needs of European industry, which often risk being overlooked during the preparation of the general objectives and in the work programmes, thereby consolidating the European paradox, which can be summed up as Europe's high science output and low capacity to transform this output into market innovation, as compared with its competitors.

3.2. The work and action of ETPs have gradually altered this approach. European industry has managed to set targets and priorities for the major manufacturing sectors, which have largely been incorporated into the structure and objectives of H2020.

3.3. There has been a shift from a top-down to a bottom-up approach spanning the whole innovation cycle and aiming to achieve higher Technology Readiness Levels (TRLs) in order to develop new production technologies, new products, and new skills.

3.4. JTIs and cPPPs should be key tools for ensuring that industry plays an active role in multiannual programming and in implementing the H2020 Community measures. The private sector is committed to investing some EUR 10 billion in Joint Technology Initiatives to stimulate innovation in seven sectors, helping to reverse the decline in the European manufacturing industry’s role.

4. Comments and observations on upcoming challenges for the Union

4.1. The Committee is firmly convinced that the various forms of R&I partnerships are a formula for excellence with regard to development and a powerful tool to address the main issues affecting the EU’s competitiveness.

4.2. The Committee considers that JTIs and cPPPs are positive experiences for the creation of EU-wide partnerships, if they can provide a multiannual framework for combining EU and national resources with private resources, know-how and research and innovation capacities in order to share knowledge and disseminate key innovations in sectors that are crucial to success on the global market.

4.3. In the EESC’s view JTIs and cPPPs must meet their responsibilities effectively in terms of:

— economic results;
— optimisation of the sector’s added economic-technological-innovative value;
— capacity to bring competitive technologies to the market;
— increased financial leverage effect;
— greater involvement of SMEs, the social economy and end users;
— flexibility and rapidity in transferring innovative outcomes;
— networking;
— a role clearly geared to reindustrialising the European economy;
— environmental sustainability and climate challenges;
— sustainable carbon-free product and process design;
— social and employment challenges;
— active involvement of local areas.

The development of new technologies and innovation on the part of industry must lead to high-quality training for human resources and new, advanced occupational skills, with closer and more systematic involvement of the social partners and local authorities in defining and applying the sector’s broad strategies.

4.4. According to the most recent reports published by the EC in 2016 (6), initial survey results (7) show that while H2020 seems to respond adequately to the need to open up to PPPs, these approaches do not always fully meet the requirements for openness and stimulation to bring in newcomers. There is no general agreement on their capacity to support jobs, growth, investment and rapid development on the digital single market, although views are more positive regarding the capacity to meet energy and climate changes.

4.5. Similarly, the ability of JTIs and cPPPs to interact successfully with other EU financial instruments such as the European Structural and Investment Funds (ESIF) and the European Fund for Strategic Investments (EFSI) is perceived as very limited, although some JTIs have signed relevant protocols. It is important in the EESC’s view that synergies be generated to promote the involvement of regional and local actors, facilitating alignment with common operating standards.

4.6. Given that the rate of rejection of project proposals appears to be running at 7 to 1 in H2020 — a higher rate than under FP7 where it was 5 to 1 — it would seem advisable to rebalance the pool of independent expert evaluators to whom project applications are submitted. More than 50% of project applications in the first H2020 cPPP calls for proposals were from industry, but at the same time more than half the expert evaluators had an academic background compared to just over one fifth with private sector expertise.

(7) A fuller examination will be possible following publication of the interim report in 2017.
4.7. The tables available for JTIs and cPPPs reveal significant positive features for the sustainability and competitiveness of European industry. Activities are formulated by private partners through a broad and open system of consultations on preparing work programmes and the associated calls for proposals in response to, and reflecting, industry’s real needs, with high mobilisation rates and a powerful leverage effect of 3 to 9.

4.8. With regard to the partial table of JTI calls in 2014, this type of partnership should provide greater clarity concerning its institutional status and levels of governance, in response to European taxpayers and the EU institutions.

4.9. The EESC believes that JTIs and cPPPs, including the tools for opening up and participatory access, must meet urgent requirements in line with a strong growth policy, including the full contribution of the social partners.

4.10. JTIs and cPPPs are in fact competing in a global race to be the frontrunners in the development and marketing of the new technologies of the future. They therefore require the development and implementation of clear industrial strategy objectives:

— flexibility;

— transparent and efficient evaluation systems;

— appropriate criteria for scientific/technological excellence and industrial relevance;

— compliance with the principles of sound financial management;

— capacity to involve SMEs effectively;

— rapid development of start-ups/spin-outs.

4.11. The EESC emphasises the need to involve all stakeholders in Europe’s key industrial sectors — spanning all types of goods, sizes of enterprises, human resources and their training, development and representatives — in order to improve the integration of the social aspects and SMEs and the stakeholder participation in R&I projects.

4.12. The EESC therefore considers it important to introduce appropriate social and training instruments to be important, and to use key performance dynamic indicators (KPDJs) to monitor not only patents and scientific publications but also, and most importantly, the evolving impact on social and economic aspects and on training for new occupational profiles.

4.13. The EESC sees mobilising private sector investment, successfully building on public funding and with a powerful leverage effect, as a key factor in reaching the Europe 2020 growth and employment targets, and, in particular, the 3 % investment in R&I.

4.14. Innovation activities with higher TRLs should continue to benefit from investment support plans for industrial infrastructure and plants, which are based on a stable outlook and subject to regular efficiency checks, along the lines of Commission President Juncker’s European Fund for Strategic Investments (EFSI).

4.15. The EESC believes that members of industry should be more involved in R&I programmes and the programme committees, which are crucial to the development of broad-based industrial involvement in each Member State.
4.16. Lastly, the EESC considers that the Member States and the EC should review and harmonise — where possible and appropriate — the regulatory framework for industrial sectors, including JTIs and cPPPs, which are required to maximise added value in terms of environmental, economic, social and employment benefits, smart business models and solutions in integrated territories, new skills and social innovations (8).

4.17. The EESC considers that the development of different types of R&I partnerships under a wide range of EU policies, and not only under H2020, should be marked by greater coherence and better coordination in R&I actions, as part of an overall EU view encompassing the internal and external dimensions. Setting up a European Innovation Council with strong representation of industry and society, flanked by pan-European infrastructure networks to support innovation, could help foster a more efficient framework.

4.18. With a view to FP9 (9), the EESC advocates devising a transparent framework for the qualitative and quantitative evaluation of the success or failure, in economic, innovative, social and environmental terms, of the work of current JTIs and cPPPs. This should involve industrial end users, the social partners, SME representatives and civil society in evaluating strategic priorities and reshaping the future partnerships on which efforts should focus as 2030 approaches.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

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(8) See for example the arrangements in place in some Member States, under which industrial sector partnerships can call directly on the public authorities to see if they can remove technical and legal obstacles or barriers hampering the rapid translation of technological discoveries into market innovations.

(9) See opinion INT/792 — ‘Mid-term evaluation of Horizon 2020’ (see page 66 of the present Official Journal).
Opinion of the European Economic and Social Committee on ‘Strengthening the European personal care, body hygiene and beauty products industrial sector’

(own-initiative opinion)

(2017/C 034/05)

Rapporteur: Ms Madi SHARMA

Co-rapporteur: Mr Dirk JARRÉ

Plenary Assembly decision 21/01/2016

Legal basis Rule 29(2) of the Rules of Procedure

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Outcome of vote 181/1/1

(for/against/abstentions)

1. Conclusions and policy recommendations

1.1. Europe has always played a key role in the production, innovation and development of personal care, body hygiene and beauty products. More recently, its leading position in this sector has progressively been eroded in the process of global competition and conditions which fail to recognise the innovatory technological pressure and commercial reality of remaining competitive.

1.2. This opinion considers strengthening the European personal care, body hygiene and beauty products industrial sector, specifically those products covered by the Cosmetics Regulation (EC) No 1223/2009. A ‘cosmetic product’ is any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours; a substance or mixture intended to be ingested, inhaled, injected or implanted into the human body shall not be considered to be a cosmetic product.

1.3. The hygiene paper, tissue and sanitary wear sectors are outside the scope of the Cosmetics Regulation but can be considered in many of the recommendations due to the added value of this sector in personal hygiene.

1.4. The opinion does not include pharmaceuticals, tattoos, permanent makeup, beauty care services nor products administered via surgery or instruments, nor skin care products for animals. However, the EESC recommends that all of the above should be considered in a separate document due to rising consumer concerns regarding harmful chemicals.
1.5. While the innovative capacity of Europe’s specialised enterprises is impressive, innovation itself and thus production and commercialisation of EU inventions, have shifted to other parts of the world, bringing serious economic and social consequences. Creating an enabling environment, to move beyond Industry 4.0 by considering advanced bio-technological progress, through appropriate strategies, will lead to major contributions to industrial reshoring and new product development (NPD).

1.6. The EESC makes the following sector specific recommendations accepting that the sector is already well regulated to ensure consumer protection and safety; additional legislation is considered unnecessary but increased transparency should be considered:

— Greater technology convergence between life science engineering, development of genomics, pharmaceuticals, medical devices and the beauty and care sector

— Better collaboration between large and small companies and within bio-technical research

— Strategies to minimise the non-revenue generating period for innovative SMEs

— Greater market intelligence and knowledge transfer between stakeholders to enhance cosmetic innovation and promote individualisation

— Improved opportunities for employment in innovation and NPD

— Resource and waste management strategies for environmental sustainability and the circular economy

— High priority for research into alternatives to animal testing together with regulatory acceptance of proven alternative methods

— Widespread application of requirements in connection with protection of biodiversity, respect for the intellectual property of indigenous people and compliance with fair trade principles

— New concepts for the engagement of user groups and consumers from NPD to evaluation

— Review of international cooperation to increase accessibility, harmonisation and the promotion of EU standards worldwide to combat fraud.

2. Personal Care Sector Overview

2.1. Cosmetics and personal care products are daily essentials for over 500 million European consumers, across all age segments. Products range from everyday hygiene products such as soap, shampoo, deodorants and toothpaste to luxury beauty items such as perfumes and make-up. The sector itself is worth EUR 77 billion (2015) and was one of the few sectors untouched by the global financial crisis. Europe is established as a world leader in the sector and a dominant exporter of cosmetics. Trade outside Europe amounted to EUR 17.2 billion in 2015.

2.2. Brand recognition in the cosmetic industry is important due to the high degree of competition. Customer loyalty is based on reliable advertising, quality, safety and new product development (NPD), and can be compared with the fashion industry with seasonal shifting trends.

2.3. The sector is made up of all sized companies with over 4 600 SMEs in the cosmetics industry in Europe. The SME segment is estimated to be 30 % of the market but in some EU States this can be up to 98 %. The product portfolio ranges from 20 000+ products for large companies to around 160 for smaller companies. A large cosmetic manufacturer has a portfolio of around 2 000 ingredients, 600 for SMEs, with each adding around 4 % of new ingredients annually. These new ingredients have a significant effect on profitability and growth.
2.4. At least 2 million people are employed throughout the value chain across Europe from manufacturing to retail. Manufacturing itself employed 152 000 workers in 2015 (1) with slightly more female workers (56%) than males (44%). Over the past five years, the industry has grown its direct and indirect employment by 2.3%, more than 39 000 jobs (2).

2.5. In 2015, the expenditure on R & D is estimated at EUR 1.27 bn. This varies considerably per country. The industry employs over 26 000 scientists researching new areas of science, working with new ingredients, developing formulations and carrying out safety assessments, leading to an impressive number of patents in the EU each year.

2.6. The European paper industry, in particular the tissue industry, is worth over EUR 10 bn. annually and represents 25% of the global tissue market. The increased use of quality tissue products such as paper towels, handkerchiefs, toilet paper, etc. is an important element of improved life quality and overall hygiene conditions both, at home and away from home and thus an important contributor to the personal care sector.

2.7. The European cosmetic sector is credited with taking the lead on a complete ban on animal testing, whilst still promoting innovation and competitiveness. Today’s market is driven by safety and innovation equally, with new colour palettes, skin-specific treatments, anti-ageing products and unique formulas. Consumers constantly demand more choice, better personalisation and even greater efficacy. In order to respond more effectively to user’s preferences and expectations, consumer groups and organisations are regularly engaged at the earliest stages of development.

3. EU Legislation

3.1. The monitoring of ingredients and testing criteria, including the ban on animal testing, environmental protection and labelling, are all subject to EU legislation and guidelines. The regulatory framework for market access, international trade relations and regulatory convergence are monitored by the European Commission.


3.3. Regardless of manufacturing processes or channels of distribution, cosmetic products placed on the EU market must be safe. The Cosmetics Regulation (including its Annexes) and its amendments provide the regulatory requirements and restrictions for all substances used in cosmetics. A cosmetic product’s ‘Responsible Person’ is liable for the safety of the product and must ensure that it undergoes an expert scientific safety assessment before it is sold. A database with information on cosmetic substances and ingredients, CosInging, enables easy access to data on these substances. Ensuring a high-level of protection for human health and consumer safety, also implies that the responsible scientific committees should take particular account of the potential health risks to particular professional groups (e.g. hairdressers and beauticians) who use cosmetic products on a daily basis, in the line of their professional activities, and are therefore subject to higher levels of exposure than the general public.

4. Strategies for Sector Growth

4.1. To remain competitive, manufacturers are constantly innovating to discover new ingredients, utilising existing ingredients in new applications and creating more personalised products. However, they cannot work in isolation and thus the EU Commission, national governments and stakeholders, especially consumer and employee representatives, need to work together to create an environment conducive to growth.

4.2. The EESC recognises that the main challenges for growth in the sector are comparable to those of all industry sectors and makes the following recommendations specifically for the personal care and cosmetic sectors:

(1) Eurostat.
(2) Source Cosmetic Europe.
4.2.1. **Greater convergence** of the life-science engineering sector, including between genome research and the beauty and care sector, would better support product diversification. Skin is the largest organ of the human body but the distinction between the dermal application of cosmetics and treatments by medical products tends to disappear. Certain effects like irritations, allergies and skin cancers need to be taken into account. Initiatives such as EIT Health (3) spanning key areas of healthcare including pharma, MedTech, BioTech, and Digital Health are good examples of collaboration. Cosmetic products bring increased personal hygiene, well-being benefits and/or lifestyle factors (positive effects that are not recognised in regulations such as reducing stress, confidence building or enhancing sleep). Whilst cosmetics are not medicinal products, cosmetics are based on sophisticated science of the skin and its function. Development of cosmetics can therefore benefit from advances in other fields of biological science, in particular in the pharmaceutical industry. Research collaboration should be encouraged to focus on individualisation considering tailored lifestyle and wellbeing products.

4.2.2. **Better collaboration** between large and small companies, alongside the development of sector specific incubators (4) or clustering, could increase competitiveness and enhance growth. All cosmetic products undergo an expert scientific safety assessment before they are launched which can be administratively and financially restrictive for smaller companies. Although it is essential the safety assessment remains in place, smaller innovative companies should utilise a range of business support measures that could assist the development period between the innovation and NPD process and the successful commercialisation of the final product, thereby reducing the risk of failure. Such measures would include better intelligence sharing, through technology and knowledge transfer, cooperation for investment opportunities: costs reduction analysis and accessibility to funding streams (5). Additionally, governments should shift their mind-sets on manufacturing towards supporting local production and job creation in Europe.

4.2.3. **Greater market intelligence and data provision** from academia, industry and consumers will enhance growth through knowledge transfer. Personal care trends have moved towards organic, natural, sunscreen UVB and UVA, pro-aging and anti-aging products expanding the scope of innovation. Currently menopause and aging innovation offers an area of development for the beauty segment, targeting a substantial number of people with products that help them to look and feel their best. With scientific and technological advancement in sequencing of the human genome, and progress made in understanding its diverse functions and its absolute individuality, the future of the cosmetics industry lies in extremely advanced personalisation of the products. Research and investment in this approach, in cooperation with the medical professions and academia, constitute a key issue for the sector.

4.2.4. **Encourage greater engagement of employees**. Employees are at the forefront of product innovation, as they experience the overview of the sector from the development process to consumer feedback. Hence increased consultation, including the promotion of intrapreneurship, could support company growth. The sector is diverse in its employment opportunities and improved communication to showcase skills and competences required for current and future development will make the sector more attractive. Over 514 000 life sciences students are engaged in Europe (4) creating new research and opportunities for increased collaboration across sectors. Again, greater collaboration between academia and industry would help attract a wider spectrum of employees.

4.2.5. **Research and Development provision**, investment, R & D expenditure and safety provisions are needed to sustain growth. Funding mechanisms, public and private, for R & D, patent registrations and NPD in manufacturing within the EU could be considered.

4.2.6. **Patent infringements and counterfeit goods** pose a serious risk to profitability for large and small EU companies, as well as to consumer health. In 2006, counterfeit perfumes and cosmetics cost the EU EUR 3.0 bn. in lost revenue. Greater IP protection for brands could be ensured by including the country of manufacture on the product.

(1) www.eithealth.eu
(2) http://www.biocity.co.uk/medicity/nottingham
(4) Euromonitor International.
4.2.7. **Commitment to ‘risk based’ regulation:** Currently substances are not regulated based on their intrinsic properties (e.g. irritant) but on the basis of whether the property of the substance will actually occur under the real use conditions (e.g. used at a concentration below the irritation threshold). This approach is possible because the use of cosmetic products is well defined and full risk assessments are possible. This is different to chemicals legislation (without defined use), where the intrinsic properties ‘hazard’ drive the legislation. It is crucial to the future ability of the industry to innovate and grow, that an appropriate distinction between hazard and risk is maintained in EU legislation and policy.

4.2.8. **Promotion of territory specific ingredients.** Facilitating the research and certification of regionally specific natural products through Protected Geographical Indication (\(^7\)) (i.e.: Corsican Immortelle) would allow for the promotion of EU regional products enhancing a focus on local commodities and artisanal products. Currently the costs of isotope tracing, or laboratory analysis of natural products is prohibitive for entrepreneurs and SMEs.

4.2.9. **Animal testing ban:** The Cosmetics Regulation has established testing bans (prohibition on testing finished cosmetic products and cosmetic ingredients on animals) and marketing bans (prohibition on marketing finished cosmetic products and ingredients in the EU which were tested on animals). There is no desire to lift this ban. However, the following challenges are faced by manufacturers in innovation, NPD and exports:

| Regulatory acceptance of validated alternative methods: | In a number of areas of safety testing, non-animal strategies have been successfully developed, validated and accepted by OECD. These can accurately predict the complex reactions of a biological system, in particular for the testing of finished cosmetic products as well as for certain toxicity endpoints in relation to ingredient testing. It is also possible to substitute certain missing safety information by read-across to already known, chemically related ingredients or through application of a threshold-of-toxicological concern. It is crucial that these validated methods are accepted by regulators so industry can move toward innovative and an animal testing free world. |
| R & D to improve safety assessment of ingredients and products: | In the absence of animal testing there is as yet not a full set of in vitro tests for safety assessment of new molecules such as sunscreens. Research to develop safety assessment approaches without the use of animals should be supported both from the private and public sector. R & D to understand skin biology to develop products that prevent/reduce skin cancer are a priority as the incidence of skin melanoma is still increasing. |
| Exports: | many of the countries to which European cosmetic products are exported require product testing on animals as part of consumer safety. This leads to conflicting regulatory requirements and significant challenges for the industry. Global agreements on this issue should be negotiated. |

4.2.10. **Resource and waste management:** Population growth, consumption increase and the depletion of resources, particularly water, are issues for consumers’ and industry alike in respect of sustainable consumption and CSR. Producing environment-friendly products which consider waste and resource management is a sector priority. The Commission’s Circular Economy package and Cosmetics Europe’s ‘Guidelines for Cosmetic Companies, especially SMEs (2012)’ are valuable but much more needs to be done as significant challenges remain. The protection of resources for the sector goes hand in hand with the need to protect biodiversity, which is of shared benefit for current and future generations. The search for new products should not be at the expense of indigenous people and their intellectual property. The widespread application of fair trade principles and environmental codes of conduct among businesses in the sector is both beneficial and much needed. No less important is the attitude of consumers, who should reject products manufactured using methods at odds with sustainable development principles.

\(^7\) [http://ec.europa.eu/agriculture/quality/schemes/index_en.htm](http://ec.europa.eu/agriculture/quality/schemes/index_en.htm)
4.2.11. **Increased transparency:** Market surveillance is key to ensuring consumer protection. Increased collaboration between National Consumer Authorities, Consumer organisations, users and health professionals at a national level would enhance consumer trust and transparency. The consultations with stakeholders should take place throughout the process of product development and innovation. Product notification on the RAPEX system empowers consumers to demand improved safety throughout the supply chain but they insist that notification of serious risk should be at the earliest opportunity. Consumer’s state greater transparency is needed towards:

— Ensuring stronger enforcement of existing legislation and clearer safety assessment, to preserve consumers trust in product safety whilst increasing levels of compliance with the Cosmetics Regulation, this includes more comprehensive and easy-to-read labelling on how to use products and their purpose.

— Advertising transparency is required on editorials ‘advertorials’ and product promotion in order to avoid misleading consumers. Advertising has prohibitively high advertising costs for smaller companies. Paid advertising material should be clearly identified, including comparisons of products which, although branded differently, are sometimes from the same company.

— On organic products the Cosmetics Regulation does not lay down specific rules. There are currently no EU harmonised rules setting criteria for organic cosmetics, leading to products with low levels of organic ingredients being able to claim ‘organic’ credentials. Consumers could be misled and the EU beauty industry risks damaging its trusted reputation without the implementation of specific guidelines.

4.2.12. **Opportunities in new markets** including those geared towards changing consumer shopping habits, such as e-commerce and direct sales, offer new sales models alongside trading cross borders. Initial findings of the e-commerce sector inquiry found that half of companies surveyed in the EU cosmetics and health sector did not sell cross-border. Whilst cosmetics companies embrace the digital era they remain limited by regulatory requirements which are often country-specific: including national language labelling; animal testing laws; cosmétovigilance requirements.

4.2.13. **Trade barriers:** The EU has a good trade surplus in cosmetic products however the European Commission should continue to press for convergence in fora such as International Cooperation on Cosmetics Regulation and in trade negotiations where the EU regulation becomes an international standard. The EU Cosmetics Regulation remains the model of inspiration for consumer safety for emerging regions (ASEAN, Russia, Latin America, China). This provides an opportunity for EU regulators and industry to contribute to regulatory systems in the main export markets that are highly compatible with the EU system.

— **Support for harmonisation** is needed to increase internal market trade. Trade barriers are increased in the EU by the lack of a single customs administration. There is a separate agency responsible for EU customs law in every Member State which is not administered in a uniform manner. EU rules on classification, valuation, origin and customs procedures are often applied differently in each Member State, with varying VAT levels.

— **Combating fraud, counterfeiting and adulteration** in imports and within the EU is a serious issue. EU countries must cooperate, exchange information and act more quickly on Serious Undesirable Effects (SUEs) attributable to cosmetics use. The increase of fraudulent and adulterated products, partly as a result of rising imports, coupled with limited resources in the Member States to monitor products, means that risks to consumer’s health are increasing.
Trade Agreements: Cosmetics have been one of the more challenging chapters of the Transatlantic Trade and Investment Partnership (TTIP) debate. EU standards could be more widely used as a result of TTIP and other trade agreements, promoting the credibility and brand trust of products made in the EU allowing market access for EU companies to more consumers.


The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on ‘Shipbreaking and the recycling society’

(own-initiative opinion)

(2017/C 034/06)

Rapporteur: Mr Martin SIECKER

Co-rapporteur: Mr Richard ADAMS

Plenary Assembly decision 21/01/2016

Legal basis Rule 29(2) of the Rules of Procedure

Own-initiative opinion

Body responsible CCMI

Adopted in section 28/09/2016

Adopted at plenary 19/10/2016

Plenary session No 520

Outcome of vote 202/2/3

(for/against/abstentions)

1. Conclusions and recommendations

1.1. EU Ship owners control around 40% of the world’s merchant fleet. They also account for around one third of the end-of-life tonnage beached in sub-standard yards in South Asia. The EU is the largest market sending end-of-life ships for dangerous and polluting shipbreaking. As home to the biggest ship owner community, the EU also has a particular responsibility for regulating ship recycling.

1.2. The EESC argues that there is a powerful social and moral case for eliminating the abuses of irresponsible ship dismantling through a system which creates added value in an end-of-life ship that is sufficient to pay for the higher costs of responsible recycling. The majority of ship recycling would probably continue in countries with low labour costs, but with improved working and environmental conditions. At the same time this will also make it possible for EU dismantling yards to be more competitive.

1.3. Action by the International Maritime Organisation (IMO) has had little effect to date, although every effort should continue to be made to reach a universal legally binding instrument through this forum. The EU’s role in this process can be influential and dynamic. The search for an effective solution to irresponsible shipbreaking has been on the EU’s agenda for many years, resulting so far in the EU Ship Recycling Regulation (EU SRR) which will become fully applicable no later than 31 December 2018. However, a fundamental weakness is that ship owners could easily avoid the EU SRR by simply ‘flagging out’ to a non-EU country.

1.4. What is lacking in the Regulation is an economic instrument the Commission could use to guide developments in the desired direction. A highly detailed report has now developed a blueprint for such an instrument via the introduction of a ‘ship recycling license (SRL) scheme’. By the end of this year, the Commission will present a proposal based on this idea, which will incentivise ship owners to have their vessels that are reaching the end of their useful lives dismantled in EU-approved facilities in ways that are both socially and environmentally acceptable.
1.5. An advantage of the proposed financial mechanism is the synergy it would bring about with the existing regulatory framework. Control mechanisms would not interfere with those of the EU SRR. Existing EU institutions are already in place to administer and implement such a licence. However, the EESC urges the Commission to also assess any risk for EU trading partners to see the proposal as anti-competitive interference into the conduct of international shipping.

1.6. Only by recognising the responsibility of the ship owner through the ‘polluter pays principle’ and building the cost of responsible recycling into ship operating costs, can current harmful practices be eliminated. The operators and users of bulk, freight and passenger shipping all have a part to play. Firstly by acknowledging that there is a serious problem and secondly by supporting a progressive, enforceable financial mechanism such as the SRL which is capable of global extension under the auspices of the IMO and with an information campaign extending outside the EU.

1.7. The EESC supports the European Commission in this endeavour. Apart from the fact that it fits very well within the recycling society policy of the EU it can also be a major step forward in reforming the dangerous and polluting ship-dismantling industry in South Asia and in preventing it from being re-established elsewhere. The EESC recognises the potential of the HKC provided it incorporates the principles of the EU SRR, and also stresses that a financial instrument is necessary. We encourage the EU to provide technical assistance to yards around the world to meet these requirements.

2. State of play

2.1. Without shipping, the global economy would not function. Every year, approximately 1 000 large ocean-going vessels (tankers and container, cargo and passenger ships) are sold for dismantling. More than 70 % of those end-of-life ships end up on beaches in India, Bangladesh or Pakistan for hazardous breaking operations. The remainder are mainly dismantled in China and Turkey, where proper infrastructure is more conducive to cleaner and safer practices, provided that adequate procedures are applied (1).

2.2. Most decommissioned ships are scrapped in an unacceptable way using the ‘beaching’ method. That method involves grounding the ships on sandy beaches, where they are taken apart by mostly unskilled workers, (including reported instances of child labour in Bangladesh), without fully appropriate equipment and with little or no protection against the large quantities of hazardous substances released (2).

2.3. The ship-recycling industry moved to East Asia (China and Taiwan) in the 1970s, when stricter environmental and occupational health standards were introduced in Europe. In the 1980s, the industry also faced stricter regulation in East Asia and consequently moved to South Asia. In the last 30 years, 470 deaths have been reported in India. In 2014, 25 deaths and 50 serious injuries were reported in South Asian yards. Last year, 16 workers lost their lives in yards in Bangladesh and so far this year, twelve workers have died there. Many more workers are seriously injured or made ill by toxic fumes and suffer painful deaths due to cancers caused by exposure to hazardous materials such as asbestos. The natural environments around these beaching facilities are severely degraded (3).

3. The cause of the problem — avoiding responsibility

3.1. At the heart of the ship-recycling problem is the lack of effective international governance to achieve a global solution. The International Maritime Organisation (IMO), an agency of the UN, has produced the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (HKC) which remains unratified and uncertain in effect. As in many other areas, the EU, by promoting good practice and practical solutions, can offer a regulatory and legal framework capable of yielding positive results worldwide and effective in dealing with the particular set of extra-territorial issues prevalent in the shipping industry.

(1) List of all ships dismantled over the world in 2015.
(2) Shipbreaking in Bangladesh and India National Geographic Video: Where Ships Go to Die, Workers Risk Everything (2014).
(3) NGO Shipbreaking Platform.
3.2. International law requires that every merchant ship be registered in a country. Unctad (United Nations Conference on Trade and Development) has reported that almost 73% of the world shipping fleet is registered or 'flagged' in a country other than the one where the beneficial owner of the vessel is registered. The reasons for flagging one's ship outside one's country include tax avoidance, the ability to avoid national labour and environmental regulations and the ability to hire crews from lower-wage countries. Many of these open registers are also termed FOCs (Flag of Convenience) or FONCs (Flag of Non-Compliance). These are flags from countries that have a very weak record of enforcing international law. Approximately 40% of all end-of-life ships beached in South Asia were imported under FOCs or FONCs such as the flags of St Kitts and Nevis, Comoros and Tuvalu. These 'end-of-life' flags are hardly used during the operational life of any ship and offer special discount rates for last voyages and quick and easy short-term registration without any nationality requirements.

3.3. Only a small number of ship owners have taken voluntary measures to ensure clean and safe recycling of their obsolete vessels. Less than 8% of the ships sold for breaking still have a European flag and these are mostly dismantled in a safe and sustainable way. Most vessels that reach the end of their service are sold to so-called cash buyers who bring the vessel to its final destination in South Asia. The majority of ship owners do not deal with recycling facilities themselves: they conveniently distance themselves from final disposal and leave it to these cash buyers who specialise in end-of-life ships and act as a middleman between ship owners and shipbreaking yards. Their service includes moving and crewing a ship on its last voyage and dealing with the required paperwork and authorities at the breaking destination. Both private and public ship owners resort to these practices.

3.4. This business is profitable to:

— those who organise the scrapping locally at lowest cost, exploiting workers and damaging the environment;

— ship owners worldwide, who can get a better price for the scrapped ship;

— business interests in the countries concerned, as it provides an important source of scrap steel which is used in the local and national economy;

— governments receiving revenues from the trade and who have a low incentive to regulate or police the industry and apply the legal safeguards that do exist.

3.5. Whilst voluntary coordinated actions by ship owners have existed since 2009, such as a set of guidelines on the preparation of hazardous materials inventories and other end-of-life measures in 2015, Bangladesh, where conditions are known to be the worst, was the preferred destination of end-of-life ships (4).

4. Dealing with the problem — attempts to enforce responsibility

4.1. In 2009, the IMO adopted a particular instrument for shipping, the HKC, which sets up a framework of regulations with the ultimate goal of delivering the required sustainable level playing field in ship recycling activities worldwide. In reality this claim does not stand up to scrutiny. While this is a small step forward, the implementation and enforcement provisions are weak and open to a wide range of interpretations, there is no independent certification or auditing stipulated and beaching is, in practice, still allowed.

4.2. The HKC will only enter into force 24 months after ratification by 15 States representing 40% of global tonnage and whose annual ship recycling capacity accounts for at least 3% of the combined tonnage of the signatories. So far only five countries, with Panama as the only major flag state, have ratified the HKC, but none comply with the required ship recycling capacity for entry-into-force of the Convention. Entry into force of the Convention is thus not expected any time soon.

4.3. Another initiative by the IMO, the International Ship Recycling Trust Fund, has not been internationally supported. Although the IMO has delivered positive maritime reform in several areas, effective action on ship dismantling is not one of them. The ship-recycling industry has tended to locate or relocate to countries with low labour costs and where environmental and health and safety standards are both low and unenforced. The ‘facilitating’ role of such states can be eliminated only by attaching a significant, independently held financial fund to every individual ship that is reclaimable, provided that it is recycled responsibly. Shipping is a global industry, while shipbreaking — with 70% of all ships dismantled on three beaches in South Asia — is a regional scandal and deserves an effective solution.

4.4. Within the EU, decommissioned ships are regarded as hazardous waste and fall within the scope of the Basel Convention which regulates all kinds of transport of hazardous waste and is transposed at EU level through the Waste Shipment Regulation. This should in theory have prevented EU-owned ships from being disposed of irresponsibly. The rules of the Convention and of the Waste Shipment Regulation are also being systematically circumvented by ship owners by the sale of vessels approaching end-of-life to cash buyers as soon as these vessels leave EU waters for their last trip. However, following entry into force of the Ship Recycling Regulation (SRR) within the EU, decommissioned ships that sail under the flag of an EU Member State will be excluded from the application of the EU Waste Shipment Regulation and the Basel Convention — which regulates all kinds of transports of hazardous waste — from 2019.

4.5. After analysis, the EU and its Member States concluded that both the Hong Kong and Basel Conventions appeared to provide an equivalent level of control and enforcement for ships classified as waste. NGOs globally, the UN Special Rapporteur on Human Rights and Toxic Waste as well as the European Parliament and the EESC have denounced the HKC for not providing proper solutions.

4.6. The search for an effective solution has been on the EU’s agenda for many years. In 2007 the European Commission produced a green paper (\(^5\)) on the subject, followed by a communication in 2008 (\(^6\)) and finally a proposal for the EU Ship Recycling Regulation (EU SRR) (\(^7\)) in 2012. The Regulation entered into force on 30 December 2013 but is only required to become fully applicable by 31 December 2018. The Regulation brings a number of the requirements of the HKC into force early. In addition, the EU SRR establishes a European List of approved recycling facilities where EU-flagged vessels will have to be scrapped. These facilities need to be independently certified and audited. The EU SRR also goes beyond the HKC by setting more stringent standards for recycling facilities and looking at downstream waste management as well as labour rights.

4.7. The EU SRR is, however, a rather pale reflection of the previous green paper and the communication on the same subject. These two documents provided an impeccable analysis of ship recycling problems in South Asia and expressed the view that robust measures were needed to tackle the unacceptable conditions in these countries. The measures in the EU SRR do not, however, solve these problems. Whilst the EU SRR sets high standards for ship recycling facilities that effectively exclude the sub-standard beaching method, it is very easy for ship owners to circumvent these standards by transfer of ownership or simply by flagging out to a non-EU flag. As the EESC concluded, the political will to hold the shipping industry responsible was manifestly absent and it was felt that the Commission should have produced a better, more creative and audacious proposal, richer in initiatives and in line with the level of ambition of previous Commission documents (\(^8\)).

5. A more effective approach

5.1. What is lacking in the Regulation is an economic instrument the Commission could use to guide developments in the desired direction. The fundamental weakness that ship owners can easily avoid the EU SRR by simply flagging out to a non-EU country was recognised by the Commission in its 2012 initial proposal which included a clause on ‘penultimate ownership responsibility’. Whilst this clause was rejected during tripartite negotiations, the EP ensured an article was included in the Regulation that asked the Commission to look into possible alternative financial mechanisms.

\(^8\) OJ C 299, 4.10.2012, p. 158.
5.2. In July of this year the Commission published a new study, conducted by Ecorys, DNV-GL and the Erasmus University of Rotterdam, on a ‘ship recycling licence’ (SRL) aimed at incentivising ship owners to finally shoulder their responsibility when it comes to clean and safe ship dismantling.

5.3. The SRL would create a dedicated fund specific to each ship, held in escrow by a major financial institution that would build up capital to finance safe and sustainable recycling. The amount of the licence would be determined by a combination of tonnage, type of transport, frequency of calling at EU ports, design based on the cradle-to-cradle principle and the presence of toxic materials on board. The capital is created by ship owners who, every time one of their vessels calls at an EU port, pay the appropriate charge to the fund that is linked to that specific vessel.

5.4. At end-of-life this fund could be reclaimed if the ship was indeed recycled in an EU-approved yard and thus used to make up for the loss of revenue stemming from going for responsible dismantling. By the end of this year, the Commission will put forward a formal position on this study.

5.5. A major advantage of the proposed financial mechanism is the synergy it would bring about with the existing regulatory framework. In particular, control mechanisms under the proposed financial mechanism would work very well with existing control mechanisms under the EU SRR, such as the site inspections of facilities to take place prior to and after their inclusion on the European list. The licences could also be included on the list of certificates which are to be checked regularly by port state control as part of pre-existing obligations. Similarly, the already existing European Maritime Safety Agency (EMSA) appears to be best suited to fulfil the tasks of inspection and the issuing of licences, whereas one of the European financial institutions like the European Investment Bank (EIB) or the European Investment Fund (EIF) would appear to be best placed to administer the income from a possible SRL. The EESC urges the Commission to also assess any risk for EU trading partners to see the proposal as anti-competitive interference into the conduct of international shipping.

5.6. Such a fund would go some way towards the EESC proposal supporting a more extensive and viable ship recycling industry in Europe. There is sufficient capacity in the EU which is no longer used for building and repairing ships but which is suitable for the decommissioning and recycling of ships. This fits in with the EU’s goal of developing into a sustainable recycling society with a circular economy in which waste is turned into raw materials by means of a sophisticated and fine-meshed recycling system. In view of alternately volatile and steadily rising raw material prices and high unemployment in a number of European Member States and the fact that a number of oil rigs in EU waters are reaching the end of their economically viable life, this could be highly profitable for Europe as a whole. Moreover, an industry specialising in recycling end-of-life ships would be an opportunity for the development of maritime areas and training of both young people and the unemployed in emerging skills.

5.7. On 12 April 2016 the Commission published technical guidance for ship recycling facilities seeking approval under the EU SRR. Facilities wishing to be listed as EU-approved need to ensure healthy and safe working conditions, pollution control — including proper downstream waste management — and enforcement of international labour rights. Facilities within and outside the EU can apply to be on the list. Apart from EU facilities, the better yards in China and Turkey will most likely feature on the list, which will be published by the end of this year. Recycling facilities using the beaching method have already applied to be on the EU list. The EESC agrees with Parliament and the Commission that the current beaching method should not be accepted on the EU list.

5.8. If Europe wants its ships to be scrapped in a responsible way, it is reasonable that it should ensure that the cost of doing so is integrated into the operating cost of the vessel. In a market economy nothing is for free, a price has to be paid for everything. The price for responsible scrapping of ships is paid in money. When ships are scrapped in an irresponsible way the price is paid in other currencies, such as destruction of the local environment and the loss of human lives. As the EU does not wish to accept these values as a legal means of payment, it should not accept their use as a legitimate currency in its payment traffic with developing countries outside Europe.
5.9. In a period of over-capacity and low profit in the industry there are strong indications that the great majority of ship owners are resistant to any measures which will involve higher charges. Yet the impact on ship owners will be modest. To change the behaviour of 42% of ship owners, it is estimated that the measures required to achieve that goal will add 0.5% to the operating costs of smaller ships and around 2% to those of the largest categories of ships. If the licence-fee rates are increased and/or if the duration of capital accumulation is shortened, the percentage of ships sold for sustainable ship recycling will increase to up to 68%. In the long run, the report estimates that up to 97% of ships operating in European ports will be able to accumulate sufficient funds to cover the gap of sound recycling (9).

5.10. The revenue fund from the SRL must however demonstrate that it meets the cost of responsible recycling and that it will be applied and levied equitably upon all operators calling at EU ports. However, a regional (continent-wide) measure such as the EU SRL cannot be effectively implemented worldwide without the cooperation of ship owners and the IMO. An EU financial instrument, applicable to any ship that calls at an EU port, might very well trigger that solution at a global level, which could be extended through the IMO. Governments of Member States with significant resident fleet owners need to make considerable efforts to take forward relevant legislation in line with fraud policies and consistent with WTO guidelines.

5.11. Political resolve can also be generated and supported by informed public opinion. Going public on the outrageous conditions in most of the South Asian recycling facilities is having some effect but at present there is no way that concerned members of the public can directly influence the shipping industry by purchasing or boycotting relevant ship services. This needs to be changed by encouraging major corporate users of sea freight services to demand that their goods are shipped on vessels where responsible and irrevocable end-of-life policies are in place.

5.12. As in many other areas, the EU, by promoting good practice and practical solutions, has a role to play and can offer a supportive regulatory framework capable of yielding positive results worldwide and effective in dealing with the particular set of extra territorial issues prevalent in the shipping industry.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

(*) Table 4.2; p. 83.
Opinion of the European Economic and Social Committee on 'Prosumer Energy and Prosumer Power Cooperatives: opportunities and challenges in the EU countries'

(own-initiative opinion)

(2017/C 034/07)

Rapporteur: Janusz PIETKIEWICZ

Plenary Assembly decision 21/01/2016
Legal basis Rule 29(2) of the Rules of Procedure
Own-initiative opinion

Section responsible Section for Transport, Energy, Infrastructure and Information Society
Adopted in section 06/10/2016
Adopted at plenary 19/10/2016
Plenary session No 520
Outcome of vote 225/4/3
(for/against/abstentions)

1. Conclusion and Recommendations

1.1. The EESC takes the view that the general development of distributed prosumer energy should form an important and sustainable part of the European Union's energy policy. Such an approach would be beneficial and might even be necessary from the point of view of energy security and in light of environmental and social concerns.

1.2. The extent to which prosumer energy contributes to overall energy generation should be tailored to the specific circumstances of each Member State. The EESC therefore proposes that the European Commission develop a framework for prosumer energy, while the detailed regulation in this field should remain a matter for the individual Member States.

1.3. A wide range of renewable energy sources can be used to generate prosumer energy, which is suitable for any area regardless of climatic conditions.

1.4. The wide-scale arrival of prosumers on the energy market has been made possible thanks to new technologies, the digital revolution and the expectations of consumers that they should be able to participate directly in economic processes.

1.5. To ensure that the concept of the prosumer is better understood in the Member States, it is suggested that the Commission draw up a framework definition of the prosumer covering essential common elements, such as: size of the installation, individual and collective power generation, ownership of the installation and the issue of power generation surpluses.

1.6. Anyone can become a prosumer regardless of whether they own property, installations or facilities used to generate prosumer energy. For example, both the owner of a family house and the tenant of an apartment in an apartment block can become a prosumer.

1.7. The economic advantages of prosumer energy, which are mainly associated with lower energy transmission costs, better use of local energy sources and the economic activation of local communities, should in the not too distant future enable this kind of energy to be generated without the need for additional support mechanisms.
1.8. The savings and social benefits of a more informed and active consumption, the decentralised use of renewable energy sources, the reduction of network losses and efficiencies resulting from cooperation can rapidly result in a positive return on the investment in prosumer energy generating facilities, the development of transmission, distribution and local networks and their management system, as well as the development of energy storage.

1.9. On no account should the systems used to support prosumers distort competition on the energy market or eliminate other operators. They must also take into account that there are energy consumers in this market who cannot or do not wish to become prosumers.

1.10. Financial solutions which are likely to have an impact on prosumers, such as taxes, tariffs and other charges, should be favourable to them. Under no circumstances should they discriminate against prosumers on the energy market.

1.11. The dynamic growth of prosumer energy depends on the creation of good partnerships between prosumers, other energy producers and companies working in the field of energy transmission and distribution. Conditions need to be put in place that enable all energy market stakeholders to reap the benefits of the growth of prosumerism. The EESC suggests that the Commission carry out tests to find solutions in this area.

1.12. Solutions are required to protect prosumers from the monopolistic practices of energy transmission and distribution companies, and of large energy producers.

1.13. In general, prosumers generate energy for their own needs (individual and those of groups of individuals, private households, farms and small businesses). A perfect match between the capacity of energy installations and own energy needs is not achievable. It is therefore crucial to find a solution to the problem of surplus energy. The issue is all the more important if we wish to encourage prosumers to lower their energy consumption — something we should do as a matter of routine.

1.14. Smart living systems should be used to support optimal energy consumption by prosumers. The EESC calls for this to be included in the system solutions currently being drawn up by the European Commission.

1.15. Given the small scale of the power generated by individual prosumers, prosumers should not be restricted in their access to the network.

1.16. Distribution and transmission networks, and the way in which they operate, must be adapted to take account of the growth in prosumer energy. Prosumers should contribute to the costs arising in this connection, but transparent rules should be drawn up for contributing to these costs.

1.17. If the necessary development of prosumer energy is to be achieved, smart local networks also need to be developed. The EESC sees the roll-out of smart meters as part of the network infrastructure, and the related financing costs should not therefore be directly borne by consumers. The EESC draws attention to the need to ensure the protection of any data that is collected.

1.18. The benefits of prosumer energy will increase sharply as a result of the development of small-scale energy storage facilities. The Committee suggests that scientific research should continue to focus on improving existing energy storage technologies and looking for new ones.

1.19. One way of stepping up development of prosumer energy is to create power cooperatives or other forms of prosumer groups. Groups of prosumers are more effective. Among other things, they benefit from lower energy generation costs, have a stronger position in the energy market and assume a direct role in improving local energy security.
1.20. Groups of prosumers are better able to balance the energy they generate with their own energy needs. This in turn further reduces the transmission of energy, meaning lower energy costs for members of the group. As a result of smaller fluctuations in supply and demand, prosumer groups are more effective at influencing the distribution and transmission network than individual prosumers.

1.21. The EESC suggests that the Commission attach the utmost importance to the development of prosumer energy in activities relating to the construction of nearly zero energy buildings.

1.22. The Committee proposes that the Commission take account of prosumer energy issues in the current Electricity Market Design and Renewables Package review initiatives.

1.23. The EESC believes that the benefits of prosumer energy should be applied in an active policy of reducing energy poverty and protecting particularly socially vulnerable groups, as well as addressing issues connected with the silver economy and the ageing society. The involvement of civil society organisations will be key in this respect.

1.24. The widespread development of prosumerism is also an opportunity to activate local businesses, thereby creating new jobs linked to the establishment of key facilities and services.

1.25. The involvement of local and regional authorities will have a huge impact on the further development of prosumer energy. The EESC recommends that the Commission take account of this issue in its Covenant of Mayors activities.

1.26. Given that prosumer energy is at a different stage of development in the Member States, it would be a good idea to organise various exchanges of experience. The EESC suggests that the Commission monitor the development of prosumerism in the Member States as part of the annual Energy Union reporting. The data collected will be extremely helpful for the activities carried out by the Member States.

1.27. The widespread introduction of prosumerism is a complex, multi-faceted and lengthy process. It is therefore important that solutions to encourage development of prosumer energy are sustainable over the long term.

2. Context

2.1. Access to energy sources, security of supply and pricing policies that take into account the interests of vulnerable social groups and consumers in difficult situations are a major challenge for societies, all political administrations and individual consumers.

2.2. Until recently, we were unable to effectively obtain energy in any other way than through combustion, with the possible exception of hydroelectric power. Technological developments have made it possible for energy to be widely produced without having to burn anything. We have learned to produce energy in its cleanest form from sunlight, without polluting the environment. Furthermore, this energy source is both free and inexhaustible and the only costs incurred are those of the installations.

2.3. It is equally effective to generate electricity from wind power, i.e. from the same source, the sun, which, in the process of warming the Earth, causes movements of air masses. This also includes biomass, as photosynthesis is the principal reason for its renewal.

2.4. The development of renewable energy is inevitable in the face of the reduced availability of fossil fuels arising from the fact that they are being progressively exhausted, the dependence of many countries on imports and global warming and air pollution. These problems have meant that Europe, and with it the majority of the largest economies, have begun to invest in RES.

2.5. At the 1992 Earth Summit in Rio de Janeiro, fundamental socioeconomic principles were adopted requiring environmental protection, such as the United Nations Framework Convention on Climate Change.
2.6. In September 2015, the UN General Assembly adopted the Sustainable Development Goals (SDGs). One of them (SDG 7) is to ensure access to sustainable energy for all. Today, 1.2 billion people in the world have no access to electricity.

2.7. More than 120 million EU citizens are at risk of poverty or social exclusion. 10% of Europeans live in households where no-one has a job; the number of homeless is rising. These figures also mean energy poverty.

2.8. Civil societies are showing overwhelming support for RES. This was confirmed in 2015 by Pope Francis' Environmental Encyclical and declarations on climate change by Muslim, Hindu and Buddhist religious leaders. They called on faith communities to commit to a zero- or low-carbon future.

2.9. The need to move away from fossil fuels was reinforced at the 2015 COP21 conference in Paris in which 200 countries took part. This was, above all, about 'holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C'.

3. The digital revolution. Impetus for the development of prosumerism

3.1. Over the last half century the Earth's population has tripled. The fragility of the global financial system has posed the threat of long-term stagnation in the world economy. The high level of unemployment and rising energy costs have caused instability in many countries: the costs of doing business and the burden on consumers have risen.

3.2. The world has been faced with the need for an economic paradigm shift and transformation of business models, also in the social sphere. Instruments for the new system have emerged as a result of the digital revolution and the internet of Things.

3.3. By 2020 there will be more than 50 billion devices connected to the network on the market, i.e. seven times more than there are people in the world. A smartphone, rather than a PC, has already become the most important window for communication with the world. In 2020, there will be around 6.1 billion of them on the market.

3.4. The internet of Things has made it possible for millions of people to participate in social networks. The sharing economy model has emerged, which is better adapted to an organisation of society focused on social cohesion. The economy is beginning to move from centralised institutions managed in a top-down way to the idea of sharing, and many excluded social groups are being given the chance to participate actively in economic life.

3.5. Online platforms can make consumers into producers, creating and disseminating information and products made using 3D printers. Platforms make it possible to share cars, homes, clothes and other items. The consumer/producer can undertake training on the internet, obtain medical advice or find a craftsman for home renovation. Social entrepreneurs, avoiding the banking establishment and using crowd-funding, can fund their economic activities in the young sharing economy.

3.6. In a world of digital opportunities social capital becomes just as important as financial capital, access becomes more important than ownership, and 'exchange value' on capitalist markets is increasingly replaced by 'sharing value' in the cooperative community.

3.7. The development of digital technology and new business models in the energy sector, including the distributed energy model, make it possible to regard rural areas, suburbs of conurbations, residential areas consisting of single-family houses, single-building communities and housing associations as large power plants with enormous potential. The same applies to the cloud of distributed sources which give rise to the new doctrine of energy security, built from the bottom-up — from households, farms, small businesses and micro-cooperatives.
3.8. In the energy sector, the internet has made it possible — in the framework of the sharing economy — for millions of people to participate in social networks, producing electricity in their homes, office buildings, on the roofs of warehouses, and then sharing it by means of the internet of Energy, just as today we create and exchange information on the network. Elements of that system which still need to be significantly developed include energy storage, the ‘internetisation’ of energy networks and electric cars.

4. Towards Renewable and Distributed Energy Sources

4.1. Producing clean energy to supplement the market and replacing fossil fuels have made it necessary to transform energy systems and introduce rules on the participation of new players in the market.

4.2. In accordance with the Article 2(3) of the Lisbon Treaty, sustainable development in Europe takes place in a social market economy. The civil society partners play an important role in this and public acceptance of the transformation of our energy systems, especially at the local level, is crucial.

4.3. The European Union has drawn up targets on the Energy Union and transforming the EU into an energy-efficient, low-carbon economy by 2030. Two of the main targets are to reduce greenhouse gas emissions by 40% and increase the share of renewable energy sources to 27% without setting country-specific indicators. A low-energy economy will ensure energy security and economic growth with low levels of CO₂ emissions and, in the longer term, an increase in the production and consumption of locally produced energy. According to the most recent available data, in 2014 RES made it possible to reduce global CO₂ emissions by 380 Mt.

4.4. One of the individual 2030 targets outlined by the EU is to cut spending on energy by private consumers and businesses. They will be able to actively enter the energy market as a result of the possibilities created by new technologies.

4.5. The EU energy balance is dependent on trade. More than half the EU’s internal annual gross domestic energy consumption, amounting to EUR 400 billion, comes from imports. Some studies show that by 2030 the EU’s dependency on external energy supplies may reach 70%. It has been estimated that RES made it possible to reduce global fossil fuel use by 114 Mtoe in 2014.

4.6. It is key for the EU to improve its energy balance. One solution is for energy to be produced from many local sources directly by individual consumers. Without broad grassroots support for renewable energy production to satisfy local needs, many countries may have difficulties in ensuring that their systems are secure.

4.7. Technological developments in energy production in home installations, increasingly efficient energy storage solutions, transmission of energy over smart grids, use of smart meters and local demand management mean that consumer installations can have a significant effect on the energy basket of each country.

4.8. The renewable energy sector is a strong factor in technological innovation. It is essential to the fundamental transformation of Europe’s energy system in the framework of the Digital Single Market strategy.

4.9. The transformation of passive consumers into active ‘prosumers’ in various sectors and the possibility of integrating micro-entrepreneurs and the single market strategy into the digital era of the internet of Things are described in the European Commission’s May 2016 Digital Single Market Strategy (COM(2015) 192 final), which is built on three pillars: 1) better access to online goods and services, 2) the right conditions for digital networks and services to flourish, and 3) the growth potential of the European Digital Economy. This could bring the EU economy EUR 415 billion per year and create hundreds of thousands of new jobs, including in the renewable energy sector.
4.10. The market, which is dominated by major energy producers and distributors, must be opened up to individual players and become more distributed. Electricity will no longer flow 'top-down' in a centrally regulated way from large power plants to consumers. It will be produced from many decentralised renewable energy sources.

4.11. The degree of distribution of electricity generation needs to be adapted to the specificities of energy consumers. Differences in this area may be associated above all with the operation of energy-intensive industries in a given country.

4.12. Currently energy security increasingly depends on the resilience of the energy system to terrorist attacks. By developing distributed generation we also increase energy security, as decentralised generation is less vulnerable to terrorist threats.

4.13. Distributed energy sources make it possible to look at the problem of continuity of energy supply to operators whose activities are highly dependent on electrical current (e.g. poultry-breeding farms, processing plants, cold stores). There are EU countries where power cuts average no more than twenty minutes per year, but there are others where cuts in supply vary from 450 to 500 minutes. Prosumer micro-installations ensure business continuity for producers of this kind.

4.14. The opportunities created by the general development of distributed prosumer energy can be exploited in the socially important areas of the EU identified in the Europe 2020 strategy in connection with the solution of the demographic problems associated with an ageing society and combating poverty and social exclusion.

4.14.1. One of the objectives of the strategy is to reduce by at least 20 million the enormous number of 122 million people at risk of poverty and social exclusion. Support will be provided by operational support programmes, active labour market instruments and targeted funds, including at least 20 % of the European Social Fund budget. Logistical and financial support for these people to set up energy micro-cooperatives and/or to join existing local internet of Things businesses could facilitate their occupational and social integration and help them to escape from the risk of poverty.

4.14.2. Similar challenges exist in relation to the silver economy. The EU faces a historic challenge of a kind which no society has ever before faced, namely sharply rising longevity and the simultaneous general digitalisation of life, which call for the introduction of unconventional economic solutions as well as new social strategies.

4.14.3. In 2060 there will be two senior citizens for every young person (1). The elderly population and older workers should be viewed not as a threat and a burden on society but as an opportunity in the age of the digital revolution for the creation of a job-rich economy, building on the extensive experience and leisure time of senior citizens and their financial capital — even if modest — for investing safely in digital-age enterprises. One possibility would be the involvement of older people as e-seniors in energy generation activities, for example through cooperative power plants located in housing estates or blocks of flats.

5. **Prosumer energy**

5.1. The distinguishing feature of modern capitalism was a definition of the concept of consumption in relation to production and marketing processes, consumption no longer being the privilege of a wealthy elite but rather a mass phenomenon.

5.2. The term ‘prosumer’ was first introduced in 1980 by the writer and futurist, Alvin Toffler. In ‘The Third Wave’, he defined prosumption as the blurring of the distinction between production and consumption in the market. The third wave was a process involving the participation of individuals or organised groups of prosumers in the production of products intended for personal use, which, in turn, shifted the boundaries between producers and consumers.

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5.3. The concept of a market in which consumers, including households, were perceived exclusively as passive market participants was not in line with the challenges brought about by technological developments. As early as 1972, Marshall McLuhan and Barrington Nevitt predicted that, as electrical technology developed, the consumer would be able to become the producer.

5.4. The backbone of a modern economy is the secure and affordable supply of energy to consumers, taking into account the need to protect vulnerable social groups as part of the fight against energy poverty.

5.5. Prosumers are individuals, groups of individuals, households or farms able to operate in an organised way, e.g. through associations, foundations or cooperatives, that are both producers and consumers of energy produced in small installations located in back yards or on residential or commercial buildings (e.g. mini wind turbines, photovoltaic panels, solar collectors and heat pumps). Prosumers can also be small businesses, including social enterprises and local authorities.

5.6. The concept of prosumerism includes, in addition to electricity generation, heating and cooling.

5.7. In principle, prosumers produce energy for their own private use. They become the co-producer of the goods consumed. Individuals who produce an amount of energy similar to what they consume are also considered prosumers, even if the two processes are not simultaneous. For instance, this is the case when they produce energy mainly during the day, but consume relatively little for their own needs, selling off any surplus to other consumers and consuming most of their energy at times when they themselves are producing much less of it.

5.8. Individual prosumption requires life to be organised differently. It can, to a large extent, be linked to a dissatisfaction with mass, standardised production. Modern consumers in the digital age want to be treated as individuals and see an opportunity to meet their individual needs and aspirations. They are consciously getting involved in projects related to environmental protection and combatting greenhouse gas emissions.

5.9. Prosumers associate the transition to a modern energy system with development, the need for creativity and independence. The most active group of prosumers on this market is the net generation. This generation is distinctive in that it does not see the world from the perspective of consumption but through production. It aspires to meet needs related to freedom, credibility in society, a fast-paced life and innovativeness.

5.10. The first prosumer processes originated in simple self-service operations and e-commerce and in the process of making consumption less market-orientated. Other causes of prosumption are changes in the job market, computerisation of everyday activities, the possibility of working from home (teleworking), more free time and the need to make use of it in the best way possible.

5.11. The market-based reason for the rise of prosumption, not only in the energy sector, is the fall in household incomes during the crisis, rising prices of goods and services, the need to save on an everyday basis and the production of goods and services by individuals for personal use for economic reasons.

5.12. Many countries see benefits from the simultaneous development of distributed energy sources, including micro-installations. The upper limit on their power is usually 50-100 kW. This applies to prosumer installations, in particular.

5.13. Prosumer energy can be regarded as an essential element of the transition to distributed generation, i.e. a solution that is generally desirable from the point of view of energy security, and bearing in mind environmental and social considerations.

5.14. The broad implementation of prosumerism should significantly facilitate the accomplishment of the tasks arising from COP 21 in Paris.
5.15. The EU has put consumers at the heart of its energy policy, making it possible for them to make active use of new technologies. In recent years new RES technologies have emerged, for both large-scale industrial installations and smaller-scale projects, with significant reductions in the cost of underlying investments. For example, the cost of solar PV modules fell by 80% between 2008 and 2012. As a result, businesses and households have been able to start producing and consuming their own electricity profitably.

5.16. Bearing in mind the advantages of the development of prosumer energy, it makes sense to encourage potential prosumers to become active in this field. This support could include the removal of barriers and the simplification of administrative procedures, easier network connections and favourable conditions for the sale of surplus electricity.

6. Energy Cooperatives for Prosumers

6.1. An energy cooperative is a voluntary association with an unlimited number of members and legal personality. The objective of an energy cooperative is to meet the energy needs of its members.

6.2. A prosumer can act individually or together with neighbours in an apartment block housing several families. We speak of a cooperative when several people invest in the installations. They may consist of entire groups of residents on a particular site. The idea is to produce electricity or heat using renewable energy sources to meet personal needs and possibly to sell any surplus to the grid. Three natural persons are required for this in Germany, in Poland ten natural persons or three legal persons.

6.3. The German experience of recent years shows that the aim of cooperatives is not to maximise profits but, above all, to provide economic assistance and support to their members. Every fourth cooperative out of nearly a thousand was financed solely from members’ contributions. In the case of the remaining cooperatives, two thirds of the funding was obtained from cooperative banks. Every member has one vote, regardless of the amount of his/her financial contribution. Generally, this is not a large amount, and it is laid down in the cooperative’s statutes. If a cooperative makes losses, members’ liability is limited to the amount of their investment.

6.3.1. Cooperatives have to function effectively in economic terms, like any business. The advantage of cooperatives was the negligible proportion of bankruptcies in this sector (about 0.1 % of all bankruptcies in Germany). Initially dividends averaging 5-6 % were paid; currently they average 2-3 %.

6.3.2. Municipalities in Germany are very important partners for energy cooperatives, and not just by making roofs and municipal buildings available for investment. Often mayors have taken the initiative for the formation of energy cooperatives and have tried to win over local people to this idea.

6.4. One notable effect of the formation of energy cooperatives is the opportunity of obtaining energy at a lower cost than would otherwise be possible for individuals.

6.5. Energy cooperatives very significantly strengthen the position of prosumers compared to large players in the energy market.

6.6. Energy cooperatives also directly involve local people in the process of increasing energy security in their area. This is essential for optimising solutions tailored to the needs and conditions of local communities.

6.7. The cooperative movement, particularly in the old EU countries, played a significant role in driving growth and boosting economic competitiveness, as well as fostering European values such as solidarity, autonomy and democracy. The economic potential of cooperatives in the old EU countries is still huge. For the central and eastern European countries from the former socialist bloc, the socialist origins of the cooperative movement as well as the policy of that time of bringing cooperatives under the control of central and regional authorities are today acting as a hindrance to prosumer cooperatives and having a negative effect on attitudes towards them.
6.8. The self-consumption model has opened up the possibility of reducing energy costs, especially for SMEs, for which high electricity prices constituted a serious burden. Among residential consumers new models have emerged, ranging from PV panels on roofs, owned either by the household or third parties, to projects implemented by civic renewable energy cooperatives.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on ‘Marine energy: renewable energy sources to be developed’

(own-initiative opinion)

(2017/C 034/08)

Rapporteur: Stéphane BUFFEAUT

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(For/against/abstentions)

1. Conclusions

1.1. Scientists and engineers have been working for many years to harness the energy of the oceans. Currents, tides and the force exerted by swells contain indefinitely renewable reserves of energy. In France, EDF’s Rance tidal power station, inaugurated in 1966 by General de Gaulle, generates a capacity of 240 MW, its 24 turbines each generating 10 MW. The latest wind turbines generate at most 8 MW. Thus this technology is effective, even if the Rance barrage was for a long time the only such facility in the entire world. There is now another example of a similar installation in Lake Sihwa, South Korea, with a capacity of up to 254 MW. There were projects in the UK, but they have been blocked or suspended due to objections on ecological grounds.

1.2. The fact remains that such investments are worthwhile when installed in favourable geographical locations with strong tidal coefficients, and should be given more consideration in the national energy mix.

1.3. The first industrial applications have been implemented, showing that these techniques should not be seen as risky experiments but as clean energy sources to be developed.

1.4. The EESC is therefore of the view that this type of renewable energy production should be developed and that there should not be an exclusive focus on wind turbine and solar technologies. Of course, marine energy cannot be harnessed everywhere, but it would be detrimental to disregard a predictable source of renewable energy with a minor — or manageable — impact on the environment. It is universally acknowledged that the future of energy will be based on a variety of sources of supply.

1.5. On 6 June 2016, Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Norway and Sweden decided to strengthen their cooperation on offshore wind energy. Along with the European commissioners for Energy Union and the climate, they signed an action plan tailored to Europe’s northern waters. Specifically, this cooperation will involve harmonising regulations and the subsidy system for offshore wind energy, as well as interlinking electricity networks.
The EESC strongly recommends adopting a similar approach regarding marine energy — whether water turbines or tidal barrages — that promotes cooperation between Member States or neighbouring countries of the European Union that have suitable sites for this type of facility (mainly those with Atlantic or North Sea coastlines).

1.6. It is also of the view that techniques that have yet to be fully developed — such as wave power and ocean thermal energy — should not be neglected; however, at a time when public funds are scarce, funding should be allocated according to efficiency criteria. Therefore, priority should be given to the technologies that offer the fastest progress.

1.7. It emphasises that investing in this field would enable the European Union to eventually take its place at the forefront of new renewable energy sources. European companies already hold 40% of renewable energy patents. The EESC recommends keeping up research and development efforts in the area of marine energy, but also with regard to storing energy produced from intermittent sources, so the production of renewable energy can be smoothed out.

1.8. It warns against the temptation to restrict subsidies to the classic forms of renewable energy, an approach that would reduce the number of options and distort the renewable energy economy in favour of technologies promoted by an effective lobby.

2. General comments

2.1. Most of our planet is covered by oceans, and it would be more accurate to call it ‘planet sea’ rather than ‘planet earth’. Humans have always fished for food. Recently, we have managed to exploit the resources that lie in or under the sea floor (polymetallic nodules, oil, etc.). Meanwhile, the energy generated by the oceans has been used for centuries, but on a small scale, by means of tide mills on some coastlines.

2.2. The current need to combat all kinds of pollution and to reduce greenhouse gas emissions should encourage us to look into the energy potential of the sea. Indeed, how could the European Union and Member States with access to the sea not take an interest in the energy opportunities that the oceans could offer?

2.3. While Europe has an extensive maritime domain, making use of the renewable energy resources of these vast expanses is still in its infancy. However, the European Union and Member States could help innovative companies and industrial groups within the energy sector to promote the implementation of new techniques to harness sea energy. This is what the marine energy forum hopes to do.

2.4. The sea offers various renewable energy sources: swells, waves, currents, tides, temperature differences between surface waters, wind. Each technique and method has its own geographical and ecological requirements, meaning that these innovative techniques are only feasible if the constraints and the consequences involved are taken into account.

3. Harnessing the energy of currents, tides, swells and waves: water turbines

3.1. Anyone who has ever contemplated a calm or raging sea knows that there are forces at work in the vastness of the oceans, and that they are constantly moving. It is therefore natural to wonder whether it would be possible to harness or harvest the energy produced by the sea.

3.2. In practice, what techniques have been studied and put in place?

— estuary barrages with tidal turbines. The Rance barrage in France has been operating well for decades. There are two projects in the UK, but they have been blocked by environmentalist pressure groups;

— offshore turbines mounted on columns or buoys;

— turbines attached to the sea floor (‘water turbines’). There are projects in Brittany which will soon be implemented.
3.3. In practice, harnessing tidal currents seems to be the most promising technique. However, location has a large impact on the potential of these techniques. The most promising areas of the Atlantic and the North Sea are those with the biggest tidal coefficients, for the most effective areas are those with a large tidal range. The great advantage of this type of power generation is that it is predictable and regular, as tides are constant and their range is well known in advance.

According to EDF, the European Union could generate around 5 GW of power (2.5 GW of which would come from the French coastline) — the equivalent of twelve 10 800 MW nuclear reactors. Nevertheless, aside from the Rance barrage, harnessing tidal currents is in the technological research phase and is not yet operational.

3.4. What water turbine technologies are being tested?

— The Arcouest (1.5 MW), a prototype water turbine, was submerged off the coast of Paimpol in Brittany in 2014. This water turbine was developed by OpenHydro (DCNS shipbuilding group) for Paimpol/Brehat, the first EDF tidal power plant. It consists of four turbines, with a capacity, once they are installed, of 2-3 MW. The machinery is simple and robust, consisting of an open centre with a low-speed rotor that operates without lubricant, which minimises its impact on marine life. This water turbine was tested for four months. The turbine rotated continuously for 1 500 hours and numerous mechanical and electrical readings were taken. The tests were successful and confirmed the viability of this type of water turbine. The decision was therefore made to start a demonstration site in the summer of 2015. The turbines have been constructed and are ready to be installed, but weather and sea conditions have delayed their installation. It is worth noting that these two turbines were built in Cherbourg and Brest, which shows that these new technologies can stimulate industrial activity in coastal regions.

— Semi-submerged water turbine able to be raised for maintenance. This is a British technology, developed by the Tidalstream company. A prototype has been developed for a ship to turbine (STT) installation operating in the Pentland Firth. This consists of four turbines of 20 m in diameter, with maximum total capacity of 4 MW. By way of comparison, a wind turbine would require a diameter of 100 m and a wind speed of 10 m/s to generate an equivalent amount of power. Moreover, the wind turbine’s foundation, 25 metres below sea level, would be 25% larger than the STT’s foundation. Tidalstream therefore believes that its system would be competitive in comparison to offshore and onshore wind turbines. The cost of electricity produced by the STT system could reach GBP 0.03 per kWh (approximately EUR 0.044 per kWh). This system has been tested in trials on the Thames and has been shown to be viable.

— Water turbines mounted on columns, developed by Marine Current Turbines. This technology requires anchoring a column to the sea floor, which therefore means that the depth to which they can be submerged is limited. The water turbines can move up and down the column, enabling them to be raised above the surface for servicing and maintenance.

— Water turbines mounted on an anchored buoy were installed in the Hammerfest Strait in Norway in 2003.

— Finally, tidal turbines mounted underneath an estuary barrage, such as the Rance barrage, which is the oldest example of this type and has been operational since the 1960s. Two projects are being studied in the UK, but they have been blocked for environmental reasons.

4. Harnessing the energy of swells and waves: wave power

4.1. There is a vast array of wave power solutions: submerged, surface, onshore and offshore prototypes. Energy is captured differently from one prototype to another; mechanical energy is captured at the surface (undulations) or under water (translational or orbital motion), pressure variations between waves are captured (variations in water level) or an amount of water is physically captured by means of a reservoir.

4.2. The main drawback is that wave power is not easy to predict, unlike tidal currents. Harnessing the energy of swells and waves is currently at the technological research stage and is not yet operational. However, six different techniques are being tested:

— a floating, articulated chain, known as a ‘sea snake’. This consists of a series of long floats — the head of which is anchored to the sea floor via a cable — oriented in the same direction as the wind, perpendicular to the waves. The waves make the chain oscillate, and these oscillations compress a hydraulic fluid at the joints, driving a turbine. This system has been tested with varying degrees of success;
— oscillating wave surge converter;
— point absorber;
— submerged pressure differential device;
— oscillating water column;
— overtopping device.

5. Harnessing ocean thermal energy

5.1. This involves making use of the temperature difference between surface water and deep water in the oceans. A frequently used acronym is OTEC, which stands for ocean thermal energy conversion. European Union texts use the term ‘hydrothermal energy’ to mean ‘energy stored in the form of heat in surface water’.

5.2. Solar energy raises the water temperature at the surface — it may exceed 25 °C between the tropics — while deeper down, starved of solar radiation, the water is cold, at around 2 °C to 4 °C, except in enclosed seas such as the Mediterranean. Moreover, the cold layers do not mix with the warm layers. This temperature difference can be harnessed by means of a heat engine. To produce power, a heat engine needs a cold and a warm source, and uses deep water and surface water as these cold and warm sources.

5.3. But to be able to function optimally and profitably, this type of OTEC must operate in specific areas with surface water at a certain temperature and with water of a certain depth. The necessary pipes can be sunk to a depth of around one thousand metres at reasonable cost and using current technology. It would be senseless, therefore, to install OTEC facilities kilometres offshore, as this would require longer pipes, incurring additional costs. In practice, the optimal area is between the Tropic of Cancer and the Tropic of Capricorn, i.e. between a latitude of 30 °N and 30 °S — in the European Union’s ‘outermost regions’.

6. Harnessing wind energy at sea: offshore wind turbines

6.1. Although they do not, strictly speaking, fall under the category of marine energy, wind turbines that are attached to the sea floor or floating (while anchored, of course) should also be mentioned. They are by far the most developed offshore technique and seem almost conventional compared to those explored above. However, they have an undeniable visual and environmental impact. The question of conflicting use with fishermen has often been raised. In practice, wind farms that are attached to the sea floor act as marine reserves in which fish proliferate. As a result, they indirectly benefit fishermen by rebuilding stocks in areas closed to fishing, where mast foundations perform the function of artificial reefs.

6.2. This is the most frequently used method in Europe, and it is booming. To date, almost one hundred wind farms have been installed, mainly in the North Sea, the Atlantic Ocean (United Kingdom) and the Baltic Sea. There are few installations or plans in the Mediterranean, which is a deep sea with little or no continental shelf.

6.3. The major milestones in implementing these techniques can be summarised as follows:

— the first offshore installation dates from 1991 in Denmark (Vindeby), and generates 450 kW;

— the deepest foundation goes down to 45 m, installed in 2007 in the United Kingdom (Beatrice Wind Farm, which generates 2 × 5 MW);

— the first large floating wind turbine in deep water (220 m) dates from 2009; installed in Norway (Hywind), it generates 2.3 MW;

— the most powerful offshore wind turbine is in Belgium (Bligh Bank) and generates 6 MW;

— the largest offshore wind farm is under construction, on Dogger Bank in the United Kingdom. It has a planned capacity of 12 000 MW with 166 turbines. It should be noted that the United Kingdom, mindful of its energy independence, already has 1 452 turbines in 27 wind farms.
6.4. There are also two significant projects off the French coast, one in Brittany, and the other between the islands of Noirmoutier and Yeu. The calls for tender have been issued and the operating consortia have been chosen.

6.5. The economic return of offshore wind farms is affected by their location, in particular by the strength and regularity of the wind. It can thus vary by a factor of two. During periods of slack demand, surplus power supplied by wind has occasionally been sold on spot markets at negative prices. Thus the considerable boom of this type of electricity production can lead to surpluses that are very difficult to make use of, because they are linked to one-off, random weather events (see Professor Wolf’s opinion on intermittent energy sources).

6.6. The development of this method and technological advances linked to the use of wind turbines over the last 20 years are making them cheaper to invest in and to operate. In the early 2000s, the cost per megawatt hour was EUR 190; now it is between EUR 140 and EUR 160. In comparison, a modern EPR nuclear reactor generates one megawatt hour at a cost of EUR 130, although it does so stably and predictably.

6.7. Clearly, the other techniques for generating offshore power will have to confront competition from offshore wind turbines if they are able to expand to an industrial scale, and will have to prove that they have a competitive edge over offshore wind turbines, which incur not insignificant monitoring and maintenance costs. Water turbines and estuary barrages currently seem to be the most effective and most profitable systems. One of their advantages is that they provide predictable and regular power.

7. What is the future of offshore renewable energy?

7.1. As it is a type of green energy, offshore renewable energy is eligible for various European or national support schemes, including preferential purchase terms. However, apart from offshore wind turbines, these technologies — particularly water turbines — still need to be tested ‘in real life’. Hopefully, a certain strain of ecological conservatism will not impede the new techniques being tested. It is well known that fierce opposition from environmentalists and fishermen, in particular, has prevented estuary barrages from being developed. Any installation has environmental impacts. We therefore need to be able to measure these impacts as accurately as possible so as to assess the real balance between costs and benefits.

7.2. The first water turbine array was recently submerged between Paimpol and the island of Bréhat. The currents created by the rising and falling tides drive the turbines’ rotors; each device can generate 1 MW and these water turbines will be able to meet the energy needs of 3 000 homes.

7.3. Finally, these techniques for generating marine power all depend on their location to be effective. Therefore, they are not a universally effective source of power. We will therefore need to be more sensible in this area than in the case of some other subsidised renewable energies, such as solar panels, which are sometimes installed more due to tax advantages than because they are effective. It should also be noted that taxing CO₂ will help to make renewable energy production techniques, currently at an embryonic stage, economically worthwhile.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on the ‘2030 Agenda — a European Union committed to sustainable development globally’

(Own-initiative opinion)

(2017/C 034/09)

Rapporteur: Ioannis VARDAKASTANIS

Plenary Assembly decision

21/01/2016

Legal basis
Rule 29(2) of the Rules of Procedure

Own-initiative opinion

Section responsible
External Relations

Adopted in section
29/09/2016

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20/10/2016

Plenary session No
520

Outcome of vote
141/1/1
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes the 2030 Agenda as it includes an ambitious set of goals and targets to transform our world and marks a historic shift in the way that economic, social and environmental disparities are addressed worldwide. As the European Union (EU) plays an important international role in terms of diplomacy, the promotion of human rights, trade, development and humanitarian aid, as well as working with multilateral organisations and bilaterally with third countries, it can have a huge influence on the process of achieving the Sustainable Development Goals (SDGs) at global level. However, the voluntary reporting may undermine the coherent, effective and measurable implementation of the 2030 Agenda. The EESC calls on the EU to approach the implementation of the 2030 Agenda as an obligation and opportunity to shape future EU policies and programmes. The EESC also points out that the EU should embrace the 2030 Agenda as it offers and provides a new forward looking narrative for making the EU a Sustainable Development Union and accordingly presents to EU citizens and the rest of the world a new vision for inclusive human development.

1.2. The 2030 Agenda fully reflects the European values of prosperity for all, human rights, social justice, combating poverty, democratic governance, the social market economy and environmental protection. Therefore, the EU is expected to play a leading role in implementing the 2030 Agenda and to contribute to achieving the SDGs at global level. The EU will thus be acknowledged to be a leading actor in the promotion of environmentally, socially and economically responsible and sustainable development, as well as respect for human rights, gender equality, non-discrimination and support for vulnerable groups. The eradication of poverty should be an overarching priority in the EU’s policies and programmes. Furthermore, the principles of climate justice and ‘just transition’ should be fully and effectively mainstreamed and integrated into the EU’s overarching strategy for the implementation of the 2030 Agenda.
1.3. The EESC points out that the EU will only be able to meet its commitment to sustainable development at global level and therefore to substantially and effectively promote the implementation of the 2030 Agenda if it makes the necessary changes in order to adapt its policies and programmes to the three pillars of the SDGs in a balanced and inclusive way. The EU and the Member States have a moral and political obligation to both EU citizens and the rest of the world to address the implementation of the 2030 Agenda in a politically coherent and coordinated way. The EU institutions and the Member States urgently need to agree on the way forward at the highest political level through an interinstitutional agreement between the Commission, the Council and the Parliament in order to establish a robust basis for further political action. This agreement on the implementation of the SDGs should form the basis for an overarching strategy to mainstream the 2030 Agenda with the aim of making the EU a Sustainable Development Union.

1.4. As it had done in an earlier opinion, the EESC calls for the establishment of a Sustainable Development Civil Society Forum to promote and monitor the implementation of the 2030 Agenda in order to ensure consistency in the EU’s internal and external policies and programmes. In this Forum all stakeholders, including the Council, Commission, Parliament and civil society, should participate fully as key actors, making the Forum’s work transparent and accountable to European citizens. The EESC is ready to facilitate this process.

1.5. The EU itself should proactively present a periodic voluntary review to the Session of the UN High Level Political Forum on its internal and external policies and programmes, starting in 2017. The EU will be the first regional organisation to do so. In addition, the EU should prepare annual thematic reports in line with the annual thematic reviews of the UN HLPF. Civil society should be fully included in this reporting process through the European Sustainable Development Forum. The EESC is ready to facilitate this process.

1.6. The EU has an obligation to comply fully with international and European treaties and agreements safeguarding the environment, human rights and economic, social and cultural rights. Therefore, international and European legislation should underpin the EU’s approach to the implementation, monitoring and review of the 2030 Agenda. The voluntary character of the 2030 Agenda should not undermine the obligation to fully and effectively mainstream and integrate its obligation to international and European law into the EU’s overarching strategy for the implementation of the SDGs. This The EU’s international obligations should be applicable to all EU’s policies and programmes.

1.7. The European Commission needs to address the way in which the instruments of external action factor in the 2030 Agenda. The mapping exercise of external policies is the first step, but this is not enough and needs to be flanked by a detailed and comprehensive gap analysis and assessment in order to identify the real gaps that exist between current external policies and programmes and the future ones that should fully include, mainstream and integrate, in a balanced and fair way, the economic, social and environmental pillars of the 2030 Agenda. Therefore, the EESC calls on the Commission to take specific action to include this in the forthcoming communication on the implementation of the SDGs.

1.8. The European Commission needs to fully integrate and mainstream the 2030 Agenda into the external action of the European Union. The EU is a major actor in the world, interacting with other stakeholders (public, intergovernmental, private and non-governmental) through its external action and instruments. Therefore, the European Commission should fully utilise key areas, such as trade and development policies, neighbourhood policy, environment policies and climate action, foreign and security policy, social and solidarity economy, human rights promotion, humanitarian aid, disaster risk reduction and technology transfers, to proactively push forward the implementation of the 2030 Agenda. The European Commission needs to fully integrate and utilise the 2030 Agenda in the European Consensus on Development, and the EESC regrets that it has not been sufficiently included in the EU’s Global Strategy on Foreign and Security Policy. The European Commission should include in the long awaited and much delayed Communication on the 2030 Agenda a meaningful programme to achieve policy coherence and policy coordination in its external actions and programmes in order to guarantee a sustainable development approach which is mainstreamed into all external policies.

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2 Exploratory opinion of the European Economic and Social Committee on A European Sustainable Development Civil Society Forum (OJ C 303, 19.8.2016, p. 73).
3 See footnote 1.
4 See footnote 1.
1.9. The European Commission and more particularly the High Representative for Foreign and Security Policy should establish effective mechanisms to coordinate official development assistance and the Addis Ababa Action Agenda in a coherent way; so as to ensure that ODA goes to partnerships and specific programmes and projects that are developed in accordance with the three pillars of the 2030 Agenda, fully taking into account the principles of poverty eradication, ‘no one is left behind’, climate justice, just transition, inclusive growth and development, promoting modernisation, infrastructure development and sustainable businesses, combating inequality and ensuring respect for human rights.

1.10. The EESC recommends that the European Commission utilise the conditionality approach of the European Structural and Investment Funds during the process of mainstreaming the 2030 Agenda into instruments for external action and therefore a similar 2030 Agenda conditionality approach should be applied to all SDG-related policies and programmes.

1.11. The EU delegations in third countries should conduct surveys in order to measure public awareness and understanding of the Sustainable Development Goals. The European Commission should organise and carry out awareness-raising activities and campaigns to make the 2030 Agenda for Sustainable Development a European Agenda. The European Commission should undertake periodic Eurobarometer surveys in order to measure awareness and understanding of the Sustainable Development Goals among EU citizens. Civil society organisations have a crucial role to play in this process.

1.12. The EESC calls on the European Commission to issue an annual report on the implementation of external action and funds in regard to the 2030 Agenda. This should be part of the planned annual EU reports on the implementation of the Sustainable Development Goals. The European Commission should also draw up and include a set of 2030 Agenda indicators and benchmarks in its external policies and programmes in order to facilitate evaluation, assessment and reporting on how effectively the EU external instruments channel funding towards SDG-related projects and programmes, and specifically how the economic, social and environmental pillars of the 2030 Agenda are taken on board in the EU’s external action instruments.

1.13. The European Commission should promote the multi-stakeholder-led governance model in its external policies and programmes, making civil society organisations in third countries real partners in the implementation of the SDGs. Transparency, accountability and partnership should underpin this new approach to consultation and participatory decision making. The democratic implementation of the 2030 Agenda requires full inclusion of civil society organisations at all stages, including monitoring and review.

1.14. The EESC calls on the European Commission to mainstream capacity building of civil society organisations in its funding instruments and in its external policies and programmes. The Commission should set up a specific programme and funding line to support the capacity building of civil society organisations (CSOs) so that they can participate fully in this process. Existing capacity-building programmes need to be more explicitly opened to CSOs that are building bridges between local issues and governance issues (5).

1.15. As the EESC interacts with a wide range of partners in many countries around the world, the EESC is ready to facilitate the real and meaningful involvement of all partners (mainly from civil society) in the implementation and monitoring of the SDGs and to this end it undertakes to facilitate the participation of civil society in implementation at national level.

2. Introduction

2.1. The EESC welcomes the commitment entitled ‘Transforming our world’ made by the world’s leaders on 25 September 2015 to the 2030 Agenda for Sustainable Development, which establishes a set of goals to end poverty, protect the planet and ensure prosperity for all. Each goal has specific targets to be achieved over the next 15 years. Therefore, the 2030 Agenda is expected to promote the creation and establishment of strong and inclusive partnerships between all stakeholders and so to strongly support the delivery of a new governance model at global level.

2.2. The 2030 Agenda is characterised by its universal, indivisible and integrated approach to the economic, social and environmental pillars, thus striking a unique balance between the three dimensions of sustainable development. That is why the 2030 Agenda constitutes a historic change in the way that economic, social and environmental disparities around the world are addressed.

(5) See footnote 1.
2.3. The 2030 Agenda is a plan of action for people, the planet and prosperity. It sets out 17 Sustainable Development Goals (SDGs) and 169 targets equally addressing the economic, environmental and social dimensions of sustainable development in order to ensure prosperity for all, build on the achievements of the Millennium Development Goals, address the MDGs’ deficits and shortcomings, and offer to the world a new vision for sustainable development and inclusive growth which will benefit all parts of the population. The 2030 Agenda also aims to protect, promote and deliver human rights and equality for all, with more emphasis on gender equality (Goal 5).

2.4. The EESC embraces and fully supports the importance of the principle ‘no one is left behind’, which applies to all SDGs and targets and which therefore should be fully mainstreamed when developing partnerships, policies and action to implement and monitor the 2030 Agenda.

2.5. The 2030 Agenda established a high-level governance structure at the UN level called the High Level Political Forum (HLPF), a multi-stakeholder platform mandated to carry out systematic reviews and follow up on the 2030 Agenda’s implementation. The first meeting of the HLPF, after the signing of the 2030 Agenda, took place in July 2016 and 22 governments, including four EU Member States, submitted the first ever Voluntary National Reviews (VNR), reporting on efforts to implement the 2030 Agenda for Sustainable Development in their countries (the countries were Estonia, Finland, France and Germany as well as China, Colombia, Egypt, Georgia, Madagascar, Mexico, Montenegro, Morocco, Norway, Philippines, Republic of Korea, Samoa, Sierra Leone, Switzerland, Togo, Turkey, Uganda and Venezuela).

2.6. During the implementation of the 2030 Agenda, more focus should be placed on action, policies, programmes and the creation of multi-stakeholder, transparent and participatory partnerships aiming to eradicate the economic, social and environmental disparities around the world based on the principles of universality, indivisibility, transparency, accountability and human rights.

2.7. The universal and indivisible nature of the 2030 Agenda applies equally to developing and developed countries and its implementation requires transformational economic, social and environmental changes on all sides. As the EU is expected to lead by example in the implementation of the 2030 Agenda, the EU and the Member States should align all policies and programmes to meet the objectives of combating poverty and inequality, preserving the planet and creating inclusive economic growth in a balanced and coherent way, benefiting all parts of the population equally, and integrating and mainstreaming the three pillars of the SDGs.

2.8. The EU institutions will need to initiate high-level processes that will result in high-level political decisions to make the EU a Sustainable Development Union. Therefore, it is of paramount importance that an overarching strategy for the implementation of the SDGs be developed to promote, deliver and mainstream coherence and coordination in the EU’s policies and programmes in a balanced way, taking equally into account the three pillars of the 2030 Agenda.

3. Making the EU a global leader for the implementation of the 2030 Agenda

3.1. The greatest challenge of the 2030 Agenda’s implementation is the eradication of poverty in all its forms, including extreme poverty. This is also a key cross-cutting principle and value enshrined in the Treaties of the European Union, and is a prerequisite for achieving sustainable development (Goal 1). The EU has a strong global presence and thus de facto has become a major actor with a heavy influence on economic growth and development policies worldwide. Therefore, it has a unique opportunity to gear its external policies and programmes towards the implementation of the 2030 Agenda at global level by ensuring that the three pillars of the 2030 Agenda are integrated in a balanced way in all EU external action instruments. Given the universality and indivisibility of the 2030 Agenda, the EU should expect to be strongly scrutinised, first and foremost on how well it deals with this challenge.

3.2. The EU should look for mechanisms to share the burdens and benefits of climate change as it has an impact on human rights, poverty and equality. One such mechanism is ‘climate justice’, which is used to frame global warming as an ethical and political issue, rather than solely as an environmental or physical one. This is done by relating the effects of climate change to concepts of justice, particularly environmental justice and social justice, and by examining issues such as equality, human rights, collective rights and the historical responsibilities for climate change. A fundamental proposition of climate justice is that those who are least responsible for climate change are hit hardest by it.
3.3. It is equally crucial to mainstream and integrate into external and internal EU policies and programmes the concept of ‘just transition’ that helps safeguard people’s and workers’ rights (e.g. decent work), while modernising and making national economies and business actors environmentally friendly and socially responsible through EU external instruments.

3.4. The fair implementation of the economic, social and environmental pillars of the 2030 Agenda through the EU’s external action should include strategies to promote the low-carbon, circular and collaborative economies, sustainable food production and consumption, investing in innovation and long-term infrastructure modernisation and encouraging sustainable businesses (6).

3.5. The 2030 Agenda is based on the volunteering principle and approach and this may hamper its full and swift implementation. However, the EU should make the implementation of the 2030 Agenda both internally and externally a mandatory process; its 17 Goals are fully compatible with the principles and values of the EU as they are enshrined in its Treaties and therefore need to be mainstreamed and implemented by means of the EU’s policies and programmes. The external action of the EU should be rooted in these principles and values.

3.6. The full implementation of the 2030 Agenda by the EU requires real commitment at the highest political level by the EU institutions and the Member States in order to effectively and swiftly mainstream, integrate and include the SDGs in all EU policies and programmes.

3.7. The universal nature of the 2030 Agenda and the commitments made by countries around the world, regardless of their level of economic and social development and their living standards, pose a very significant challenge to the EU to provide leadership and guidance for the progressive implementation of the 2030 Agenda at global level. However, in order to achieve this and make the EU a 2030 enabler, it needs to take the necessary decisions and make the needed changes in its policies and programmes.

3.8. It should be noted that a year has passed since the 2030 Agenda was agreed, with the European Commission dealing with the implementation of this Agenda in a very incoherent and uncoordinated way. The first session of the HLPF took place in July 2016 at the UN, where four Member States (Estonia, Finland, France and Germany) presented their voluntary reviews. The EESC regrets that the European Commission did not present a coherent and coordinated strategy to the first session of the HLPF in order to facilitate better coordination and delivery of synergies both between EU Member States and between Member States and the EU institutions.

3.9. This lack of coordination is also reflected in the consultation documents for both the Global Strategy for Foreign and Security Policy and the new Consensus on Development which reflects the limited integration and mainstreaming of the 2030 Agenda. At the beginning of the year, the European Commission initiated consultation on the European Pillar of Social Rights with no reference to the 2030 Agenda and more specifically to its Social Pillar. It should be noted that the EESC is currently preparing an opinion on the European Pillar of Social Rights which sets out the Committee’s views. The EESC strongly underlines that the 2030 Agenda for Sustainable Development cannot, and should not, be implemented by the EU in silos.

3.10. Development aid from the EU and the Member States goes to around 150 countries; they are the largest donors of official development assistance (ODA) which amounts to more than 50% of the total global ODA donated every year. Preliminary figures show that total EU ODA (EU institutions and Member States) increased to EUR 68 billion in 2015 — growing for the third year in a row, increasing 15% from 2014 and reaching its highest level to date. The EESC calls on the EU and the Member States to increase total ODA: in 2015, this came to 0.47% of the EU’s Gross National Income (GNI), and needs to achieve the target of 0.7%.

3.11. The Eurobarometer survey shows that almost nine out of ten EU citizens support development aid (89% — a 4 percentage point increase since 2014). More than half say that promised levels of aid should be delivered by the EU (7). European citizens expect the EU to meet its commitments to sustainable development goals, providing a new vision for a sustainable Europe, and to fulfil its implementation obligations.

(6) See footnote 1.
(7) Special Eurobarometer 441 — The European Year for Development — Citizens’ views on Development, Cooperation and aid.
3.12. The European Commission should undertake the review of policies and programmes focusing on third countries to ensure that they are compatible with the 2030 Agenda. The mapping exercise that the European Commission is carrying out should be flanked by a comprehensive and detailed gap analysis in order to identify shortcomings and inconsistencies between EU policies and programmes geared to third countries and with the Sustainable Development Goals.

3.13. There is a lack of reliable and disaggregated data on the situation of vulnerable people in the world. Therefore, the European Commission should support the work of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators. Eurostat needs to enhance its capacity to measure the impact of the 2030 Agenda on vulnerable groups inside the EU. The EESC calls for an annual report to be issued on the implementation of actions and funds in regard to the 2030 Agenda. This should be part of the planned annual Eurostat reports on the implementation of Sustainable Development Goals for Europe.

3.14. The EU institutions should take the necessary steps to be able to meet the challenge of putting the principle of ‘No one is left behind’ into effect and fully integrate this principle into its policies and programmes. In order to achieve this, a significant level of disaggregated, reliable and accessible data is required.

3.15. The European Commission should always involve and consult civil society when conducting the comprehensive review or establishing processes to monitor the implementation of the 2030 Agenda. However, the EESC considers that the European Commission should mainstream capacity-building activities for civil society into all of its policies and programmes and thus make civil society a real partner in the implementation of the SDGs by providing funding for international cooperation for EU-based civil society and other regions’ civil society organisations. To this end, the EESC calls on the European Commission to endorse the establishment of the European Sustainable Development Forum as recommended in the EESC opinion on A European Sustainable Development Civil Society Forum (8).

3.16. The EU institutions should establish an inter-institutional coordination mechanism to effectively, swiftly and coherently mainstream and integrate the goals and targets of the 2030 Agenda into all EU external action policies and programmes. Comprehensive engagement in the SDGs’ implementation at global level by the EU requires strategic planning for the future of the EU’s external policies and programmes. The EESC therefore calls on:

3.16.1. the European Commission to present in the forthcoming Communication on the 2030 Agenda a meaningful programme to achieve policy coherence and coordination in its external action and programmes. A Communication without a meaningful plan to transform EU external policies into 2030-driven policies will fall short of the expectations of people around the world. This plan should be part of an overarching EU strategy covering the necessary measures and making the needed changes in order to implement the 2030 Agenda coherently in EU policies and programmes at global level. The multi-stakeholder governance model should be a basic component of the overarching strategy, ensuring the full involvement of civil society organisations in the implementation of the SDGs (9);

3.16.2. the European Commission to ensure that the EU’s Global Strategy on Foreign and Security Policy is a broader mechanism, so as to embrace the 2030 Agenda in areas such as trade, development, democracy, human rights, humanitarian aid, disaster risk reduction, technology transfers and climate action;

3.16.3. the European Commission to ensure that the proposal for the future Consensus on Development establishes real coordination between EU institutions and Member States, providing assistance to third countries. This coordination should include pooling resources. The Consensus should include effective bilateral coordination between EU and Member States on their national priorities, partnerships with the EU and inclusion of other public and private donors. This is expected to have a multiplier effect for achieving the 2030 Agenda and will diminish the negative impact of fragmentation and overlapping of aid, as is currently the case;

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(8) See footnote 2.
3.16.4. the European Commission to promote the social and solidarity economy through its external policies and programmes. The EESC considers that the social and solidarity economy is fully aligned with achieving the SDGs and therefore this sector of the economy can be instrumental in the balanced implementation of the economic, social and environmental pillars of the 2030 Agenda.

3.16.5. the European Commission to clarify and specify the means to be used to implement the 2030 Agenda, while looking for strong synergies with the Addis Ababa Action Agenda and the Financing for Development Forum.

3.17. The new holistic approach of the 2030 Agenda, with the universal and indivisible nature of the three interrelated pillars, points to a more comprehensive model of human development and therefore the results of the 2030 Agenda implementation cannot be measured in the traditional way, using exclusively GDP to measure economic growth and inclusive development.

3.18. The European Union should devise and implement specific policies and programmes, with the aim of fully implementing the 2030 Agenda, with a particular focus on promoting democracy, human rights, environmental policies, the rule of law and inclusive growth with real improvement of the living conditions of vulnerable groups. These should be basic components of the EU’s external action, policies and programmes, with an emphasis on promoting the balanced implementation of the three pillars of the 2030 Agenda.

3.19. The External Action Service should also devise and implement a coherent plan to include measurable action and initiatives. The aim should be that by playing a leading role in mainstreaming the 2030 Agenda consistently in its action, policies and programmes, the EU will be regarded by the rest of the world as paving the way towards balanced and fair implementation of the 2030 Agenda.

3.20. The European Commission should establish a 2030 Agenda conditionality to be shaped by the 17 goals, and this conditionality should be included in all policies and programmes funded by the EU through its external action. The recipients of these programmes should be responsible for meeting this conditionality when implementing them. Undoubtedly, the 2030 Agenda conditionality needs to be equally and fully applicable to all EU policies and programmes. The conditionality principle has already been included in the regulatory framework of the EU Structural and Investment Funds (10).

3.21. It is widely accepted that the 2030 Agenda brings a paradigm shift to the development agenda and that this should be fully reflected in EU Development Cooperation programmes. Therefore, the 17 goals of the 2030 Agenda should be fully mainstreamed, integrated and included in the EU Development Cooperation Agenda. The EU should also fully respect and take into account international treaties, including environmental and human rights treaties, when developing and implementing external action (11).

3.22. The European Commission should include in its external policies and programmes measures to gauge people’s understanding and perception of the impact of the implementation of the 2030 Agenda. Therefore, the European Commission should carry out a Eurobarometer survey in the EU Member States and relevant surveys in the partner countries. It should be noted and underlined that according to Eurobarometer, only ‘one third of Europeans have heard or read about the Sustainable Development Goals (36 %)’.

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(11) International Convention on the Elimination of All Forms of Racial Discrimination 21 December 1965
International Covenant on Civil and Political Rights 16 December 1966
International Covenant on Economic, Social and Cultural Rights 16 December 1966
Convention on the Elimination of All Forms of Discrimination against Women 18 December 1979
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 10 December 1984
Convention on the Rights of the Child 20 November 1989
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 18 December 1990
International Convention for the Protection of All Persons from Enforced Disappearance 20 December 2006
Convention on the Rights of Persons with Disabilities 13 December 2006
4. Ensuring a meaningful role for civil society organisations in the process of implementing the 2030 Agenda around the world

4.1. The 2030 Agenda calls on the world to move towards a multi-stakeholder governance model, with a greater role for civil society. This entails new, more collaborative and inclusive ways of working, built around participatory decision making.

4.2. The process of negotiating the 2030 Agenda has mobilised and attracted new actors from civil society and therefore this involvement of civil society needs to be capitalised on, reinforced and formalised during the implementation process. In fact, the positive and effective contributions of civil society organisations during the negotiations on the 2030 Agenda have made civil society's role in the implementation of this Agenda indispensable, thus making civil society a de facto partner in this process.

4.3. Civil society has to play a crucial role in the implementation of the 2030 Agenda at global, regional and national level. It must be ensured that civil society also plays an effective role at national level in the EU Member States and in the partner countries. In order to make this participation and partnership a reality, the EESC calls on the European Commission to mainstream, integrate and include civil society capacity-building activities in its policies and programmes.

4.4. However, civil society should proactively seek to adapt to the requirements of the 2030 Agenda in order to effectively influence its implementation. It is clear that the 2030 Agenda calls on civil society organisations to become a real propelling force for its implementation and this means that civil society should approach this process as a paradigm shift in the way it is organised and works. This can be achieved only if civil society prepares and restructures itself so as to be capable of participating fully in the decision-making process. Civil society organisations should be representative, democratic, transparent and accountable.

4.5. The EESC is aware of the restrictions, barriers and obstacles facing civil society organisations in many parts of the world and that this regrettable situation hampers their real and effective participation in this process. Therefore, it calls on the European Commission to make it obligatory for the partner countries to facilitate the real participation of civil society through systematic consultation and involvement in the planning, implementing and monitoring of the 2030 Agenda related to projects and programmes, especially those funded by the EU. To achieve this, the EU delegation in partner countries should closely monitor this and report to the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The UN delegations in partner countries should also organise consultation meetings with civil society organisations concerning EU funding programmes.

4.6. The future establishment of the Sustainable Development Forum in the EU is a good model of a platform which could be replicated in other regions and countries of the world, tailored to local conditions (12).

4.7. The EESC is ready to facilitate the meaningful involvement of civil society organisations in the implementation, monitoring and review of the 2030 Agenda at global level. The EESC can support this by fully utilising its wide network of contacts, partners and stakeholders in many regions of the world. It also calls on the European Commission to integrate and mainstream structural and meaningful support in its external policies and programmes in order to enable civil society organisations in third countries to participate as full partners in the 2030 Agenda's implementation process.


The President of the European Economic and Social Committee
Georges DASSIS

(12) See footnote 2.
Opinion of the European Economic and Social Committee on 'Mid-term evaluation of Horizon 2020'
(exploratory opinion)
(2017/C 034/10)

Rapporteur: Ulrich SAMM

Consultation
Slovak presidency of the Council, 14/03/2016

Legal basis
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Exploratory opinion

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Single Market, Production and Consumption

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Plenary session No
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180/0/3
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes Horizon 2020 as a strong and successful programme that brings together excellence, joint research infrastructures, collaboration across borders as well as synergies between academia, industry, SMEs and research organisations.

1.2. Horizon 2020 is a key policy instrument for implementing the Europe 2020 strategy 'to contribute to sustainable European economic growth and competitiveness by reinforcing the innovation capacity of the Member States and the Union in order to address major challenges faced by European society'.

1.3. The EESC therefore, in line with the European Parliament’s research committee (ITRE), calls for EUR 2.2 billion to be restored from the European Fund for Strategic Investments (EFSI) back to the EU’s Horizon 2020 research and innovation programme.

1.4. The EESC welcomes the fact that innovation carries more weight in the Horizon 2020 programme. Innovation is key to economic growth. The newly introduced SME instrument is a positive example of an efficient application, selection and monitoring process.

1.5. Funding of basic research is extremely successful. The ERC grants in particular are held in high esteem: they are viewed as high-level awards for individual researchers, and function as a Europe-wide benchmark.

1.6. The EESC is worried that funding for research into Societal Challenges has been significantly reduced. Many success stories of EU-wide research collaboration from FP6 and FP7 ended with Horizon 2020. Collaborative research should once again play a role as an indispensable element in the research and innovation chain.

1.7. The EESC calls for a careful evaluation to find a reasonable balance between the three funding pillars: Excellent Science, Industrial Leadership and Societal Challenges. This evaluation should take into account their differences in terms of impact, lead times, leverage effects and, in particular, their specific EU-added values.
1.8. The European Union needs to provide well-balanced support for the whole research and innovation chain, from fundamental to product-driven research.

1.9. The EESC also emphasises that social sciences and humanities have to play a key role in analysing and predicting the societal developments caused by changes in working and living conditions resulting from demographic change, globalisation, climate change, emerging technologies, digitalisation and education for new high-quality jobs.

1.10. The EESC is following with great interest the performance of the European Institute of Innovation and Technology (EIT) and the recommendations issued by the Court of Auditors. We expect the interim evaluation to lead to considerable improvements in the EIT.

1.11. The foundation of a new European Innovation Council (EIC), as proposed by the Commission, and which is supposed to address entrepreneurs/innovators directly, could become an umbrella which streamlines the funding instruments for innovation, thereby providing an efficient way to close the innovation gap.

1.12. The EESC strongly recommends that when introducing a new funding instrument the other instruments be reviewed thoroughly, with the aim of reducing their number and harmonising them as far as possible.

1.13. The EESC would like to stress that the provision of mobility funding and access, along with support for researchers to infrastructure across borders, is a key asset of the European Research Area, which should be supported more effectively.

1.14. The EESC is exceedingly concerned about the large disparities between Member States in terms of national funding for research and innovation. This has led to large differences in success with regard to receiving EU funding.

1.15. The EESC recommends that all instruments be reviewed in order to make improvements which may help to overcome these disparities. To this end, collaborative research bringing together several Member States will play an important role, as well as the new measures for Spreading Excellence and Widening Participation.

1.16. The EESC calls for national R&I funding to be strengthened and would like to emphasise to Member States that EU R&I funding cannot replace national efforts.

1.17. The EESC also supports the Council conclusions of 27 May 2016 stressing that, within the framework of Horizon 2020, care should be taken to ensure that loan-based financing is not further expanded to the detriment of grant-based R&I funding.

1.18. Reasonable success rates need to be achieved to avoid wasting resources and causing frustration among the best participants from industry and academia. A variety of proposals for countermeasures are available and the Commission should implement them immediately for the remaining Horizon 2020 period.

1.19. The need to further simplify Horizon 2020 procedures is still a major issue. We acknowledge the Commission’s successful efforts to make applications easier. In contrast to this, the project execution stage may now involve extra burdens. The EESC recommends that the Commission accept, as far as possible, the principle that compliance with national rules is the main criterion, as long as these rules meet agreed standards.

1.20. The interim evaluation should analyse how Horizon 2020 contributes qualitatively to its objectives of fostering excellent science, addressing urgent societal challenges and supporting industrial leadership for greater economic and inclusive growth that creates real jobs in Europe, rather than focusing too much on quantitative measures such as counting publications, patents and return on investment, as the FP7 evaluation has done. It also recommends establishing compatible indicators for both research and innovation investments within the Structural Funds and the EFSI.
2. Introduction

2.1. Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020), was launched in 2014 to strengthen scientific excellence, to meet the major challenges facing society in Europe and to promote economic growth. It followed the Seventh Framework Programme for Research and Technological Development (2007-2013). The structure of Horizon 2020 differs significantly from FP7, as the programme now also encompasses the European Institute of Technology (EIT) and parts of the former Competitiveness and Innovation Framework Programme (CIP). As can be seen both in this new structure and in the name, innovation has a much stronger role in Horizon 2020 than in its predecessor.

2.2. The EESC has provided a detailed analysis of the proposal for the Horizon 2020 Regulations in its opinion from March 2012 (1).

2.3. The EESC welcomes Horizon 2020 as a strong and successful programme that brings together excellence, research infrastructures and most of all researchers from different EU Member States, associated states and around the world, and which produces important results as well as synergies between academia, industry, SMEs and research organisations. It is the world’s largest public funding programme for research and innovation and a strong signal that the EU is investing in its future.

2.4. The following three main pillars of Horizon 2020 comprise over 90% of the Horizon 2020 budget:

1. ‘Excellent Science’ with the European Research Council (ERC), future and emerging technologies (FET), researcher mobility (MSCA) and European research infrastructures (EUR 24.4 billion).

2. ‘Industrial Leadership’, focusing on the competitiveness of the European Industry in six sub-programmes with a particular emphasis on SME funding (EUR 17 billion).

3. ‘Societal Challenges’ with seven sub-programmes (EUR 29.7 billion).

2.5. The programme was agreed by the Council and European Parliament with a total budget of over EUR 70 billion (nearly EUR 80 billion in current prices) of funding over seven years. The programme’s budget was cut by EUR 2.2 billion in 2015 so that these funds could be used for the EFSI.

2.6. Horizon 2020 has a multi-faceted role in the strategy of the EU. It is the financial instrument that implements the Innovation Union, a Europe 2020 flagship initiative aimed at securing Europe’s global competitiveness. It has its roots, however, in the Lisbon Treaty, notably Articles 179 et seq., which set the goal of achieving a European Research Area and task the European Union ‘with the implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities’.

2.7. Horizon 2020 was established in times of severe economic challenges and youth unemployment in Europe, and in consequence has put a much stronger emphasis on innovation than earlier EU research programmes. Innovation is generally understood in this context to be the commercial introduction of a new or significantly improved products and services.

2.8. In this context, Horizon 2020, with its focus on economic growth, has also established a new SME instrument specifically designed to help individual SMEs to be more innovative. Its aim is that 20% of the funding in pillars 2 and 3 will be absorbed by SMEs and it places a stronger emphasis on financial instruments.

3. From research to innovation

3.1. The EESC acknowledges the success of Horizon 2020, and welcomes the shift in focus towards more innovation for a growing economy. However, it also would like to highlight some dangers concerning the research and innovation chain, which it feels could threaten this success.

3.2. The European Union needs to address the whole research and innovation chain, from fundamental to product-driven research. Only well-balanced support along this chain will ensure that the know-how generation results in the application of ‘know-how’ and eventually societal and economic benefits. The EESC calls for a careful evaluation to find a reasonable balance between the three funding pillars Excellent Science, Industrial Leadership and Societal Challenges, taking into account their differences in terms of impact, lead times, leverage effects and, in particular, their specific EU added values.

3.3. Fundamental research in Europe is extremely successful. The bottom-up funding from FET, the MSCAs and the ERC should definitely be maintained at a high level. The ERC grants in particular are held in high esteem: they are viewed as high-level awards for individual researchers, and function as a Europe-wide benchmark.

3.4. We should also note that modern research is largely carried out in collaboration. Therefore, irrespective of the importance of supporting individual researchers, we deplore the fact that funding for collaborative basic research has been significantly reduced in Horizon 2020.

3.5. Basic research that has a long lead time before innovation is achieved, and that is chiefly motivated by societal challenges, is for the most part not covered by the ERC. This type of collaborative research was very successful in earlier framework programmes, but with Horizon 2020 it lost much of its importance. Societal challenges were reduced by 3.5% in order to finance EFSI and collaborative research in the lower Technology Readiness Levels (TRL) 1-5 lost ground to higher TRLS. This has driven many universities and research organisations away from research on societal challenges with the effect that interaction between industry and academia has been reduced rather than strengthened. The EESC urges the Commission to address this worrying development. It is of vital importance that funding for Societal Challenges is restored and research in TRLS 1-5 is included more prominently in the Horizon 2020 Societal Challenges in order to cover the entire research and innovation cycle. In this context it remains of great importance that the Commission liaises with stakeholders when developing the details of what Societal Challenges will look like at work programme level.

3.6. The EESC welcomes the fact that innovation carries more weight in Horizon 2020. Innovation is key to economic growth. The newly introduced SME instrument is a positive example of an efficient application, selection and monitoring process. The success of this instrument can be seen from the fact that the original goal of a 20% budget share for SMEs has already been exceeded. The evaluation should analyse the impact and effectiveness of this instrument in relation to the different types of SMEs and their reasons for applying as a single business (as most of them do) or as a consortium (national or EU-wide). Care should also be taken to analyse the extent to which a decrease in national funding for SME correlates with requests for funding at EU level. It is vital that SME funding also remains accessible to SMEs at regional and local level and that EU funding is not used to justify cuts to this major source of support at the local level.

3.7. Industry participation is vital for the success of Horizon 2020. It is evident that the total amount of funding from Horizon 2020 for industries is less significant in relation to industry spending on R&I. The main benefits for industry partners can be seen in terms of network building, new links to universities, research organisations and other stakeholders such as cities. EU projects play a significant role in providing critical mass for developing new standards and in supplying industry with new expertise, new clients and markets and new talents. This beneficial effect for Europe’s competitiveness should be fostered further. It must be noted that indicators of success such as the number of new jobs are not yet applicable to Horizon 2020 in view of the lead time for innovation and job creation.

3.8. The EESC is following with great interest the performance of the European Institute of Innovation and Technology (EIT). Europe needs strong interaction between industry, research and education, which is the main aim of the EIT. According to the special report of the Court of Auditors (April 2016), the EIT however faces several significant challenges. Although some of them have already been tackled recently, we expect that the interim evaluation will lead to significant overall improvements in the EIT.
3.9. A discussion about the scope and establishment of a European Innovation Council (EIC) has been initiated by the Commission. The EIC is supposed to directly address entrepreneurs/innovators. The EIC might become a faster mechanism for completing the final steps in closing the innovation gap. The EIC could become an umbrella under which the funding instruments relevant to innovation are streamlined. This of course requires careful synchronisation and harmonisation with all the other funding instruments. The EESC welcomes this initiative and is prepared to contribute to this discussion once concrete proposals are available.

3.10. One of the key challenges for the coming years it is for Horizon 2020 to deploy its full potential to support social innovation, which is critical to attain EU2020 targets. The EESC recalls that because of their nature social economy enterprises have an important role to play to that effect and urges the European Commission and the Member States to ensure that access of those enterprises to Horizon 2020 funding happens on equal terms as other actors.

3.11. The EESC also emphasises that social sciences and humanities are very relevant in Europe. Our society will inevitably change due to ageing and demographic change, which leads to new research priorities. Our society will undergo fundamental changes on the way towards sustainable conditions. Changes in boundary conditions arising from phenomena such as globalisation, climate change, access to energy and emerging technologies — of which digitalisation is a main driver — will even accelerate societal changes. Improving our education system will be key to ensuring that we are prepared for the future, with the right skills for future high-quality jobs. Assessing the impact of all these developments on our society, including any problems that may be triggered by changes in working and living conditions, should receive high priority and social sciences must play a key role here.

4. The European Research Area and the EU added value of Horizon 2020

4.1. One of the objectives of the ‘Framework Programme for Research and Innovation’ (Horizon 2020) is to complete the European Research Area (ERA). Horizon 2020 is also seen as a policy instrument for implementing the Europe 2020 and Innovation Union initiatives. Key elements for the ERA are a common European research infrastructure policy, collaborative research projects, the mobility of researchers across borders, and the coordination of major research programmes under the difficult boundary condition that EU programmes must operate in an environment in which most public funding for research and innovation is administered by Member States.

4.2. The European Strategy Forum on Research Infrastructures (ESFRI) has so far served as a useful coordination instrument for identifying new research infrastructures of pan-European interest. While setting up large-scale research facilities mainly depends on national funding, the European level is important for supporting consortia, and for providing access to infrastructure for researchers across European borders. The EESC shares the concerns of research communities about the insufficiency of this support and urges the Commission to strengthen it significantly, thereby guaranteeing access on the part of European researchers to the national and European facilities which are a key asset of the ERA.

4.3. In general, mobility within the ERA is of utmost importance. We urge therefore that funding programmes like the Marie Skłodowska Curie Actions should be maintained at a prominent level.

4.4. We welcome the initiative Open to the World, assuming that scientific quality remains the main driver for this activity. The first indications that the decrease in the participation of third countries is affecting even industrialised economies — e.g. the USA — should be carefully examined, in order to determine the causes of this worrying development.

4.5. The EESC would like to emphasise that collaborative research with a minimum of three partners from different Member States must remain the backbone of European research funding. Enabling different innovation and research players to join forces to address challenges that cannot be met by one country alone, and to create synergies within the EU research landscape is something that needs to be done at EU level and creates significant EU added value.

4.6. The EESC is exceedingly concerned about the large disparities among Member States in their national funding of research and innovation. As a result, this has led to large differences in success with regard to receiving EU funding. We observe with deep concern that these disparities are actually growing. In particular, the EU13 Member States have had little success in acquiring Horizon 2020 funding. The differences in national funding for research and innovation are huge. This is not only due to differences in GNP within the EU. In addition, the stronger Member States also spend much more in relative terms on research and innovation than their weaker counterparts.

4.7. It can clearly be stated that the failure to achieve the goal of 3% of the GNP for R&I funding (Lisbon 2007) is essentially due to a lack of national research and innovation funding. Horizon 2020 contributes only a minor share to this. The EESC calls for national research funding to be strengthened and would like to emphasise to Member States the fact that EU research funding cannot replace national efforts. This is also vital to counteract the dangers of brain drain in certain Member States.

4.8. An analysis of the rising gap between Member States should be carried out in order to assess the reasons for it. The EESC welcomes the new measures for ‘Spreading Excellence and Widening Participation’ which may help to reduce the gap. Other measures which should be considered are providing advice for support structures for applicants, or adding participation of EU-13 countries as a prioritisation criterion among equally good projects, provided the competing applicants meet the same excellence criteria. We would particularly propose strengthening a funding instrument already in place — collaborative research — which builds bridges between research communities, thereby helping to dissolve disparities.

4.9. Open Science activities are supported by the EESC (*). The use of Open Access to publications has made progress; however there are still serious problems with some publishers — an obstacle which could be overcome by coordinated EU efforts. The development of Open Data is to be welcomed but a bottom-up process within research communities is still required for defining the details of its implementation.

4.10. A European science cloud, as suggested by the Commission, could offer Europe’s researchers a virtual environment to store, share and re-use their data across disciplines and borders. The EESC supports this initiative (**), believing that it could be an important element for Open Data. We urge the Commission to carefully take into account cross-border cloud systems in specific science communities, which already exist and work well, as well as national activities aiming to achieve the same objective.

5. Towards Efficient Processes

5.1. The EESC welcomes the European Commission’s efforts to add further ‘simplifications’ to Horizon 2020. In particular, smaller players will be attracted by less bureaucracy, easier rules and more legal certainty.

5.2. The newly introduced SME instrument is a positive example of an efficient application, selection and monitoring process. Businesses have taken a very positive view of elements such as the short time to grant loan applications and funding for bottom-up ideas. These elements should be used as a best practice for other instruments in H2020.

5.3. Many major achievements have been made in simplifying rules and tools such as the much-improved participant portal, but important issues will still have to be resolved, since they severely damage the attractiveness of the programme. For example, internal invoicing as used by the majority of industry and academic organisations is made nearly impossible, and stricter provisions on the ‘full capacity’ of facilities used has added further complications. The reluctance of the Commission to reimburse individual actual salary costs rather than past values of the last closed financial year has been partly addressed but still poses an extra administrative burden. The Horizon 2020 regulations still often require parallel bookkeeping. The massive administrative expertise still needed by the participants to implement these facets of H2020 makes participation especially cumbersome for SMEs and also discourages international partners.

5.4. The EESC thus encourages the Commission to further simplify Horizon 2020 and to respect the Horizon 2020 Rules for Participation which envisage a ‘wider acceptance of the usual cost accounting practices of the beneficiaries’. It also recommends that reflections on future framework programmes should endeavour to make further progress in this direction, accepting participants’ usual accounting principles wherever possible by starting from the principle that compliance with national rules is the main criterion, as long as these meet agreed standards. Those standards might be developed and tested in collaboration with the European Court of Auditors.

5.5. In view of the next Framework Programme the EESC also strongly urges refraining from setting up more instruments and encourages the Commission instead to actively reduce the number of instruments and also to benefit from the evaluation of the JTI to limit them to the most effective ones.

5.6. The EESC, in line with the European Parliament’s research committee (ITRE), calls for EUR 2.2 billion to be restored from the EFSI back to the EU’s Horizon 2020 research and innovation programme to compensate for the considerable negative impact the cuts have. The EFSI invests in projects that cannot be seen as compensation for those projects that can no longer be carried out under Horizon 2020, as the vast majority of the EFSI projects do not address research aspects but the implementation of existing technologies. This certainly has merit, but it must not limit the source of innovative new technologies for the competitiveness of Europe which Horizon 2020 can provide.

5.7. In Horizon 2020, classical co-funding for projects in which the Commission allocates grants to specific projects, thus contributing to the total costs, is increasingly losing ground to financial instruments. The financing of research via loans is however, for both industry and for academia, useful only at the final end of the innovation chain and not in the area of break-through innovation. In addition, many relevant players are not addressed by these instruments since public research organisations in many Member States are not allowed to take out loans. The EESC thus urges that both Horizon 2020 and its successors should remain focused primarily on co-funding.

5.8. The EESC therefore supports the Council conclusions of 27 May 2016 stressing that, within the framework of Horizon 2020, care should be taken to ensure that loan-based financing is not further expanded to the detriment of grant-based R&I funding. Europe’s industry needs access to game-changing new technologies derived from high-risk projects, and these will not be discovered via loans.

5.9. The first years of Horizon 2020 saw success rates which in some cases were as low as 3%. In general, success rates have changed from 1:5 in FP7 to 1:8 in Horizon 2020. Reasonable success rates need to be achieved to avoid wasting resources as well as causing frustration among the best industry and academic participants. When success rates are much lower, the costs generated by the efforts in proposals can exceed the funding provided. A variety of proposals for countermeasures are available (impact more precisely defined, two stage processes, professional advisors, follow best practice) and the Commission should implement them immediately for the remaining Horizon 2020 period.

5.10. The Seal of Excellence for excellent applications that were not funded might be particularly good for SMEs who are hoping to obtain funding from the European Structural and Investment Funds. The question of whether the rules about state aid could cause problems in these cases still needs to be clarified.

5.11. The EESC recommends that the interim evaluation should analyse how Horizon 2020 contributes qualitatively to its objectives of fostering excellent science, addressing urgent societal challenges and supporting industrial leadership for greater economic and inclusive growth that creates jobs in Europe, rather than focussing too much on quantitative measures such as counting publications, patents and returns on investment, as the FP7 evaluation has done. It also recommends establishing compatible indicators for both research and innovation support within the Structural Funds and the European Fund for Strategic Investments.


The President
of the European Economic and Social Committee
Georges DASSIS
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1. **Conclusions and recommendations**

1.1. The EESC is deeply concerned that EU aquaculture has not improved its situation despite the provisions designed to promote it in the Common Fisheries Policy (CFP), the common market organisation (CMO) and the European Maritime and Fisheries Fund (EMFF).

1.2. The EESC notes that the main cause of slow administrative procedures applicable to the practice of aquaculture, and the unavailability of locations, is the complex implementation of EU environmental legislation, mainly the Water Framework Directive, the Marine Strategy Framework Directive and the rules on the Natura 2000 network by the public administrations of Member States and their regions. This situation leads to requirements for aquaculture undertakings that are excessively costly economically and, paradoxically, do not ensure greater environmental protection.

1.3. The EESC calls on the European Commission to comply in full with its obligations regarding coordination of the shared competences in the field of aquaculture, including the simplification of administrative procedures and the involvement of the departments of national and regional public administrations responsible for aquaculture.

1.4. The EESC calls on the European Commission to ensure that the Member States make use of the guidelines on the application of European environmental rules, as an essential means of reducing unnecessary administrative burdens and, at the same time, to ensure that the quality of water and ecosystems is preserved.

1.5. The EESC stresses that, unless the issues concerning administrative procedures and the availability of locations are resolved, EU aquaculture will not be able to properly harness the funds available through the EMFF, as was the case with the former European Fisheries Fund (EFF). The Committee is also concerned that measures to reduce the budget deficit in the Member States mean that the financing of sustainable aquaculture initiatives that could generate growth and jobs is being neglected.
1.6. The EESC calls on the European Commission to launch the Aquaculture Advisory Council as a matter of urgency and to actively support its effective operation. This forum will only be effective if the stakeholders concerned and European and national public administrations cooperate in it, especially the European Commission.

1.7. To identify the extent to which the objectives have been achieved, the EESC urges the Commission, in collaboration with the Member States, to monitor closely the multi-year national strategic plans for aquaculture, and to ensure that all departments of national public authorities with responsibilities for the environment are involved in these.

1.8. The EESC warns the Commission that the next few years will be critical for the future of aquaculture in the European Union. The efforts the Commission has made to draw up a regulatory framework that favours sustainable aquaculture could yet come to naught if the situation is not monitored strictly and if a solution is not found for the current bottlenecks which, as mentioned above, occur in public administration departments in Member States that were not involved in drawing up the respective multi-annual national strategic plans for aquaculture.

2. Background

2.1. The current regulations on the Common Fisheries Policy (CFP) and the common organisation of the market in fishery and aquaculture products place unprecedented emphasis on sustainably developing aquaculture in the European Union.

2.2. The European Maritime and Fisheries Fund (EMFF) has a specific budget for developing sustainable aquaculture. For the 2014-2020 period, the budget amounts to the generous sum of EUR 1.2 billion.

2.3. The European Economic and Social Committee (EESC) has, over recent years, issued two opinions on aquaculture (1) (2). In both opinions, the EESC stressed the relevance of the sector to the European Union and urged the Commission and Member States to foster responsible, sustainable aquaculture.

2.4. The Commission published a set of strategic guidelines in 2013 on developing sustainable aquaculture in the European Union, set out in document COM(2013) 229 final. The aim of those guidelines was to steer Member States through the process of setting national objectives for sustainable aquaculture, taking into account their respective starting points, the prevailing national conditions and their institutional arrangements.

2.4.1. Among other proposals, the directives recommended that Member States should draw up multi-annual national strategic plans for aquaculture that would set out shared objectives and, where possible, establish indicators to assess the progress made towards achieving those objectives. The plans should serve to boost competitiveness in the aquaculture sector, support its development through innovation, stimulate economic activity, foster diversification, improve quality of life in coastal and rural regions and ensure a level playing field for aquaculture operators when it comes to access to waters and land.

2.4.2. All the Member States with an aquaculture sector presented their multi-annual national strategic plans in 2013. The majority of the measures and actions proposed in those plans were subsequently incorporated into the respective operational programmes for financing through the EMFF. This was to make it easier to put the measures and actions into practice.

2.5. The new CFP provides for the establishment of an Aquaculture Advisory Council which would take up the mantle of the former Advisory Committee for Fisheries and Aquaculture (Group 2: Aquaculture). The task of the council will be to facilitate debate on issues relevant to aquaculture and to present recommendations and suggestions to the European institutions. In parallel, a Market Advisory Council is also being set up. It will focus on marketing aquaculture and fishery products more effectively.


(2) EESC opinion on ‘Strategic Guidelines for the sustainable development of EU aquaculture’ (OJ C 67, 6.3.2014, p. 150).
3. General comments

3.1. The FAO has stated that global food production needs to increase by approximately 70% by 2050 in order to feed the 9 billion-strong population that will, according to forecasts, be inhabiting the planet by then. The FAO attaches special importance to aquaculture as a food source with the potential for growth and recommends promoting it as a provider of food, employment and wealth.

3.2. The consumption of fish and other aquatic food products is recommended on the grounds of their nutritional value and their importance for maintaining good health. Ensuring that people have access to a diet sufficiently rich in aquatic products is a social priority. Annual per capita consumption of aquatic products in the European Union is around 23.9 kg, and slowly growing.

3.3. The EESC confirms that the European Union has a trade deficit in aquatic products for human consumption. The internal market requires 13.2 million tonnes of aquatic products per year, of which only 10% comes from EU aquaculture, in comparison to 25% from extractive fishing and 65% from imports. The percentage of imports has been on the rise, although it has stabilised in recent years. In any case, this situation is indicative of a marked imbalance that places the European Union in a position of weakness with regard to its present and future food security.

3.4. Annual aquaculture production in the European Union amounts to 1.2 million tonnes. Of that, 65.4% comes from offshore aquaculture and 34.6% from onshore aquaculture. Its first-sale value is some EUR 4 billion. Forms of production are varied, ranging from traditional ponds or lagoons to other more technical methods, including the use of tanks or cages in the open sea or recirculating systems.

3.5. The EMFF Regulation was approved and published in May 2014. The Commission did not definitively approve Member States' operational programmes for the EMFF until autumn 2015, a year and five months late.

3.5.1. The European Court of Auditors published a study in 2014 on the efficacy of the support provided to aquaculture by the former European Fisheries Fund (EFF). The Court concluded that the EFF had not supported the sustainable development of aquaculture effectively. At European level, the support measures were considered to have been poorly designed and supervised and to have failed to provide a sufficiently clear framework for aquaculture development. At national level, the support measures had not been designed or applied correctly and the national strategic plans and their operational programmes had not provided a sufficiently clear basis for promoting aquaculture.

3.6. Aquaculture in the European Union currently directly employs 85,000 individuals, but this figure is no longer growing. The EESC welcomes the Commission’s view that each percentage point increase in the consumption of aquaculture products in the EU would create between 3,000 and 4,000 full-time jobs. Moreover, it should be noted that there are around 200,000 indirect jobs in aquaculture-related industries, processing and ancillary activities.

3.7. The EESC welcomes the fact that the Member States have developed multi-annual national strategic plans for aquaculture and have presented them to the Commission. The EESC holds the view, however, that the relevant economic, environmental and social actors were not sufficiently involved in their drafting, in contrast to the participation of public administrations and, within them, the government bodies directly responsible for aquaculture.

4. Specific comments

4.1. The EESC notes that the external trade imbalance in aquatic products produced in the European Union is unacceptable, both from an economic point of view, given the trade deficit that this entails, and from a social point of view, given the missed opportunities for employment.

4.2. The EESC notes that the growth of aquaculture production in the European Union levelled off around 2000, and growth has not yet returned despite the efforts of the various European, national and regional institutions. Volume production remains stagnant despite a slight rise in aggregate commercial value.
4.3. In its 2013 Strategic Guidelines for the sustainable development of EU aquaculture, the Commission correctly sets out the reasons why EU aquaculture production has reached an impasse while in the rest of the world it continues to experience rapid growth. The two main reasons highlighted in the report were the complexity of the administrative procedures for aquaculture activities and the difficulty in gaining legal access to locations for farms or extending these.

4.4. The EESC acknowledges the efforts made by the Commission to assist national and regional administrations in applying EU environmental rules without placing an unnecessary burden on aquaculture farmers. To that end, guidelines have been published on the relationship between aquaculture and the Nature 2000 areas and the Water Framework Directive. Additional guidelines that cover the relationship between aquaculture and the Marine Strategy Framework Directive are also being drawn up. However, the Committee notes the lack of knowledge and shortcomings in implementing these guidelines on the part of national and regional administrations with environmental responsibilities.

4.5. The EESC notes that, as a result of the delay in adopting the EMFF Regulation and approving Member States’ operational programmes, operators in Member States will not actually be able to start using EMFF funds until late 2016 at best, a delay of almost three years.

4.6. Reports such as that published by the European Court of Auditors in 2014 state that sustainable aquaculture development has been stalled by the lack of suitable maritime spatial planning and by the complexity of the authorisation procedures. The Court also noted that the main growth objectives for the aquaculture sector had not yet been met and that growth had remained stagnant for many years.

4.7. The EESC welcomes the fact that the EMFF budget for developing sustainable aquaculture is almost triple that provided under the former EFF.

4.7.1. The EESC stresses the difficulties faced by Member States that are the primary producers of EU aquaculture products in providing co-financing for EMFF funds owing to the budget restrictions that they have imposed in an effort to meet their deficit-reduction promises.

4.8. The EESC agrees that there is an absolute need for a European forum — like the former Advisory Committee for Fisheries and Aquaculture — in which all stakeholders can participate to discuss the situation faced by the aquaculture sector and to provide consensus-based recommendations to the European and national institutions. It therefore welcomes the creation of the new Aquaculture Advisory Council (AAC), which will represent a wide range of economic, social and environmental stakeholders, as well as researchers and consumers. It regrets, however, that the establishment and launch of the AAC was delayed, as that led to a three-year gap between the termination of the Advisory Committee for Fisheries and Aquaculture and the launch of the AAC.

4.8.1. The EESC expresses concern that the Commission will not retain the same level of participation in the new AAC as in the former Advisory Committee for Fisheries and Aquaculture. The Commission itself provided the executive secretariat of the former Advisory Committee, whereas the secretariat of the new AAC will be completely external to the Commission. This could affect the power of the AAC to bring European public administrations together and to disseminate its recommendations. The EESC is concerned that the Commission could be considered simply one participant in the AAC, when it should be continuing to play a leading role.

4.9. The EESC notes that the Member States’ multi-annual national strategic plans for aquaculture have yet to bear fruit. Under most of the plans, the mechanisms for monitoring results are not being used.

4.9.1. The EESC notes that the inadequate results to date of the implementation of the multi-annual national strategic plans for aquaculture can be attributed to the fact that the bottlenecks preventing sustainable aquaculture development are not being addressed with sufficient vigour. These obstacles are occurring mainly in public administration departments in Member States that were not involved in drawing up the strategic plans and, consequently, are not aware of them. The active involvement of these departments in implementing the strategic plans is therefore required.
4.10. The EESC calls on the Commission to urge public administrations in Member States and their regions to take account of all three aspects of sustainable development — environmental, social and economic — when implementing EU environmental rules, while balancing these against the need to improve food security in the European Union.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on 'The new electricity market design and potential impacts on vulnerable consumers'
(exploratory opinion)
(2017/C 034/12)

Rapporteur: Vladimír NOVOTNÝ

Consultation Council of the European Union, 14 March 2016

Legal basis Article 304 of the Treaty of the Functioning of the European Union (TFEU)
Exploratory opinion

Section responsible Transport, Energy, Infrastructure and the Information Society

Adopted in section 6 October 2016

Adopted at plenary 19 October 2016

Plenary session No 520

Outcome of vote (for/against/abstentions) 146/66/43

1. Conclusions and recommendations

1.1. The EESC supports the basic idea of a new electricity market design. This is necessary in order to ensure a stable electricity supply system that contributes to the objectives of the European Energy Union. The medium to long-term transition of electricity production and marketing towards decentralised structures and the implementation of the targets set out in the EU Renewable Energy Directive require a completely new electricity market design. The EESC points in this connection to its opinions TEN/577, TEN/578 and TEN/583, in which it addresses this issue as well as the future role of consumers, prosumers and new market participants.

1.2. In the EESC’s view, ‘smart’ distribution grids together with ‘smart meters’ and storage technologies will also form a significant part of the new electricity market design in the medium and long term. These ‘smart’ grids and control and storage technologies can therefore produce positive effects both in terms of optimising electricity consumption and saving electricity.

1.3. The EESC draws attention to the potential of small producer/consumers (prosumers), but also of other new models such as energy cooperatives; the latter can help reduce energy poverty. In order to integrate these prosumers fully into the energy market, the Committee considers it essential, among other things, to remove administrative barriers and any other unnecessary obstacles that may hinder their activities, and to ensure they have access to distribution networks on the basis of the prevailing market conditions with regard to financing the operation of these networks.

1.4. The EESC feels that the use of smart controls in ‘smart’ households is also an important element of the new electricity market design. Their use will lead to an increase in the active role of households as part of their full integration into the new electricity market design and to reduced risks of energy poverty. These notable changes will be facilitated by incentivising training programmes aimed at large sections of the population, as well as by supporting their implementation among vulnerable households and other vulnerable customers in the energy market, such as small and medium-sized enterprises.
1.5. The EESC is satisfied that all the anticipated changes in the new electricity market design are subject to the condition that the new market will provide the right short-term price incentives (price) and long-term price signals (cost) enabling and supporting extensive investment activity in the EU electricity sector. This also means that prices must reflect the full true cost, i.e. that ‘external’ costs are also factored in.

1.6. Developments on electricity markets in recent years have led to a considerable fall in wholesale market prices; however, small consumers and SMEs have not seen the benefit of this yet, their prices having gone up rather than down.

1.7. Through a smart electricity market design, together with strategic investments in systems that also specifically include socially less advantaged citizens, e.g. in the form of energy cooperatives, it will in future be possible to combine energy policy, social policy and regional value creation.

1.8. Policy must also provide a clear answer to the question of who should, may and/or can produce electricity as part of future decentralised production. This is also crucial for solving the problem of energy poverty.

1.9. An example of this is the Polish Podlaskie Voivodeship, where a funding scheme for small PV systems is currently being launched. Thanks to an investment grant of 60% along with the plan to introduce a net metering system in Poland, energy costs for the country’s consumers can be halved.

2. Introduction

2.1. In a letter dated 14 March 2016 the Slovak Presidency of the EU Council asked the European Economic and Social Committee to draw up an opinion on the social dimension of the new electricity market design as part of a process of social and economic development.

2.2. The Slovak Presidency notes in its request that the new electricity market design brings opportunities for consumers if it offers a more proactive way for them to interact with the market. Nevertheless, possible threats to socially vulnerable consumers must also be taken into account, alongside the anticipated impact of the possible increased electricity prices on the competitiveness of EU industry.

2.3. The EESC has examined the expected development of the energy market in detail in a number of its previous opinions (1), (2) and considers that the conclusions and recommendations that it has adopted are still relevant. The present opinion therefore focuses on the risks and opportunities for socially vulnerable groups associated with the new electricity market design and on the specific manifestations of energy poverty that are related to the availability of electricity.

3. The vision of the new energy market design

3.1. The main task of the new electricity market design, which is based on principles of sustainability, must be to ensure a secure supply of electricity for all consumers at affordable and competitive prices.

3.2. The EU Energy Union framework strategy is focused on the following key strategic objectives:

— energy security, solidarity, trust,

— a fully-integrated internal energy market,

— the contribution that energy efficiency can make to the moderation of energy consumption.

(2) OJ C 424, 26.11.2014, p. 64.
— decarbonising the economy, and

— an energy union for research, innovation and competitiveness.

3.3. The main features of the framework strategy for the electricity market are:

— transition towards a low-carbon energy system,

— cost-effective integration of intermittent renewable resources,

— abandoning traditional power plants in favour of decentralised production of electricity using renewable resources,

— changing role of consumers in the electricity market,

— increasing security and reliability of electricity supply.

3.4. The changing role of consumers in the energy market should play a significant role in the new electricity market design (3).

4. Energy poverty and how to prevent it

4.1. In the recent past the EESC has adopted a series of opinions on the issue of energy poverty, in particular opinion TEN/516 — ‘For coordinated European measures to prevent and combat energy poverty’ (rapporteur: Mr Coulon, 2013) (4), which was examined closely at national level, for example by the Economic and Social Council of Bulgaria in its opinion ‘Measures to overcome energy poverty in Bulgaria’ (ESC/3/030/2015). The EESC considers that the recommendations and conclusions of these documents are still relevant and does not intend to reiterate them here.

4.2. The issue of energy poverty is also addressed in opinions TEN/578 on ‘Delivering a New Deal for Energy Consumers’ and TEN/583 on ‘Prosumer Energy and Prosumer Power Cooperatives: Opportunities and challenges in the EU countries’.

4.3. Energy poverty is characterised by limited access to energy sources due to absent or badly functioning energy infrastructure or an inability to pay for the provision of energy commodities. In cases where there is a risk of non-functioning infrastructure, capacity needs to be increased or new capacity created in order to ensure the security and reliability of energy supply. Even network operators are realising that decentralised generating units, such as PV systems in private homes, can help to stabilise regional supply and often also weak regional networks.

4.4. Even if energy poverty is often looked at from the point of view of private end-users, it is important to note that some small and medium-sized enterprises are also often exposed, with all the ensuing consequences for their competitiveness.

4.5. Energy poverty is most often related to the ability to heat homes; however, in southern EU countries it can also refer to the availability of air conditioning in hot summer months. Energy poverty is expressed specifically in the inability to pay electricity bills. In such cases, approaches are used that are based on direct or indirect support for consumers faced with energy poverty.

4.6. Direct support to consumers is provided primarily in the form of social benefit programmes, such as direct compensation of payment in monetary or non-monetary forms, and based on the national social security system at Member State level.

(3) OJ C 82, 3.3.2016, p. 22.

4.7. Vulnerable consumers are defined differently in individual Member States according to the specific situation and relevant social system in each Member State.

4.8. Indirect support is provided via social or special tariffs. Social tariffs are currently provided in 10 Member States; eight Member States have defined the status of vulnerable customers; and a total of 16 apply regulated electricity prices to their own internal markets. The EESC has expressed its clear opposition to this kind of regulated prices (see TEN 578).

4.9. However, it will be possible to limit the risks of energy poverty by adopting a series of measures that are compatible with the new electricity market design. This will include the following elements in particular:

— greater availability of information on the electricity prices of individual suppliers,

— removal of obstacles to changing energy service providers,

— greater competition and transparent offers of comprehensive energy services,

— transparent contracts, prices and energy bills,

— training and educating customers with a high level of active participation in their municipalities,

— removal of unfair trading practices and coercive procedures for concluding energy supply contracts,

— savings in energy consumption and availability of information on own consumption, broad availability of smart metering and control devices in homes and for other small consumers,

— supporting thermal insulation of flats and houses, renovating and restoring old buildings in order to reduce energy loss,

— supporting incentive schemes and training programmes for vulnerable customers,

— supporting local initiatives in the fight against energy poverty,

— prohibiting excessively high costs for vulnerable customers,

— increasing efficiency and reliability of electricity supply.

4.10. Developments on electricity markets in recent years have led to a considerable fall in wholesale market prices; however, small consumers and SMEs have not seen the benefit of this yet, their prices having gone up rather than down.

4.11. The EESC points out that small producer/consumers (‘prosumers’) can also play a distinct role in reducing energy poverty. In order for them to be integrated successfully into energy markets, it is therefore essential to remove all administrative barriers as quickly as possible and enable them to access networks while at the same time safeguarding market conditions and complying with quality standards for electricity supplies.

4.12. The EESC believes that even if the above suggestions are implemented in accordance with market regulations, most of the burden of fighting energy poverty and its consequences will continue to be shouldered by social systems within individual Member States, since these constitute the only suitable alternative from the point of view of the market.

4.13. Through a smart electricity market design, together with strategic investments in systems that also specifically include socially less advantaged citizens, e.g. in the form of energy cooperatives, it will in future be possible to combine energy policy, social policy and regional value creation.
4.14. Policy must also provide a clear answer to the question of who should, may and/or can produce electricity as part of future decentralised production. This is also crucial for solving the problem of energy poverty.

4.15. Renewable energies open up completely new possibilities for tackling energy poverty as a social problem. For example, a study of the European Commission’s Joint Research Institute concluded as early as 2014 that 80% of Europe’s population could potentially produce their electricity — using PV systems — more cheaply than the cost of drawing it from the grid. One problem is that a section of the population does not have a rooftop or land to accommodate this kind of installation. Expanding the definition of the term ‘prosumer’ and supporting communal installations (energy cooperatives) could provide a remedy here.

4.16. In a study recently published by CE Delft it is estimated that by 2050 up to 83% of households will be able to produce enough electricity themselves to meet their needs.

4.17. However, a significant problem is the fact that socially less advantaged citizens in particular do not have the money to make the necessary investments. The ‘disadvantage’ of renewable energies is that they require a relatively large initial investment, although the running costs are very low (it goes without saying that the sun and wind are free). Nevertheless, this problem can also be tackled through policy, including by making the relevant strategic investments.

4.18. An example of this is the Polish Podlaskie Voivodeship, where a funding scheme for small PV systems is currently being launched. Thanks to an investment grant of 60% along with the plan to introduce a net metering system in Poland, energy costs for the country’s consumers can be halved.

4.19. In this connection, the Committee also urges the Commission, the Council and the EP to devote greater attention to medium- and longer-term developments that could be positive for consumers, such as the example of electro-mobility. The number of electric cars on the market is expected to increase over the next 20-30 years. An electric car needs approximately 14 kWh per 100 km, equal to EUR 3.50 at 0.25 cents/kWh. A 100 km journey in a car with a combustion engine — with a consumption of 7 l/100 km and at EUR 1.20/litre — costs EUR 8.40. A PV system with approximately six modules is sufficient to produce the amount of electricity required for an electric car to travel 10,000 km; with an investment of around EUR 3,000 it would be possible to power this kind of car (from own production) for 20 years. The financial aspects — both for the public and also potentially for the regions — of the transition to electro-mobility have not been sufficiently discussed to date.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
The following Counter Opinion was rejected in favour of the Section Opinion adopted by the assembly but obtained at least one-quarter of the votes cast:

1. Conclusions and recommendations

1.1. The EESC expects that the new electricity market design proposed by the European Commission as part of the autumn/winter energy package will lead to the full integration of renewable sources in the common electrical energy market, which is an important tool for fulfilling the EU’s commitments with regard to protecting the climate.

1.2. This proposal must aim to guarantee the long-term reliability and security of electricity supplies, leading to the removal of existing market distortions as well as introducing electricity prices that ensure the competitiveness of the European economy and will also be stable and accessible for low-income groups.

1.3. The EESC is convinced that the new electricity market design in its final form will reduce or eliminate the risks of a potentially negative impact on energy poverty.

1.4. The EESC considers that the process of transforming the electricity market from its current form into a new market design will potentially have an impact upon vulnerable groups of energy consumers, in particular the citizens.

1.5. From the EESC’s point of view, the risks involved in transforming the energy market are linked in particular to the need to fundamentally strengthen the 220/440 kW national transmission networks and their reciprocal capacity links, broaden the role of distribution networks to incorporate the roles that are currently fulfilled by transmission networks alone (for example, safeguarding grid stability) and convert them to ‘smart’ systems, address the issues regarding high-capacity electricity storage, decentralise electricity production, connect decentralised production to distribution networks and change the nature of the role and behaviour of electricity consumers in the market.

1.6. The abovementioned transformation processes are long-term; it will take decades to put them in place, not to mention heavy investment that is expected to reach several hundred billion euros as well as other comparable costs linked to the development of new, often as yet unknown technical solutions.

1.7. With regard to the full implementation of market principles, a significant proportion of these costs will be recuperated via regulated elements of the electricity price, which in the course of transformation may lead to potentially negative impacts driving vulnerable groups into energy poverty.

2. Introduction

2.1. In a letter dated 14 March 2016 the Slovak Presidency of the EU Council asked the European Economic and Social Committee to draw up an opinion on the social dimension of the new electricity market design as part of a process of social and economic development.

2.2. It was requested that the factors that influence the electricity market be analysed more broadly and the influence that they have on energy price change in the EU should be assessed, in order to ensure that this change is long-lasting not only from an environmental point of view (protecting the climate), but also from an economic and social point of view, and particularly with regard to the security and availability of electricity supplies.

2.3. The Slovak Presidency notes in its request that the new electricity market design brings opportunities for consumers and offers a more proactive way for them to interact with the market. Nevertheless, possible threats to socially vulnerable consumers must also be taken into account, alongside the anticipated impact of the increased electricity prices on the competitiveness of EU industry.

2.4. The EESC has examined the expected development of the energy market in detail in a number of its previous opinions and considers that the conclusions and recommendations that it has adopted are still relevant. The present opinion therefore focuses exclusively on the risks posed to socially vulnerable groups by the new electricity market design and on the specific manifestations of energy poverty that are related to the availability of electricity.
3. The key problems in the current electricity market in the EU and the risks associated with its medium-term development

3.1. The key problems in the current electricity market in the EU can be summarised as follows:

— fundamental distortion of the electricity market,

— insufficient investment into construction of new controllable electricity sources,

— neglected development of transmission infrastructure compared with the development of renewable resources,

— reduction in and threats to the security and reliability of electricity supply,

— lack of effective coordination of national energy policies, even though these should be collaborative and coordinated at the level of transnational regions, based on the real conditions of existing markets,

— increased distortion of the electricity market as a result of inefficient market integration.

3.2. Another significant negative factor behind the non-functioning electricity markets in the EU is the fact that certain key renewable resources are geographically far away from areas of high electricity consumption. This is combined with insufficient transmission capacities at the national level. Unmanaged electricity generation, particularly in wind farms, creates surge situations which cause electricity overflows to neighbouring states, which in turn leads to critical conditions on the transmissions systems and a high risk of the systems collapsing (blackout).

3.3. In many Member States, capacity mechanism systems have been introduced in response to the intermittent supplies from renewable resources, along with discriminatory elements, such as a focus on pre-selected technologies for electricity generation or the exclusion of cross-border supplies. The new electricity market model should take into account and address the existing shortcomings and it is therefore imperative that the quality of the EU’s electricity infrastructure is improved.

3.4. Member States’ transmission systems do not provide operative cover of local shortfalls in regions that lie between Member States; further integration of energy markets is therefore difficult in these circumstances. In Europe there are a number of regional electricity markets that do not cooperate with each other and whose activity is not sufficiently coordinated.

3.5. They are gradually being integrated in accordance with the legislation in force (network codes). There are currently considerable differences between these markets, both in terms of operational safety and prices for the supplies and services provided. This integration process is absolutely necessary, although it is becoming clear that it will be very difficult.

3.6. A number of Member States, in response to the problems of integrating intermittent renewable resources into energy systems, resort to capacity mechanisms, which ensure the reliability and availability of electricity delivery at times when renewable resources are out of operation as a result of their dependence on natural conditions. Capacity mechanisms are applied by means of capacity markets or strategic reserves. Capacity markets carry the risk of distorting the market, whereas strategic reserves are neutral to the energy market and should therefore be preferred as a solution from the point of view of the market.

3.7. The outlook for the energy situation over the next 20 years is an important factor that will influence the form that the new electricity market design will ultimately take, as well as, naturally, the impact upon vulnerable customers. With this in mind, the following factors need to be taken into account:
3.7.1. Given the developments of the past decade, the energy situation in the EU requires extremely urgent solutions founded on objective strategic thinking. The reliability of sustainable supplies of electricity at a reasonable/affordable price cannot remain mere rhetoric, but must be firmly based on all three basic pillars of sustainable development. Renovating the networks alone will require around USD 655 billion.

3.7.2. In the EU, thermal installed capacities of higher than 150 GW will reach the end of their lifespan between 2016 and 2025. These constitute one quarter of the current thermal capacity of the EU. To ensure that the electricity production system remains adequate and that the supply to consumers is maintained, 100 GW of new thermal capacity with stable output must be built. It is important to bear in mind that by 2035 fossil fuels will still account for 200 GW, even if the estimates regarding technological development in the fields of energy efficiency and electricity storage are proved correct.

3.7.3. As things stand with the electricity market, however, it is not possible to invest in this kind of production capacity, and securing energy security will require a fundamental systemic change in order for market mechanisms to be strictly applied, and for there to be a favourable impact on prices for end-users.

The counter-opinion was rejected by 141 votes against, 91 for, with 22 abstentions.
III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

520ND PLENARY SESSION OF THE EESC ON 19 AND 20 OCTOBER 2016

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 — European standards for the 21st century’

(COM(2016) 358 final)

(2017/C 034/13)

Rapporteur: Antonello PEZZINI

Consultation
Commission, 17.8.2016

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

Section responsible
Single Market, Production and Consumption

Adopted in section
4.10.2016

Adopted at plenary
20.10.2016

Plenary session No
520

Outcome of vote
147/0/2

(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC considers that a new vision is imperative in order to establish a European Standardisation System (ESS) able to adapt to constantly changing international circumstances and deliver increasing benefits to businesses, consumers, workers and the environment alike.

1.2. In its role as the ‘home of civil society’, the EESC attaches particular importance to enhancing the transparency and inclusiveness of the ESS and calls for it to play a proactive role with regard to steering, applying and disseminating standards and supporting a culture of standardisation.

1.3. The EESC stresses the importance of strengthening the strategic role of technical standardisation to ensure:

— the quality, safety and performance of goods and services,

— an ever-higher level of consumer, worker and environmental protection, and

— higher levels of innovation to keep businesses competitive.
1.4. The EESC welcomes the launch of the Joint Initiative on Standardisation (JIS) bringing together public and private ESS partners to establish a common approach to setting priorities and developing joint initiatives to modernise and simplify the adoption of standards.

1.5. However, the EESC is greatly concerned about the limited guidelines for implementation and related funding, which are vital to turning a common innovative vision into tangible modernisation strategies and measures.

1.6. In this regard, the EESC recommends that the JIS public-private partnership (1) be embedded structurally and financially within the framework of the Horizon 2020 Joint Technology Initiatives (2), with the aim of:

— ensuring that well-defined technical and regulatory objectives are achieved within industry, services and consumption, and

— obtaining a greater and better concentration of financial and human resources and knowledge on shared priorities.

1.7. The EESC supports the Commission with regard to creating an integrated and structured system aimed at reaching a common strategy that helps to reduce the fragmentation of standards and of their planning systems.

1.8. The EESC therefore calls for an improved system of governance of standardisation strategies that takes account of the convergence of technologies and the digitisation of businesses and services as well as of the new and growing social and environmental competences, and which could operate in tandem with the current technical committee for standardisation.

1.9. European inter-institutional dialogue on standardisation should give a key role to all the representative bodies concerned. Standing groups should be set up within the EU institutions to provide guidance and assessment, first and foremost in the EESC and the Committee of the Regions (CoR), given that Article 114 of the TFEU stipulates that consultation is mandatory.

1.10. In the EESC’s view, there is a need to strengthen capacities in the ESS and in the relevant Commission directorates-general for making coordinated use of the relevant technical standardisation instrument for individual sectors, especially for service sectors.

1.11. The EESC considers it a priority to develop a fully-fledged European standardisation culture starting from basic education up to policy-makers and negotiators of international agreements, by launching and supporting a vigorous European awareness-raising campaign.

1.12. The EESC stresses that a truly innovative European standardisation policy should, primarily, seek customer satisfaction among individuals, businesses and workers and, by taking a balanced and flexible approach that reconciles standardisation and creativity, should achieve high levels of safety, quality and efficiency, as well as job creation and increased international competitiveness (3).

2. The technical standardisation system in the face of European and global challenges

2.1. The role of technical standardisation is of paramount importance for the operation of the single market and for the international competitiveness of products and services. It is a strategic tool that vouches for the quality, performance and safety of goods and services, the interoperability of networks and systems, high levels of business, worker, consumer and environmental protection, and higher levels of innovation and social inclusion.

(1) Joint Initiative on Standardisation.
(2) See for example the metrology P2P.
2.2. In the light of new technological developments, political priorities and global trends, particularly in services, and the IT revolution, it is necessary to review the European Standardisation System (ESS) in order to preserve its many successful aspects, correct its shortcomings and strike the right balance between the European and national dimensions, and between freedom of innovation, creativity and technical and regulatory interoperability. It is also necessary — on a more general level — to respond to the new requirements and expectations of businesses, consumers, workers and European society as a whole.

2.3. In its role as the ‘home of civil society’, the EESC attaches particular importance to enhancing the transparency and inclusiveness of the ESS and calls for it to play an increasingly proactive role with regard to steering, applying and disseminating standards and supporting a culture of standardisation, as the cornerstone for the success of future businesses and generations.

2.4. The EESC has always maintained that ‘a fast, efficient and inclusive European standardisation process represents not only a key pillar in the architecture of the single market, which is the fulcrum of European integration and the Europe 2020 strategy that seeks to achieve it, but also and above all one of the foundations of Europe’s economic competitiveness and a driving force for innovation’ (4). Clear and transparent standards are therefore needed to protect consumers and businesses as well as the environment and society.

2.5. The main overall objectives of the ESS are to increase the contribution of standards and the process of European standardisation to the free movement of goods and services in the internal market, boost growth and innovation and promote the competitiveness of European firms, particularly SMEs, while at the same time ensuring high levels of consumer, worker and environmental protection. This should be done by means of broad but rapid, inclusive and transparent drafting processes both at national and European level, based on recognised criteria, such as those laid down in the WTO Agreement on Technical Barriers to Trade, and in Regulation (EU) No 1025/2012.

2.6. The EESC has recently emphasised that ‘European standardisation must serve increasingly — through the support of the social partners and stakeholders — to flesh out and enrich the processes under way in the global economies’, stating that it would be desirable for ‘the European culture of standardisation to have a greater presence in and more influence on global standardisation processes’ (5) including through raising awareness of communication, ease of access and affordability.

2.6.1. It is also important to maintain the right balance between standardisation and creativity (6) by ensuring that there is adequate scope for those concerned — including craft enterprises and small businesses — to express themselves freely and enrich products and services within the basic limits established by the standards.

2.7. European standardisation is set to play a key role: in establishing and operating a single market in products and services by gradually bringing about EU-level harmonisation of national standards, which often tend to create technical barriers to access to domestic markets and intra-European trade and commerce.

2.8. The convergence of technologies and the digitisation of society, businesses and public services means that the traditional distinction between general standardisation and digital standardisation is becoming blurred, as has been pointed out in another EESC opinion (7), and so the Commission needs to take a consistent approach to planning and setting standardisation priorities.

2.9. In view of the wishes voiced by the various economic and social players in the EU regarding International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) standards, it is now becoming extremely important to shore up the ESS so as to ensure that international standards are aligned with a European system of standardisation that is rapid, efficient and inclusive of all interested parties, particularly when it comes to representing smaller firms, consumers and other stakeholders.

2.10. The EESC points out that upgrading the development of voluntary European standards on services could promote jobs and growth through increased cross-border services and greater market integration, making it possible to tap into the sector’s full potential for the European economy while duly safeguarding local working and living conditions, and helping to dismantle barriers arising from the use of national certification systems.

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(6) See footnote 3.
(7) See footnote 5.
2.11. In response to fast evolving technological cycles, greater complexity and closer interaction in industrial systems, increasingly fluid boundaries between products, services and ICTs, the European Commission has launched a Joint Initiative on Standardisation (JIS), bringing together public and private ESS partners — as called for by the EESC — to define a shared, common vision and a common process focusing on a set of initiatives aimed at modernising, identifying priorities, speeding up and simplifying the adoption of standards by 2019, to be delivered through:

— awareness, education and understanding about the European Standardisation System,

— timely, high quality and aligned regulatory priorities and planning processes in the framework of R&I,

— coordination, cooperation, transparency and inclusiveness in representation, including smaller concerns,

— the active and transparent involvement of all stakeholders,

— competitiveness and the international dimension, by developing common standardisation models.

3. The European Commission’s proposals

3.1. The Commission’s communication sets out its vision accompanied by a standardisation package comprising a series of targets for modernising the European Standardisation System (ESS):

— Joint Initiative on Standardisation (JIS): an innovative partnership between European and national standardisation organisations, industry and professional associations, SMEs, consumer associations, trade unions, environmental organisations, the Member States, the European Free Trade Association (EFTA) and the European Commission, with the aim of taking practical actions to speed up and streamline the process of technical standardisation,

— European technical and regulatory standards for services: a guide to promote the development of voluntary European standards in the services sector, reduce barriers arising from national standards and certification schemes, and improve information to service providers,

— structured inter-institutional dialogue between the Commission, the European Parliament, the Council, the EESC and the CoR: an annual reporting and feedback system as part of the implementation of the EU’s standardisation policy,

— presentation of annual work programmes: the 2017 work programme establishes the annual priorities of the ESS.

3.2. The Commission’s plans, particularly in the services sector, are to:

— conduct studies in areas where there is conflict or duplication between national standards,

— agree on criteria for establishing priorities for European service standards,

— produce a targeted review gathering information on current national standards and procedures for authorising standards and certificates,

— ask CEN for an annual list of areas of potential conflict or duplication between national service standards or possible gaps in the development of standards,

— take account of the European dimension before developing national standards,

— recommend that Member States explore the use of European service standards.

3.2.1. The Commission is also proposing to promote available information on harmonised European standards by providing better access to the single digital gateway proposed in the single market strategy.
4. General comments

4.1. The EESC agrees — once again (8) — that there is an urgent need to effectively and efficiently modernise the European Standardisation System, something that has been under discussion for more than 5 years. It considers a new common vision and practical actions, though still on a voluntary basis, as indispensable if we are to meet the global challenges of standardisation with an innovative process of cooperation, based on consensus on the timely development of standards in a fast changing technological climate.

4.2. According to the EESC, the standardisation process must begin from the research and development stage, by means of co-standardisation and pre-standardisation measures and by strengthening the mechanisms for transferring European standards to the international level, with the support of industry and SME representatives, consumers, the social partners, environmentalists and relevant civil society stakeholders.

4.3. If the steps to modernise the ESS set out in the joint JIS paper are to be effective and efficient both at home and internationally, the EESC maintains that priority should go to:

— aligning the programming, development and monitoring systems in the various European reference frameworks, and strengthening coordination between them,

— ensuring that there is a more robust multiannual framework with a budget for financing European standardisation bodies in order to follow up on the measures planned (9),

— providing financial and organisational support for the inclusive participation of organisations and representative bodies that are weaker and less equipped through initiatives in the areas of developing technical and regulatory standards, ‘awareness, education and understanding’, ‘European’ inclusiveness and ‘the international dimension’.

4.3.1. In this regard, the EESC recommends that a public-private partnership initiative be set up under the Horizon 2020 Joint Technology Initiatives (JTIs), building on the path mapped out in the JIS, with an appropriate budget and a structured system for establishing strategies and priorities.

4.4. The EESC is equally concerned by the absence of sturdy and innovative architecture for aligning priorities both among the different EU policies and the various directorates-general implementing them, and among programming instruments, other than the Standards Committee and JIS and structured dialogue initiatives, however laudable they may be.

4.4.1. In the EESC’s view, a new governance body is therefore needed to frame and monitor action strategies on standards spanning all aspects of standardisation, from scientific and technological to social and environmental, which could operate in tandem with the current technical committee for standardisation.

4.4.2. It believes that as it is now imperative, at long last, to modernise and promote the ESS, and given the nature of the March 2015 Council requests, we cannot act efficiently if we take a ‘business as usual’ approach here. The European structured inter-institutional dialogue on standardisation should ensure a key proactive role for representative bodies, in particular the CoR and the EESC, given that Article 114 of the TFEU stipulates that the EESC must be consulted.

5. Specific comments

5.1. Speed and timeliness of European technical standards. There are diverging interests in terms of speed and difficulty in opting for a ‘one size fits all’ solution to reduce the amount of time needed and shortcomings in monitoring processes. Timeliness is more important than speed if the latter were to undermine consensus building.

(8) See footnote 4.
5.2. **Support for the competitiveness of European firms.** Overcoming obstacles to the participation of SMEs in the process of drafting/applying standards and reinforcing the links between standardisation, innovation and research projects, including through measures to build the capacity of small businesses.

5.3. **Support for the EU’s legislation and policies.** There is a growing demand for standards in support of the EU’s legislation and policies in order to obtain the requested standards: the capacities for coordination and communication between the various players and stakeholders need to be increased.

5.4. **Improved capacity to anticipate.** When designing European standardisation processes, steps must be taken to boost the capacity to respond in good time to the need to anticipate standards, partly in order to lessen the danger of national standards undermining the overall efficiency of the ESS.

5.5. **Inclusiveness.** The representation capacity of civil society stakeholders and smaller organisations needs to be improved through capacity-building measures. The EESC has previously stressed the importance of ‘facilitating access to the standardisation process for SMEs and societal stakeholders …’ and ‘close monitoring of the efforts of the key standardisation players, in order to increase the inclusiveness of the ESS’ (10). The Annex III organisations should be granted specific member/partner status, with clear rights and obligations, especially the right to an opinion.

5.6. **Global support for European standards.** Greater impact, representation capacity, competence and coherence are needed, particularly in the ISO/IEC/ITU and especially for small businesses, consumers and the environment, and in multilateral frameworks and free trade agreements.

5.7. **Governance.** Steps must be taken to:

— redesign governance and coordination structures to make them more efficient,

— improve the Commission’s interoperable communication networks on the standardisation process,

— harmonise working methods with transparent and inclusive public-private partnership planning structures and mechanisms for interactive dialogue.

5.8. **Multiannual financial support.** A multi-annual framework for funding is vital, both for pre-standardisation and co-standardisation research (11), Science & Society and Social Sciences & Humanities activities and creating an awareness and widespread culture of standardisation, and for supporting specific standardisation strategies and pilot schemes in leading sectors through the use of cofinancing in the general and regulatory framework of Horizon 2020.

5.9. **Systems and strategies for the future.** Need for impact analyses of future international standards on the European market and for forward sectoral and inter-sectoral studies. Need for regular assessments and follow-up of the effectiveness in practice of the measures taken, involving specially-formed structures in the institutions, such as a permanent study group on standardisation within the EESC and similar bodies in the CoR and European Parliament.

5.10. **Standardisation as an EU policy instrument.** For all European policies, capacities must be strengthened in the ESS and in the relevant Commission directorates-general for activating and making coordinated use of the relevant technical standardisation instrument for individual sectors.

(11) See the EMPIR metrology programme 2014-2020.
5.11. **Structured inter-institutional dialogue.** In the EESC’s view, this tool should be fully interactive and proactive, drawing on the activities of the standing groups set up within the European institutions and involving the CoR and the European Economic and Social Committee from the very start of the planning procedure, given that the TFEU (12) stipulates that the single market, which includes standardisation, is included within the EESC’s remit.


The President
of the European Economic and Social Committee
Georges DASSIS

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(12) See in particular Article 114 of the TFEU.
Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on addressing geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC’

(COM(2016) 289 final — 2016/0152 (COD))

(2017/C 034/14)

Rapporteur: Joost VAN IERSEL

Consultation

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

Section responsible
Single Market, Production and Consumption

Adopted in section
4.10.2016

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(216/3/6)
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a Regulation on geo-blocking, both for companies and for consumers, as an indispensable element of the Digital Single Market (DSM) Strategy. It is, however, a small step, not a game-changer. Companies and customers — both consumers and companies as end-users — will continue to face considerable difficulties when selling and buying across the Single Market.

1.2. The EESC urges the European Commission and the Council to put ambitious and well-defined legal provisions in place for a successful DSM in favour of consumers and companies, also as a prerequisite for creating a resilient European economy vis-à-vis the rest of the world. Such arrangements would also promote a positive image of the European Union.

1.3. It remains to be seen whether this regulation will really alleviate consumer frustrations. Although traditional off-line trading will continue to be important, the number of companies currently engaged in cross-border on-line trading is still rather limited. However, the potential for on-line buying and selling, especially across borders, is huge.

1.4. There is an urgent need for a level playing field for off-line and on-line trading. Consequently, the EU should focus not only on ending unjustified geo-blocking, but also on tackling the remaining obstacles in the Single Market that discourage or hamper traders from selling on-line and/or off-line across borders.

1.5. Confidence among companies and consumers should be fostered through the parallel adoption of other legal provisions. Some of the most important such are a Regulation on parcel delivery (1) — to alleviate transport problems and reduce costs through fair competition that also includes social provisions — and that fully respects EU legislation in this area — and a balanced revision of EU copyright rules.

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(1) EESC opinion on the proposal for a Regulation on cross-border parcel delivery services complementing the proposals put forward in this opinion (see page 106 of this Official Journal).
1.6. The EESC opposes unjustified geo-blocking. However, the EESC acknowledges a number of well-founded reasons companies, notably SMEs and micro-enterprises, may have for avoiding or refusing cross-border on-line trade or for adjusting prices and/or conditions as a result of differences between markets. These concern, among other things, different legal environments, further national requirements, additional transport costs, language requirements on pre-contractual information and back office requirements.

1.7. The EESC underlines that justified geo-blocking resulting from the wide variations Member States’ industrial policies and divergent legal systems is hindering the spontaneous development of SMEs and scale-ups operating Europe-wide. These divergences are in turn also undermining the transparency and predictability that are badly needed to stimulate investment and reassure markets in the digital era.

1.8. The proposed Regulation rightly does not impose any obligation on traders to deliver goods or provide services to the country of the customer, if the trader does not (yet) deliver or operate in the country concerned.

1.9. Any customer in the Single Market will rightly have access to any offer and may purchase the good or service as long as the customer arranges for pick-up of the good or receives the service in a territory where the trader already operates, reasonably allowing traders to use their home-country rules.

1.10. Furthermore, the EESC welcomes the information requirements imposed on traders to enhance transparency and the provision of information to the customer, in line with the 2011 Consumer Rights Directive. An informative EU website may be helpful here. In the context of the 2011 Consumers’ Rights Directive, companies are obliged to ensure price transparency. The EESC encourages companies to go beyond minimal standards in order to gain consumer trust.

1.11. The EESC welcomes the initial findings of the e-commerce sector inquiry recently published by the European Commission (2), notably proving that e-commerce is an important driver of price transparency and price competition. Unjustified geo-blocking inhibits this natural development.

1.12. Some aspects, however, deserve further clarification, in particular:

1.12.1. The wording on laying down the applicable law — Article 1(5) states that the trader can ‘sell’ just as he does at home, relying on his home-country rules — needs urgently to be formulated more clearly.

1.12.2. After-sale services (in cases of non-conformity, returns costs, options for compensation, etc.) are not specifically covered by the regulation and therefore are regulated by the 2011 Consumer Rights Directive. A reference should be added in the geo-blocking regulation to the relevant EU legislation that would apply. This warrants further consideration.

1.12.3. Some important provisions, such as Article 7 on penalties for infringements and Article 8 on assistance to consumers, confer responsibility for enforcing the regulation on the Member States. It must be ensured that potentially diverging interpretations do not lead to more fragmentation and, consequently, to a weakening of the regulation’s impact. The EESC welcomes the willingness of the Commission to put in place an EU-wide model of complaints for consumers (3).

1.13. The date, mentioned in Article 11 for the application of point (b) of Article 4(1), namely 1 July 2018, should remain open and only be determined at a later stage, depending on the duration of the legislative process.

1.14. The EESC supports the Commission proposal for a uniform complaints form.

(2) The inquiry was published in May 2015 and the initial findings were made public on 15 September 2016.
(3) Given the differences in approach between countries, this is far from easy to achieve. It is now under discussion between the Commission and the Council.
2. Introduction

2.1. Both digital transformation in companies and digital market places, are spreading rapidly worldwide. Given the huge consequences of these dynamic processes, the Commission has rightly declared the Digital Single Market (DSM) to be one of its top priorities.

2.2. The EESC is also heavily involved in discussions on digital transformation. In a series of opinions, the EESC has already commented on the overarching and horizontal aspects of digitalisation and on proposals concerning specific issues as presented by the Commission (\(^4\)).

2.3. In the EESC’s view, the digital revolution requires robust conditions to promote the Single Market in this new era. These conditions must be defined by an appropriate — new and/or reviewed — legislative framework that guarantees the rights of citizens and consumers. Moreover, companies should be encouraged to use digital tools and innovative solutions to operate across borders.

2.4. Each of the 16 legislative and non-legislative proposals contained in the DSM package must be fully considered from this starting point and the same applies to the proposal on geo-blocking.

2.5. The assessment of current practices makes it clear that there are still many obstacles to cross-border on-line transactions. Limited market cross-border development is often not a consequence of unfair market segmentation, but is the result of traders’ uncertainty concerning consumer attitudes and remaining administrative obstacles, differing regulatory environments and language barriers. Uncertainties of this kind are also harmful to consumers’ confidence.

2.6. A lack of information also contributes to the fact that e-commerce (both buying and selling) is rapidly taking off nationally, but remains underdeveloped in the cross-border context.

2.7. There are also substantial differences in transnational trading between sectors, bigger and smaller companies, and types of operators such as retailers or intermediaries and websites, while the volume of international on-line trading varies considerably among Member States.

2.8. The situation is complicated. In order to promote the required level playing field and transparent solutions for companies and consumers, the legal package for the DSM should be introduced in a consistent manner while, at the same time, other legislative provisions on related matters, for example on VAT, parcel delivery, waste disposal regulation and consumer law, should be fully compatible.

2.9. Economic and technological trends are irreversible. Thus, in a world in which on-line trading will increase anyway, the goal of creating a European level playing field for both citizens and companies must be achieved as soon as possible.

3. A broad scope

3.1. In these days of disruptive developments, industries — both manufacturing and services — are permanently changing, new sharing economy business models are emerging, and methods of trading are adapting accordingly. Social media and services are fundamentally influencing the development of new patterns of trading and buying goods. They have huge implications for companies and consumers alike. The EU should bring existing and new legislation into line with new market realities, without adopting a heavy-handed approach, so as not to hamper the development of new business models and innovative approaches.

3.2. Geo-blocking conflicts with a basic principle of the Single Market. While there are often justified reasons for different treatment in terms of pricing or of conditions that arise, for instance, from remaining market fragmentation or differences between national markets, businesses as well as consumers will benefit from an open and competitive market leading to varied choices and better quality at fair prices.

\(^4\) OJ C 264, 20.7.2016, p. 86;
OJ C 264, 20.7.2016, p. 57;
OJ C 264, 20.7.2016, p. 51;
3.3. The significance of B2C e-commerce — consumers and companies as end-users — must be seen in a wider context. Companies are now more than ever obliged to innovate and to work efficiently at moderate prices. New breakthroughs push boundaries and help companies to become more robust and resilient. For this reason, among others, the EESC fully endorses the goal of abolishing any discrimination against the customer on grounds of nationality and/or residence.

3.4. However, the decision to go international is and will remain the exclusive right of each company. Practical evidence shows that the (large) majority of companies choose a national approach.

3.5. Compared to the US, Europe is still dragging its feet. The Chinese and Indian digital sectors are on their way to achieving strong positions. Of the top 20 world internet leaders, not one is a European company. According to international studies, Europe is a champion in starting companies. However, the fragmentation of the European market hampers the spontaneous development of Euro-wide start-ups and scale-ups. Market segmentation often inhibits market development.

3.6. The Commission rightly makes a distinction between justified and unjustified geo-blocking. Justified geo-blocking in B2C commerce occurs primarily as a result of the fragmentation of the EU market and of situations that lack transparency.

3.7. It is a very telling side-effect of fighting geo-blocking that (new) failings in the internal market are being clearly revealed. It is essential to carefully analyse on a case-by-case basis whether or not there are grounds for restricting access to a certain service or different treatment in terms of price and/or conditions on the basis of nationality or residence.

3.8. A picture of potential geo-blocking and market development in a big home market such as the US would have been extremely useful, however difficult and costly such an analysis might be. It could conceivably have provided a model for Europe to follow. As in Europe, individual US states may also hold certain legal powers that hamper nation-wide operations, but these are certainly less far-reaching than in Europe. Free enterprise and consumer demand probably overwhelmingly favour B2C e-commerce, thus creating a fertile environment for competition and also for fast-growing start-ups and scale-ups in the US home market.

3.9. Such a picture might help to evaluate prospective developments in Europe. The Commission’s analyses, based on enquiries in business, describe current practices in markets that are predominantly national in nature. The US example can illustrate the real potential of economic activity following B2C e-commerce once all major barriers are removed.

3.10. Promoting cross-border selling has already been on the EU agenda for a while. A series of directives — such as the 2006 Services Directive and the 2011 Consumer Rights Directive — have been put in place. These emphasise consumer protection, while aiming to force companies to guarantee sufficient transparency for the consumer and to stop unjustified cross-border discrimination.

3.11. The EESC is disappointed that inadequate implementation and incorrect application, as well as weak enforcement of existing EU legislation, often creates lasting barriers.

3.12. To date, however, the effect of legal provisions to encourage cross-border e-commerce remains limited. On the basis of far-reaching market studies and surveys of businesses and consumers, the Commission concludes that ‘where buying online has become normal for consumer, buying online cross-border remains the exception. Only half of the companies selling online do so cross-border’ (5).

(5) See the Impact assessment on geo-blocking and other forms of discrimination based on place of residence or establishment or nationality in Europe (COM(2016) 289 final, p. 2). However, the Commission rightly stated in its 2012 Communication on services that businesses are free to determine the geographic scope to which they target their activities within the EU, ‘even when selling online’.
3.13. The EESC agrees that cross-border restrictions linked to nationality or residence, undermine trust in the Single Market, and should consequently be combated. On the basis of extensive enquiries, one would be fully justified in concluding that there is overwhelming support among both consumers and the business sector for opening up the European market for B2C online commerce. The European Parliament takes the same view (⁶).

4. State of play

4.1. In order to improve cross-border buying and selling, the Commission has drawn up a package of measures in various areas, such as VAT registration and VAT rules for e-commerce, parcel delivery, copyright reform, a reform of the Consumer Protection Cooperation Regulation. It is also essential that vertical agreements between suppliers and distributors and unilateral measures by individual companies are fully in line with EU competition policy.

4.2. The proposal for a regulation on geo-blocking forms part of this overall package. It should be noted that a number of important sectors are not covered by the regulation, for instance the patients/health sector, rail passenger transport, (retail) financial services, electronic music, audiovisual services and certain forms of gambling. The rationale is that these sectors require specific sectorial provisions that, according to the EESC, should be put in place soon to fill gaps in DSM legislation.

4.3. The same also applies to the extremely important issue of copyright. While copyright issues are rightly excluded from the scope of the present proposal, although definitely related to it, the EESC urges the Commission to take appropriate measures to combat fragmentation in this area, to alleviate consumer frustrations and to help construct a genuine Digital Single Market.

4.4. The summary of the 2015 public consultation on geo-blocking concludes that consumers and companies alike are generally unhappy at the current fragmentation of the Single Market. It seems that companies and business associations nevertheless accept the current state of affairs, attributing it to divergent legal systems within different Member States (⁷).

4.5. The EESC notes that it is important for SMEs that the proposal does not create an obligation to deliver throughout Europe. However, SMEs will certainly benefit from the opportunities (⁸) to be able to sell products and services across the continent, especially in border regions, while as end-users they enjoy the same rights as consumers, which is helpful when buying products and services from other Member States. Moreover, the EESC underlines that successful implementation of the Regulation on parcel delivery services is necessary to support and stimulate cross-border trade.

4.6. The divergences between legal systems help explain the distinction between justified and unjustified geo-blocking. Apart from the category of companies that simply decide not to go international, businesses’ reservations about abolishing geo-blocking must largely be attributed to their existing uncertainty about divergent practices across Europe that hampers international trading.

4.7. Consumers have many complaints about cross-border trading, although the available samples are somewhat limited in size and further assessment is desirable. The complaints cover a broad range of issues, such as a lack of information, delivery restrictions or a refusal to deliver, the failure to provide justifications or explanations when services or goods are refused, rerouting, price differences, the refusal of certain credit cards, differentiation based on billing and delivery addresses and languages. Some of these result from differences between legal systems. Others, however, which result from contractual provisions or concerted practices, leading to a fairly widespread vertical market segmentation, i.e. based on personal characteristics, should be banned (⁹). Enhancing consumer and business confidence in on-line markets is essential to boost cross-border e-commerce to the benefit of consumers, companies and citizens alike.

(⁷) Summary of Responses to the EC’s 2015 Public Consultation on Geo-blocking, p. 15.
(⁸) See European Small Business Alliance (ESBA).
(⁹) See also the Issues paper presenting the initial findings of the e-commerce sector inquiry conducted by DG Competition SWD(2016) 70 final, see point (7).
4.8. As well as applying different treatment in terms of price, conditions or other aspects for services provided at the same time and in the same location (for instance through the tracking of IP addresses or profiling), unjustified geo-blocking should be banned. There is no justification for different treatment on a systematic basis regarding services such as car rental, amusement parks or hotels. Temporary promotions or price differences, however, for example during school holidays — thus on a temporary basis and horizontal — should be allowed.

4.9. Contractual cross-border sales restrictions appear in multiple forms and contractual territorial restrictions can be found in all product categories \((10)\). Some apparently unjustified restrictions, however, are in fact acceptable, such as the common example of different pricing. The Commission is right to speak of a grey zone \((11)\) in this context. For instance, differences between prices can be (at least partially) explained by different markets, the different categories of consumers targeted and the higher costs arising from different or additional national regulations and legal advice, payment services, delivery and returns handling \((12)\).

4.10. Negative perceptions and corresponding complaints about the Single Market’s false promises are widespread among consumers and, equally, in business. These complaints basically arise from two overlapping phenomena: national industrial policies and divergent legislation.

4.11. The EESC has often criticised the existence of 28 industrial policies, as a national focus on industrial policy hampers EU-wide operations in business and in particular undermines SMEs’ scope for cross-border operations. Uncoordinated national policies with an obvious lack of uniformity, where appropriate, hamper cross-border planning. Unpredictable or arbitrary government measures add to further uncertainty.

4.12. The current landscape is certainly colourful: there are different national standards and different certification schemes; some websites are blocked to prevent them from selling from another country; payment regimes usually differ; language requirements may be prohibitive: market surveillance authorities sometimes impose extra requirements \((10)\) and existing EU Directives are badly implemented or not implemented at all. A well-known example is Article 20 of the Services Directive, which Member States systematically ignore, although in this particular case there is a lack of clarity on how to enforce the article properly. All of these factors undermine both market transparency and the desired level playing field.

4.13. The internal market is a key issue. The on-line society brings the Single Market into sharp focus. Companies and consumers across the continent are brought closer together. One click of the mouse instantly opens up a huge variety of options and choices. The opportunities for specialities and fine-tuning solutions can grow exponentially. It should, however, be kept in mind that even if the Single Market worked perfectly, there would still be differences between regions.

4.14. Artificial barriers are hampering companies, especially SMEs, from developing spontaneously. Companies look for concerted actions to bypass problems or to overcome obstacles in order to secure market positions. Vertical and horizontal agreements between traders and distributors, as well as various forms of market segmentation that are generally considered to form unjustified geo-blocking, must often also be seen as defensive measures against what companies consider to be arbitrary national barriers. For example, shipping costs and the cost of after-sales services due to national policies may unexpectedly turn out to be higher. A company obliged to deliver under all circumstances might find it difficult to meet its obligations in the light of unknown conditions.

4.15. In some cases, cross-border intermediaries are used to smooth out national complications between the company in the country of origin and customers in another country. However useful this might be, this does not generally facilitate direct relations between supplying companies and customers.

\((10)\) Ibid. points (98) and (99).

\((11)\) Ibid. point (102). This grey zone should be defined more clearly.

\((12)\) Ibid. point (114).

\((13)\) See Germany as an example.
4.16. There is no doubt that unjustified geo-blocking must be mapped and combated but the EESC insists that, when putting in place the correct conditions, the right conclusions also have to be drawn from the ongoing fragmentation of the internal market as a consequence of diverging national approaches.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws’

(COM(2016) 283 final — 2016/0148 (COD))

(2017/C 034/15)

Rapporteur: Bernardo HERNÁNDEZ BATALLER

Referral

European Parliament, 09/06/2016
Council, 30/06/2016

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Section responsible

Single Market, Production and Consumption

Adopted in section

04/10/2016

Adopted at plenary

19/10/2016

Plenary session No

520

Outcome of vote

219/4/4

(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC supports the Commission’s proposal, considering it to be timely and its content to be well-argued and developed. Attention is drawn to the extension of the expected benefits by applying the proposal to all stakeholders — consumers, businesses and national authorities — as set out in the proposal.

1.2. At the same time, the EESC is deeply concerned that regulating all these matters as set out in the proposal may affect the fundamental rights and their application by the Member States.

1.3. Furthermore, the EESC urges the Commission and the Member States to ensure that the common procedural standards set out in Article 8 of the proposal are applied effectively, in accordance with the principles governing good administrative practice.

1.4. Lastly, the EESC calls on the Commission to launch the coordination with the Member States needed to implement the measures set out in the present proposal, and to extend the scope of the coordinated actions.

2. Background

2.1. Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 (1) on cooperation between national authorities responsible for the enforcement of consumer protection laws (CPC Regulation) was endorsed by an EESC opinion (2).

2.2. The CPC Regulation harmonises the framework for cooperation between national authorities in the European Economic Area, with the result that steps taken by consumer protection authorities cover the entire territory of the single market.

2.3. The legislation to which the CPC Regulation applies is set out in an Annex, which is updated when new legislation comes into force. It currently covers 20 directives and regulations forming part of the EU acquis in the field of consumer law and marketing of products and services.

2.4. The Regulation sets out to ensure the proper functioning of retail market throughout the EU.

2.4.1. The CPC Regulation establishes minimum powers for the national authorities, and enables them to bring about the cessation of cross-border infringements.

3. Evaluation of the CPC Regulation

3.1. Article 21a of the Regulation stipulates that the Commission is to assess its effectiveness and operational mechanisms, examining the possible inclusion of additional laws and, if appropriate, submit a legislative proposal to amend it.

3.2. Following an external evaluation (3) and public consultation, the Commission published a report (4) in which it identified the factors that could hinder the efficiency of the Regulation:

a) insufficient minimum powers of enforcers to cooperate efficiently and swiftly especially in the digital environment;

b) insufficient sharing of market intelligence;

c) limitation of the mechanism to address infringements concerning several countries. The national authorities are frequently faced with similar infringements taking place on their markets at the same time. ‘Widespread infringements’ and those of ‘short duration’, but which have harmful effects, should be covered;

d) the need to amend the Annex to the Regulation to extend its scope based on the following criteria:

   i. collective interests of consumers;

   ii. cross-border relevance;

   iii. the public enforcement dimension and consistency with sectoral and horizontal legislation listed in the Annex;

e) without imposing any additional legal obligations on businesses.

3.3. It was eventually proposed to strengthen the CPC enforcement cooperation mechanisms, creating the conditions for efficient enforcement of consumer law in order to achieve a strong and dynamic single market.

4. The Commission proposal

4.1. The overall aim of the proposal is to remove distortions of competition and eliminate internal market obstacles. It seeks to preserve and increase the effectiveness and efficiency of the cross-border enforcement system for Union consumer legislation.

4.2. The current CPC Regulation is modernised by deepening the level of harmonisation, in order to address the issues identified in the evaluation, boosting the cross-border enforcement of Union consumer laws in the single market.

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4.3. The proposal complies with the subsidiarity principle, since consumer protection is one of the shared competences between the Union and the Member States. It also complies with the proportionality principle, providing for a common set of minimum powers for all competent authorities in the Member States falling within its scope.

4.4. With regard to cooperation to address ‘widespread infringements’, among other instruments, a common Union level procedure is proposed to tackle important harmful infringements which concern at least 3/4 of the Member States, accounting together for at least 3/4 of the EU population.

4.4.1. It is proposed that in the vent of ‘widespread infringements’, the Commission will decide to launch the common procedure and will play a compulsory coordination role in this procedure. It will also be compulsory for the Member States concerned to participate in this common action.

4.5. The preliminary provisions of the proposal update definitions in order to take account of the extended scope of the Regulation to cover ‘widespread infringements’ and ‘ceased infringements’.

4.6. It defines how to designate competent authorities and single liaison offices for this Regulation, clarifying their roles. It also establishes the minimum investigation and enforcement powers, clarifying the current powers and adding some new ones that the competent authorities consider necessary in order to operate in a cross-border environment.

4.7. For its part, a mutual assistance mechanism is proposed, consisting of two instruments:

— requests for information, enabling competent authorities to obtain information and evidence across borders; and

— requests for enforcement measures, which enable one competent authority to request another competent authority in a different Member State to take enforcement measures.

4.8. With regard to the coordinated surveillance, investigation and enforcement mechanism, instruments are introduced such as coordinated actions, common actions against widespread infringements with a Union dimension and concerted investigations of consumer markets.

4.8.1. A new instrument is established to address ‘widespread infringements' with a Union dimension which are likely to harm consumers in a large part of the Union. The thresholds that determine which suspected infringements have a Union dimension are set out.

4.8.2. The threshold is based on two criteria: the population and number of countries affected. If necessary the common action will be adopted by a decision. The objective is to end the infringement and ensure, where needed, consumer redress through commitments by the trader.

4.8.3. This proposal contains common provisions for procedures for coordinated and common actions, such as right to be heard for traders, the role of the coordinator, decision-taking and the language regime. It also establishes the legal basis for concerted investigations of consumer markets ('sweeps').

4.9. Lastly, other Union-wide activities are included, such as coordination of other activities that contribute to surveillance and enforcement, exchange of officials between competent authorities, exchange of information on consumer policy and international cooperation.

4.9.1. It contains an Annex listing the laws that protect consumers’ interests, and determining the scope of application of the Regulation rationae materiae.

5. General comments

5.1. The EESC welcomes the Commission’s proposal, which will bring closer cooperation and enhanced legal certainty, developing modern, efficient and effective mechanisms to reduce the harm caused to consumers' collective interests and to the single market by cross-border infringements.
5.2. The proposal will help all traders who suffer from unfair competition from non-compliant traders, who have
developed business models that allow them to evade laws and harm consumers from a different Member State.

5.2.1. It will boost consumer protection, legal certainty for businesses, more consistent cross-border enforcement and a
level playing field on the single market, without any need to impose disproportionate burdens on businesses.

5.2.2. The EESC points out that consequently, when exercising the minimum powers available to the competent
authorities, an appropriate balance must be struck between the interests at stake, such as a high level of consumer
protection, the freedom to conduct business and freedom of information. The EESC underlines the importance of
respecting the rights of the defence, the right to be heard and the right to use the language of one's choice during
proceedings.

5.3. The proposal not only puts forward solutions that are, in principle, commensurate with the importance and scale of
widespread infringements, but also introduces measures to increase the effective protection of consumers' and users' rights,
which may potentially be usefully applied in cases not covered by the present proposal.

5.4. In order to achieve the objective and purpose of the proposal, the public authorities need to have the powers and
means to cooperate effectively and to be in a position to adopt measures to implement the Regulation. The EESC is favour
of increasing the minimum investigatory and enforcement powers and the means set out in the proposal for the competent
public authorities, taking account of the different legal traditions of the Member States.

5.4.1. The option of ordering the restitution of unlawful profits obtained through infringements, as previously argued by
the EESC (5), is important for the effective application of the Regulation. The proposal rightly distinguishes between the
minimum powers of the competent authorities when providing for compensation of consumers and restitution of profits as
a result of infringements.

5.4.2. It is important that the proposal should include the option of making penalties public as a means of cleaning up
the market with a view to achieving greater transparency in its operations and making the right to freedom of information a
reality (6).

5.5. The proposal does not explore proactive measures that might contribute to the objective sought, but keeps to a
reactive approach, the coercive effect of which may sometimes fail to offset the impact of infringements as much as
expected, especially if the common procedures or their effects are time-consuming.

5.6. The future application of the Regulation will also need to be reviewed in order to assess its corrective effect on the
market, since the penalty measures imposed do not always result in sufficient correction of irregular practices or adequately
reverse their consequences, especially with regard to repeated infringements.

5.7. A more comprehensive approach in the proposal to eradicating widespread irregularities might increase the chances
of success: the perceptions and expectations of consumers and users also have a vital role to play here.

5.7.1. Awareness and a combination of proactive and reactive measures, focusing on the value of self-regulation and co-
regulation together with jointly responsible action on the part of consumers, may generate synergies that would make the
proposal more efficient and effective.

5.8. The EESC is pleased that the proposal allows for the involvement of civil society organisations, since this a way of
fostering sound governance and transparency and applying the principle of openness in the functioning of EU
institutions (7).

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(7) OJ C 11, 15.1.2013, p. 3.
5.8.1. It considers extending participation in the alert mechanism to other bodies to be crucial to achieving the aim of shared responsibility for all actors.

6. **Specific comments**

6.1. The proposal could have considered including supplementary or alternative measures to purely monetary penalties.

6.2. Regarding cooperation with other public authorities and designated bodies, criteria should be laid down to ensure that the same approach is taken everywhere, to ensure optimum implementation of the provisions of Article 6, preventing divergences or dysfunctions in its application.

6.3. It considers the content of Article 8 to be highly pertinent, as its provisions clearly indicate the minimum measures the public authorities need to have available in order to act: pending their decisions, this will frequently provide a broader range of action than at present.

6.4. It is in any case of the greatest importance that the Member States ensure that the competent authorities and the single liaison offices have sufficient budget resources to exercise their powers effectively.

6.5. In the EESC’s view, the mutual assistance mechanism and the administrative procedures contained in the proposal must be developed and implemented in strict compliance with principles such as those of transparency and administrative simplification.

6.6. The chapter on coordinated surveillance, investigation and enforcement mechanism for widespread infringements requires greater clarity to make the text more comprehensible and readily assimilated, in view of the profusion of procedural circuits and processes and the ensuing cases. The same could be said about the phases of each procedure.

6.7. Turning to Article 24, it is not clear whether the trader’s commitments, once accepted by the consumer, entail termination of any other corrective action that has been launched or may be launched later, even though it may be understood from the content of Article 25 that commitments and action to impose penalties are mutually exclusive, which may clash with current law within individual Member States.

6.7.1. Neither is it clear that the use of incompatible formulas may be applied to all cases that may arise, since an examination of the specific circumstances may advise using both to different degrees. This ambiguity may leave room for individual application of the proposal, always subject however to the premise of avoiding differentiated treatment.

6.7.2. Lastly, regarding the concerted investigations of consumer markets, investigatory work should be broadened to become an administrative preventive practice, in keeping with the points made earlier. This would not only lessen the risk of widespread infringements occurring, but would also prevent temporary bias arising from action taken up to that point, and would enable early reaction.

6.8. In the interests of efficiency and effectiveness, attention should be drawn to the need for interoperability between surveillance and alert mechanisms in existing systems: indeed, they should be directly interconnected with a view to standardising integrated functioning.

6.9. Chapter VI could include an article establishing a procedure for effective communication with the public in cases where this is necessary, defining criteria for when and how to do so.

6.10. The same comments as for the surveillance mechanism apply to the database and system for exchanging information on infringements regarding the need for interoperability of surveillance and alert mechanisms.
6.11. The EESC considers that the timeframe for submitting the report on the application of the proposal is too generous. Given the importance of the objectives sought, it should be shortened or an ongoing partial evaluation system set up, so that any deviation in its functioning can quickly be identified and, if necessary, appropriate action taken to reshape the proposal and how it is applied.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on cross-border parcel delivery services'

(COM(2016) 285 final — 2016/0149 (COD))

(2017/C 034/16)

Rapporteur: Raymond HENCKS

Referral

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

Section responsible
Single Market, Production and Consumption

Adopted in section
4.10.2016

Adopted at plenary
19.10.2016

Plenary session No
520

Outcome of vote
212/0/8

1. Conclusions and recommendations

1.1. A number of studies commissioned by the European Commission have shown that cross-border parcel delivery tariffs, particularly for individuals and SMEs, are sometimes close to five times higher than the domestic equivalent and that these differences cannot be explained by labour or other costs in the destination country. This means that consumers and e-retailers cannot take full advantage of the single market.

1.2. The EESC recognises that it is now essential that the Commission take further action to ensure that all e-retailers and consumers, and particularly individuals and SMEs in remote areas, can finally benefit from cross-border parcel delivery services that are accessible, high quality and affordable.

1.3. The Commission intends to address excessive delivery tariffs through the regulation under consideration here, which, however, applies only to universal service providers that provide parcel delivery services.

1.4. The EESC fears that the measures proposed in this regulation, notably the introduction of transparency on tariffs and terminal rates, the publication of reference offers, and assessment of the affordability of tariffs — measures that are undoubtedly needed — may, in the absence of additional measures, not be enough and do little to encourage the cross-border parcel delivery services concerned to charge reasonable tariffs.

1.5. The EESC regrets that the Commission is shelving any more stringent measures until the end of 2018 as it waits to see whether the situation has improved by then. The Commission, however, does not give any indication of its future plans if the improvement it hopes for does not come to pass.

1.6. The EESC calls on the Commission to take the same approach it took to roaming charges in mobile communications, and, at the very least, make a final urgent appeal to all cross-border parcel delivery services to lower their tariffs, and announce now that, if that does not happen, it will intervene by means of a regulation and a cap on tariffs.
1.7. With regard to the assessment of affordability, for many years now, the EESC has been calling for clarification of the concept of affordable services of general economic interest and for legislative measures to be introduced requiring Member States to define indicators to establish the affordability of these services. It therefore sees the provisions of this regulation as an initial step in the right direction, on the understanding that such an assessment must, if necessary, be followed by appropriate measures.

2. Delivery services in e-commerce

2.1. Physical delivery of goods ordered online is one of the key elements for e-commerce growth. Within the European Union, cross-border e-commerce is developing much more slowly than national e-commerce. For example, in 2014 — to widely varying degrees across the Member States — only 15% of consumers bought online from other EU countries, while 44% did so in their own country.

2.2. The tariffs and the procedures for and quality of the physical delivery of goods ordered online, along with the conditions for potential return of the parcel, are among the factors which influence a consumer’s decision to place an order online. The satisfaction of an online buyer thus depends partly on their delivery experience. Access to efficient, affordable delivery solutions is particularly important for SMEs, micro enterprises and individual consumers located in remote or outlying areas.

2.3. Parcel delivery up to a weight of 31.5 kg is a fast-expanding service in many Member States. Numerous operators have developed solutions to better meet their clients’ expectations, offering a whole range of ancillary services such as standard or deferred, express or same-day delivery, parcel tracking, proof of delivery, choice of delivery location, parcel points, automated parcel machines, registered post, declared value, etc., while postal items under 2 kg — estimated to account for 80% of post generated by e-commerce — is often considered to be a ‘small parcel’ and treated as letter post.

2.4. Delivery of parcels weighing up to 10 kg — which can be increased to 20 kg — is covered by a universal service obligation whereby Member States have to ensure provision of an affordable basic national and cross-border service for all users throughout the country.

2.5. The e-commerce market is extremely varied. It is often dominated by several large e-retailers which generate a very large number of parcels every day and which are therefore very well equipped to negotiate tariffs and shipping conditions with parcel delivery operators, which are under pressure to agree to extremely advantageous ‘negotiated’ tariffs and specific delivery conditions. These e-retailers often bear the costs of parcel delivery, even across borders, themselves. Only a few large parcel distributors can compete on either of these ‘negotiated’ national or cross-border markets, while, in addition, for the cross-border market it is important to have access to an international distribution network.

2.6. However, these opportunities do not exist at present for smaller or infrequent cross-border online purchases or for individual senders, including many SMEs; delivery services do not benefit from negotiated tariffs and only have access to an international distribution network at high prices, to the extent that, ultimately, the end consumer often has to pay excessive delivery prices. In such cases, cross-border delivery tariffs can be three to five times higher than the domestic equivalent (1) and these differences cannot be explained by labour or other costs in the destination country. Examples of inflated prices and substantial discrepancies in the two-way relationship between various Member States are documented in the Commission’s impact assessment (SWD(2016) 166 final).

2.7. The Commission has been concerned with this issue for years and has issued a number of communications on the subject:

— COM(2011) 942 final: A coherent framework for building trust in the Digital Single Market for e-commerce and online services,

— COM(2012) 698 final: Green Paper — An integrated parcel delivery market for the growth of e-commerce in the EU,

— COM(2013) 886 final: A roadmap for completing the single market for parcel delivery — Build trust in delivery services and encourage online sales,


2.8. Its aim was to develop solutions which would better meet consumers’ expectations.

2.9. As these measures have only been partly successful, the Commission has been forced to issue the regulation under consideration, supported by an accompanying document (SWD(2016) 167 final), an annex (COM(2016) 285 final) and a bulky 289-page impact assessment (SWD(2016) 166 final).

3. Content of the proposal for a regulation

3.1. Improving cross-border parcel delivery services is one of the measures provided for in the Digital Single Market strategy for Europe, aiming to improve access for consumers and businesses to online goods and services across the EU.

3.2. The proposed measures include:

— making markets work more effectively by (a) making the regulatory oversight of the parcels markets more effective and consistent; and (b) encouraging competition in the field of cross-border parcel delivery services,

— increasing the transparency of tariffs and terminal rates in order to (a) reduce unjustifiable tariff differences; and (b) lower the tariffs paid by individuals and small businesses, especially in remote areas,

— assessment by the national regulatory authority of the affordability of delivery tariffs,

— transparent and non-discriminatory access to the services and infrastructure necessary for the provision of cross-border parcel delivery services.

4. General comments

4.1. Given that the various initiatives taken by the Commission — including the 2012 Green Paper on An integrated parcel delivery market for the growth of e-commerce in the EU and a 2013 roadmap for completing the single market for parcel delivery. Build trust in delivery services and encourage online sales (2) — have yielded only meagre results as regards cross-border tariffs, it is now essential that the Commission take further action to ensure that all e-retailers and consumers, and particularly individuals and SMEs in remote areas, can finally benefit from cross-border parcel delivery services that are accessible, high quality and affordable.

4.2. The study carried out by the University of St Louis in Brussels concluded that universal service providers’ published cross-border parcel prices paid by individuals and small businesses were almost five times higher than their domestic equivalents, while the Copenhagen Economics study noted that other operators’ prices were three to five times higher than their domestic equivalents, and these differences cannot be explained by labour or other costs in the destination country.

4.3. The EESC therefore finds that the prices charged to individuals and small business are excessive, irrespective of the parcel delivery service. The Commission intends to address this problem by obliging national regulatory authorities to assess the affordability of cross-border delivery tariffs.

4.4. The EESC welcomes the fact that, in order not to lose any more time, the Commission has opted for a regulation. It is concerned, however, that the measures proposed in this regulation will again be ineffective. Limiting its ambition to introducing transparency of tariffs and terminal rates, the publication of reference offers, and assessment of the affordability of tariffs — measures that are undoubtedly needed — may, in the absence of additional measures, do little to encourage the delivery service providers concerned to charge reasonable prices.

4.5. The EESC regrets that the Commission is shelving any more stringent measures until the end of 2018, pending an evaluation report on the application of this regulation. In this report, the Commission intends to assess whether the affordability of cross-border parcel delivery services has improved, and whether transparent and non-discriminatory wholesale cross-border access has been granted by universal service providers providing parcel delivery services. However, the Commission does not give any indication of its future plans should the aforementioned improvement and non-discriminatory access not come to pass.

4.6. The EESC would have preferred the Commission to take the same approach that it took to roaming charges in mobile communications, and, at the very least, make a final urgent appeal to all cross-border parcel delivery services to lower their prices, and announce now that, if that does not happen, it will intervene by means of a regulation and a price cap.

4.7. Moreover, the regulation’s proposals on transparency of tariffs and terminal rates, publication of a reference offer, assessment of the affordability of tariffs and transparent, non-discriminatory cross-border access apply only to universal service providers which provide parcel delivery services.

4.8. However, in the total parcel delivery market, the share of universal service providers varies from 10 % (Bulgaria, Spain, United Kingdom, Italy) to 25 % (Czech Republic, Denmark, France, Estonia), while only a small percentage (5 to 10 %) of these parcels are covered by universal service obligations. Thus, the regulation under consideration addresses only a small section of the market, which nevertheless is essential for consumers and SMEs in remote areas without other alternatives.

4.9. With regard to the assessment of affordability, for many years now, the EESC has been calling for clarification of the concept of affordable services of general economic interest and for legislative measures to be introduced requiring Member States to define indicators to establish the affordability of these services (\(^{3}\)). It therefore sees the provisions of this regulation as an initial step in the right direction, on the understanding that such an assessment must, if necessary, be followed by appropriate measures.

4.10. However, the assessment provided for in this regulation will be confined to the tariffs for the shipping categories included in the public list of cross-border tariffs provided for in the annex to the regulation, i.e. parcels weighing 0,5, 1, 2 or 5 kg (with or without track and trace). The EESC believes that this assessment should be extended to 10 kg, 15 kg and 20 kg parcels, again with a view to possible future regulation of cross-border parcel delivery tariffs.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the ‘Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Report on Competition Policy 2015’

(COM(2016) 393 final — SWD(2016) 198 final)

(2017/C 034/17)

Rapporteur: Juan MENDOZA CASTRO

1. Conclusions and recommendations

1.1. The EESC welcomes the 2015 Report, as it considers it fundamental to the EU’s social market economy that competition policy is on an equal footing in all sectors.

1.2. Imports based on unfair competition constitute a danger to European businesses. Anti-dumping measures are essential to save jobs and protect those economic sectors that are affected.

1.3. The EESC shares the concerns of SMEs, trade unions and EU employers’ associations over the possibility that China will be granted market-economy status.

1.4. SMEs, which are fundamental to economic recovery, are the most vulnerable to abuses of a dominant position.

1.5. State aid control ensures a more efficient use of resources and improves public finances. However, such aid can be essential in guaranteeing the provision of services of general economic interest.

1.6. The EESC recommends that information about State aid awards should be improved in order to ensure greater publicity and transparency.

1.7. A small number of third-country global actors control digital innovation and it is fundamental for Europe to ensure its leading position thanks to its Digital Single Market.

1.8. The major challenge for European competition policy in a sector dominated by technology giants is to ensure that consumers have access to the best products and prices and that all companies, whether big or small, compete in an open market and based on the merit of their products. The EESC considers that, despite some of the criticisms it receives, the EU’s actions are, in general, balanced and in compliance with legislation.
1.9. The European Energy Union has enjoyed significant success in ensuring security of supply (a strategic success), reducing greenhouse gases, promoting renewable energy and increasing consumer choice. Nevertheless, it faces significant challenges relating to the cost of energy, the greater interconnection of networks and leadership with regard to implementing the Paris Agreement.

1.10. In the energy sector, merger control must be made compatible with expected mergers and acquisitions aimed at lowering production costs, which will reduce the number of businesses.

1.11. Regulation (EC) No 1/2003 has strengthened national competition authorities (NCAs) and has helped to consolidate the international standing of EU competition policy. Coordination among NCAs, as well as between NCAs and the Commission, make measures related to cross-border transactions more effective.

1.12. Regarding the financial crisis, the EESC reiterates that the exposure of taxpayers to the costs of bailing out the banks should be reduced.

1.13. The EESC calls for the EU regulations limiting interchange fees on credit and debit cards to be applied irrespective of the country in which the card issuer has its head office. Likewise, banks should not be prevented from offering interchange fees that are lower than those offered by retailers based in another country of the European Economic Area (EEA).

1.14. The EESC would like to underline the need for the Commission to continue its work to promote competition by reducing tax induced distortions resulting from misalignment of the 28 tax systems.

1.15. The widespread introduction of competition systems as a result of globalisation makes international cooperation vital. In the face of growing demands and a range of forums in which to participate (OECD, Unctad, International Competition Network), the EESC highlights the fact that the EU needs sufficient resources to continue speaking with one EU voice, which at present is listened to and respected.

2. Competition Report 2015

2.1. The Commission states that ‘strong and effective EU competition policy has always been a cornerstone of the European project’.

2.2. The key elements of the Report are grouped into three chapters:

— competition policy boosts innovation and investment across the EU,

— seizing the opportunities of the Digital Single Market, and

— building an integrated and climate-friendly European Energy Union.

2.3. The Commission reports on its specific activities in these areas, noting that, when enacting legislation, its guiding principles have been to safeguard impartiality, apply the rule of law and serve the common European interest.

2.4. In the past 25 years, the number of competition regimes around the world has risen spectacularly, from around twenty in the early 1990s to about 130 in 2015, covering 85% of the world’s population.

3. General comments

3.1. The EU’s competition policy

3.1.1. The EESC appreciates the 2015 Report, which addresses fundamental areas for economic development and the well-being of EU citizens.

3.1.2. A competition policy based on a level playing field in all sectors is a cornerstone of the social market economy in Europe. It is also an essential tool for ensuring the proper functioning of a dynamic, efficient, sustainable and innovative internal market, boosting economic growth, creating jobs and increasing competitiveness in the global arena.
3.1.3. Competition policy should not hinder the emergence of industrial champions in the European economy. In order to be effective and credible, it should not be directed exclusively at bringing down prices for consumers, but should also promote the development and competitiveness of European businesses in world markets.

3.1.4. A strong industrial base is vital to prosperity and growth. Bearing in mind the threat that unfair competition poses to European businesses, the EESC points out that anti-dumping measures safeguard tens of thousands of direct and indirect jobs and protect economic sectors from unfair import policies.

3.1.5. Imports under conditions of dumping, which put thousands of jobs in the EU at risk, amount to unfair competition. The EESC feels that China can hardly be said to operate in market conditions since it fails to comply with four of the five criteria established in the Commission's practice and in Regulation (EC) No 1225/2009 (1).

3.1.6. EU Structural Funds should not be used to support, directly or indirectly, the relocation of services or production to other Member States.

3.1.7. SMEs are the backbone for Europe’s economic recovery. Because of their size, however, they are also the most vulnerable to practices involving the abuse of dominant market positions, which in many cases means they are likely to disappear. Competition policy should focus specifically on such practices, especially on the part of large business groups.

3.1.8. Once again, the EESC draws attention to the lack of a genuine legal mechanism for collective actions that would provide effective enforcement of the right to compensation for the victims of abuses of dominant position, and it remains of the view that neither Directive 2014/104/EU of 26 November 2014 nor the Recommendation on common principles for collective redress mechanisms in disputes concerning infringements of competition law are capable of providing the necessary collective redress for the rights of those affected by such infringements.

3.2. **State aid**

3.2.1. Modernising State aid enables the EU to use resources in a more efficient way and improve the quality of public finances. It also helps Member States comply with the Europe 2020 strategy for growth and budgetary consolidation.

3.2.2. However, State aid can be essential to ensuring the delivery of services of general economic interest, including energy, transport and telecommunications. Likewise, it is often the most effective policy tool for guaranteeing the provision of services that are vital when it comes to safeguarding economic and social conditions in isolated, remote or peripheral areas and in island regions of the Union.

3.2.3. The EESC considers it necessary to maintain coherence between competition policy and other EU policies, especially in the case of investments aimed at boosting innovation and research, such as RDI, risk financing and universal broadband.

3.2.4. EU citizens do not consider themselves to be sufficiently informed about the complex State aid system and highlight the difficulty of accessing information about which companies receive such assistance (2). In order to achieve greater publicity and transparency, the EESC recommends that Member States should in every case publish details of aid recipients, the amount of funding received and its objective.

3.3. **Competition in the Digital Single Market**

3.3.1. The Digital Single Market is a fundamental EU strategy for ending the fragmentation of multiple national markets and merging them into a pan-European approach (3). A small number of third-country global actors control digital innovation and it is fundamental for Europe to ensure its leading position thanks to its Digital Single Market.

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(2) Perception and awareness about transparency of state aid, Eurobarometer, July 2016.

3.3.2. The major challenge for European competition policy in a sector dominated by technology giants is to ensure that consumers have access to the best products at the best prices and that all companies, whether big or small, compete in an open market and based on the merit of their products.

3.3.3. Cases that the Commission is investigating:

— internet search engines. The Commission’s statement of objections is based on the fact that Google systematically favours its own price comparison products. Three other concerns have been raised that are also being investigated,

— E-books. Amazon imposes clauses that may prevent competition, for example, the right to be informed about more favourable conditions or alternatives offered by its competitors,

— cross-border provision of pay-TV services in the United Kingdom and Ireland. The licence agreements between Sky UK and six large film studios in the USA require Sky UK to block access outside of its licensed territory,

— mobile devices such as smart phones and tablets. Among other practices, Android requires manufacturers to pre-install Google Search and the Google Chrome browser, and obliges them to select Google Search as the default search engine for their devices as a prerequisite for granting them licences to certain applications that are exclusive to Google,

— baseband chipsets that are used in electronic devices. Qualcomm, the main worldwide supplier, is being investigated to see whether it has offered financial incentives to a prominent manufacturer of smart phones and tablets on condition that they only use Qualcomm’s products.

3.3.4. In general, these cases involve potentially monopolistic practices and abuse of a dominant position. The technical complexity and high impact of the cases under investigation have led to criticism that, among other things, the EU has ‘declared war on Silicon Valley’. The EESC does not agree with this criticism and supports the actions of the Commission, which it considers to be balanced and in compliance with legislation.

3.3.5. Google — which in 2015 earned USD 74.5 billion in revenue — has a dominant position in the EEA of above 90% in markets for general internet search services, operating systems with licences for smart phones, and application stores for the mobile operating system Android. It has been claimed that the Commission’s investigation has undermined the possibility of the EU transforming itself into a centre for innovative ideas and is based upon incorrect technical evidence. Nevertheless, in 2012 the technical services of the United States Federal Trade Commission concluded that Google, which controls two thirds of the North American market, was using anticompetitive tactics and abusing its dominant position to the detriment of its users and competitors (4). An investigation carried out in that country reached the same conclusion (5).

3.4. A European Energy Union that respects the climate

3.4.1. The European Energy Union has achieved major successes:

— security of supply: the EU has achieved a strategic success and is currently much better prepared to face a crisis such as that which took place in 2009. European dependency on gas supplied by Russia has fallen to a third, and infrastructure for the internal distribution of gas, possibilities for external supply and storage capacity have all improved substantially,

— targets set for reducing greenhouse gas emissions and increasing the use of renewable energy sources (20-20-20 by 2020) could be met ahead of time and energy efficiency seems to be developing almost to target, albeit partly due to the economic downturn,

— markets have been opened up and consumer choice has increased.

(4) http://www.wsj.com/articles/inside-the-u-s-antitrust-probe-of-google-1426793274
3.4.2. However, the EESC — which has already expressed its support for the 2015 framework strategy (6) — feels that particular emphasis must be placed on the major challenges that the EU will face over the coming years:

— reducing the cost of energy, which is still very high for European consumers and has an impact on the following areas: social (risk of energy poverty), economic (seriously affects SMEs) and external competitiveness of businesses (energy is much cheaper in other markets, such as the United States),

— improving the integration of markets, increasing the interconnection of networks, and

— assuming a leadership role in implementing the Paris COP21 objectives, so that the radical shift involved in the gradual, profitable transition towards a low-carbon economy will be a success.

3.4.3. The EESC supports the Commission in its efforts to apply antitrust legislation strictly, as this is fundamental to addressing the abusive practices of the dominant operators in the market. The legally binding agreement between the Commission and Bulgarian Energy Holding should be noted.

3.4.4. In 2012 the energy sector received public support amounting to EUR 122 billion (EU-28) (7). Without this support, consumers would be unable to pay already-high energy prices. When applying State aid policies (8), the Commission should take into account the fact that certain kinds of renewable energy — which receives the most aid (EUR 44 billion) — have high production costs, making it difficult for suppliers to be competitive in the market.

3.4.5. The EESC notes that the acquisition of Alstom’s energy business by the US company General Electric (GE) has been approved by the Commission (9).

3.4.6. The Commission states that ‘merger control continued to be an effective tool for keeping the EU energy market open’. This needs to be made compatible with the fact that low oil prices could make business mergers to reduce production costs inevitable. Some forecasts indicate that the number of oil and gas producers will fall by a third.

4. Strengthening the EU’s internal market

4.1. Taxation

4.1.1. The EESC agrees that transparency and a fair distribution of the tax burden are essential to the existence of the single market. Evasion, fraud and tax havens cost European taxpayers dearly and at the same time distort competition. It is estimated that the EU loses between EUR 50 and 70 billion of tax revenue every year due to tax evasion, which represents just over 16 % of public investment in the EU. If we add to this the loss of income from legal — or supposedly legal — tax engineering practices, the damage becomes even worse (10).

4.1.2. The action plan for applying a fair and efficient corporate tax system is an important step in reducing aggressive tax planning, a practice that erodes Member States’ tax bases and promotes unfair competition (11).

4.1.3. The EESC would like to underline the need for the Commission to continue its work to promote competition by reducing tax induced distortions resulting from misalignment of the 28 tax systems. The complicated transfer pricing system which is currently in place for intra-group transactions is particularly expensive and burdensome for businesses operating within the EU, and leads to disputes between Member State administrations and results in double taxation of companies. Setting up a common corporate consolidated tax base (CCCTB) for businesses with cross-border activities is appropriate.

(6) OJ C 383, 17.11.2015, p. 84.
(9) GE has announced that — between 2016 and 2017 — it will cut 6 500 jobs in Europe, including 765 in France. Le Monde 14.1.2016.
(10) See: Bringing transparency, coordination and convergence to corporate tax policies in the European Union, September 2015.
4.1.4. The Commission is investigating the tax agreements between certain Member States and large multinational companies: Luxembourg (Fiat, Starbucks, McDonald’s, Amazon); the Netherlands (Starbucks). In the case of Apple, the Commission considers that, because of the tax treatment applied to it, this company was able to avoid paying tax on the sale of practically all of its products in the EEA, as a result of which it must reimburse an estimated EUR 13 billion to Ireland. Without prejudice to the final decision, the Committee supports the Commission in its investigation of tax agreements that can be detrimental to competition.

4.2. National Competition Authorities

4.2.1. Regulation (EC) No 1/2003 (12) has strengthened national competition authorities and has helped the international prestige of EU competition policy. The Commission has proposed that National Competition Authorities (NCAs), which currently deal with the greatest number of cases, should be strengthened. The proposal has been put forward for public consultation. Coordination among NCAs, as well as between NCAs and the Commission, make measures related to cross-border transactions more effective.

4.3. Card payments

4.3.1. Although use of the various electronic payment systems has become widespread, globally, consumers pay for 85% of their purchases in cash. In the EU, the situation is similar in several Member States, although in Scandinavian countries only 10% of purchases are made in cash. In any event, card payments are key to the operation of trade and are very important for consumers. Regulation (EU) 2015/751 imposes a cap on the size of interchange fees (13).

4.3.2. The statement of objections against MasterCard is based on the fact that it has prevented banks from offering lower interchange fees to retailers based in another European Economic Area (EEA) country as well as charging higher fees to cards issued in other parts of the world. European consumers’ associations have repeatedly reported abusive practices on the part of card companies such as Visa and MasterCard, facilitated by their dominance of the market. The EESC hopes that this prohibition will be eliminated as a result of the investigations and that the limits in interchange fees established in the EU will be applied independently of the country that produces the cards.

4.4. State aid for banks

4.4.1. The Commission makes reference to the State aid approved for various banks in a number of Member States. To date, the crisis has cost European taxpayers dearly. In order to avoid the total collapse of the banking system, governments bailed out their banks with urgent assistance on an unprecedented scale. In the Euro area, between 2008 and 2014, government assistance to financial institutions amounted to 8% of GDP, of which 3.3% has been recovered (14).

4.4.2. Aside from the great cost to the public purse, bailouts of the banks — which should be resolved by applying the legislation in force as of 1 January 2015 (15) — could lead to distortion of competition.

The EESC maintains that it is necessary to:

— reduce taxpayers’ exposure to the costs of bailing out banks,

— assign public authorities the necessary powers to take preventive measures, and

— grant resolution authorities the power to write down the claims of unsecured creditors of a failing institution and to convert debt claims to equity (16).


(14) ECB Bulletin.


(16) OJ C 44, 15.2.2013, p. 68.
5. Competition in the era of globalisation

5.1. The widespread introduction of competition systems as a result of globalisation makes international cooperation vital. The EESC enthusiastically supports the Commission’s active participation in forums such as the Competition Committee of the OECD, the United Nations Conference on Trade and Development (Unctad) and the International Competition Network (ICN).

5.2. At present, the EU’s voice is heard and respected in these forums. The Committee stresses the need to maintain human and material resources in accordance with this responsibility.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy making in the field of financial services for the period of 2017-2020' 

(COM(2016) 388 final — 2016/0182 (COD)) 

(2017/C 034/18)

Rapporteur: Reine-Claude MADER

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s decision to think about the interests of consumers and savers and provide assistance to their organisations. The Committee believes that financial services deserve particular attention given that their technical nature makes them difficult for non-experts to understand and that they raise important issues.

1.2. The EESC supports the initiative taken with the pilot project launched by the Commission in late 2011 to set up a financial expertise centre for consumers and end-users of financial services that would allow them to be involved in framing EU policies on financial services and ultimately help to restore confidence in Europe’s financial system.

1.3. The EESC notes that two NGOs, Better Finance and Finance Watch, are eligible for the operating grants provided by the European Commission through open calls for proposals, and that their activities were evaluated as broadly positive in 2015.

1.4. However, the Committee feels it would be useful to call for a number of conditions to be met.

Legitimacy

1.5. The EESC points out that the legitimacy of these organisations must derive from their membership, their governance, and also from what they do to make the technical details of financial legislation and financial tools comprehensible to the general public.

1.6. In this respect the EESC feels that a particular effort should be made to really involve end-users in the work of the said organisations. This must be reflected in the membership and governance of Finance Watch and Better Finance and in new, adapted working methods.
Financial independence, transparency and accountability

1.7. The EESC welcomes the financial transparency demonstrated by Finance Watch (1), but thinks that both Finance Watch and Better Finance must continue their efforts to achieve greater financial independence, including independence from the European Commission, as the credibility of their activities and their legitimacy in the eyes of the general public hinge upon this.

1.8. The EESC points out that these organisations may be held to account financially in the event of irregularities: the European Commission and the Court of Auditors effectively have the power of audit, on the basis of documents and on-the-spot checks, over the financial operators concerned directly or indirectly by grants. For its part, OLAF may carry out on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union (2).

1.9. The EESC welcomes the multiannual nature of the financial envelope provided for implementing the Union’s programme to encourage the involvement of consumers and other end-users of financial services, because this will make it possible to guarantee greater financial stability to beneficiary organisations. The latter will be able to organise their activities and fix their programme further into the future.

Public visibility

1.10. The EESC notes that despite efforts in relation to communication and visibility, including articles published in the financial press and organisation of conferences, Finance Watch and Better Finance are still largely unknown among the general public and national consumer associations, which ought in fact to receive their newsletters directly.

1.11. The Committee takes note of the results of the ex post evaluation of the pilot project which the Commission launched at the end of 2011 to support the development of a financial expertise centre for consumers and end-users of financial services (3). It asks these NGOs to step up their efforts to strengthen the role of end-users and consumers and ensure that they are better informed and their interests better represented when EU policies for the financial sector are drawn up.

Balance between financial sector professionals and users

1.12. The EESC recognises the need to develop technical expertise so that users of financial services can talk to financial industry specialists on an equal footing. Such expertise is key to the credibility of these organisations’ activities vis-à-vis the financial sector, whose resources are greater.

1.13. The EESC calls for a fair balance that will further the concept of a stable and sustainable financial system that looks to the long term.

2. Content of the proposal for a regulation (4)

2.1. This initiative follows on from previous ones taken by the European Commission since 2007 to restore consumer confidence in the wake of the financial crisis.

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(1) Total resources of Finance Watch in 2015: 32.1% from donors and foundations, 7.4% from research projects, 56.4% from EU grants, 1.3% from events, and 2.7% from membership fees. Source: http://www.finance-watch.org/about-us/governance-and-funding.

(2) Article 8 of the Proposal for a Regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy making in the field of financial services for the period of 2017-2020 — COM(2016) 388 final — 2016/0182 (COD).


(4) Article 8 of a Proposal for a Regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy-making in the field of financial services for the period of 2017-2020 — COM(2016) 388 final — 2016/0182 (COD).
2.2. The Commission’s objective is to ensure that more account is taken of the consumer perspective. This led to the setting up in 2010 of the Financial Services User Group (FSUG), systematic involvement of consumer and civil society representatives in expert groups set up, and then the launch in 2011 of a pilot project to provide grants supporting the development of a financial expertise centre.

2.3. Two non-profit organisations were selected after a call for proposals issued by the Commission. These were Finance Watch, set up in 2011 as an international non-profit association under Belgian law, whose purpose is to represent civil society interests in the financial sector; and Better Finance, a body resulting from the reorganisation of European federations of investors and shareholders existing since 2009, with the aim of forming a financial centre of expertise, made up, inter alia, of individual investors, savers and other end-users of financial services.

2.4. These organisations received operating grants from the European Commission between 2012 and 2015. Finance Watch received EUR 3,04 million between 2012 and 2014, and Better Finance received EUR 900 000 over 3 years. These grants covered 60% of the organisations’ eligible costs.

2.5. The evaluation carried out in 2015 concluded that the strategic objectives set by the Commission had been achieved, while seeing room for improvement in relation to providing information to consumers and taking their point of view on board.

2.6. The Commission also noted that despite their efforts these organisations had not managed to secure stable and adequate resources from donors independent of the financial sector, which meant that EU funding was vital for their activities.

2.7. The proposal for a Regulation sets out for the period 2017-2020 a programme of research, awareness-raising — including among non-experts — and activities to strengthen interaction between the members of the beneficiary organisations, as well as advocacy activities to put forward their positions at EU level.

2.8. The objectives are to continue enhancing the involvement in Union policy-making in this area of consumers and other end-users of financial services and to help ensure that they are informed about issues relating to regulation of the financial sector.

2.9. Funding for Finance Watch and Better Finance is fixed at a maximum of EUR 6 million for the period 1 January 2017 to 31 December 2020.

2.10. Each year the beneficiaries must submit a description of activities carried out and activities planned.

3. General and specific comments

3.1. The financial crisis made the European Commission and the European Parliament aware of the imbalance between representation of financial sector professionals and that of financial service users in the relevant bodies.

3.2. On the basis of Article 169(2)(b), which stipulates that the Union must promote the interests of consumers and ensure a high level of consumer protection, the European Commission proposes to co-finance the activities of organisations specialised in the sphere of financial services.

3.3. The EESC can only endorse this objective, which it has advocated in a number of its opinions where it drew attention to the need to put the consumer at the centre of all policies, which means giving resources to consumer representatives (5).

3.4. Given the complexity of issues relating to savings and investment, the EESC also endorses the setting up a financial expertise centre that is independent of the financial industry and available to organisations representing the interests of consumers, savers and end-users who are not experts in financial matters, where technical complexity limits accessibility for non-experts and where much is at stake.

3.5. The Committee believes here that it is important to check very carefully that there are no financial or other links that might compromise the activities of the organisations in question.

3.6. The EESC would emphasise that the organisations’ legitimacy must derive from their membership and governance, as well as the action they take to make the technical aspects of financial legislation and financial tools comprehensible to the broader public.

3.7. The EESC points out that despite efforts undertaken in relation to communication and visibility, including articles published in the financial press and organisation of conferences, Finance Watch and Better Finance are still largely unknown to the general public and national consumer associations, which could receive their newsletters directly.

3.8. In the Committee’s view, it is not for experts to stand in for civil society representatives, but rather they should give those representatives the means to identify the relevant issues and to assess the measures that should be taken and make proposals.

3.9. The EESC shares the European Commission’s view about the need to facilitate the involvement of consumers and other end-users in framing EU policies, at the same time restoring their confidence in the European financial system.

3.10. The Committee takes note of the Union’s programme provided for in the proposal for a regulation and of its objectives, while underlining that it will be extremely difficult for the institutions and organisations to interact with the wider public.

3.11. As the setting up of Finance Watch and Better Finance coincides with the launch of the pilot project (6), it is necessary to ensure that all of their members are independent of any industrial, commercial or economic interests.

3.12. The EESC considers the duration and type of financing adopted to be appropriate: it welcomes the multiannual nature of the financial envelope provided for implementing the Union’s programme to encourage the involvement of consumers and other end-users of financial services, because this will make it possible to guarantee greater financial stability to beneficiary organisations. The latter will thus be able to organise their activities and fix their programme for a longer time frame, even if the amount of the grant envisaged is modest in relation to the declared objectives.

3.13. The EESC also believes that these organisations should find complementary sources of funding so as to guarantee that they can develop, balance their books and be independent, which includes being independent of the European Commission.

3.14. The EESC calls for the regulation to be adopted swiftly so as not to check the momentum created by the pilot project.

3.15. The Committee endorses the evaluation procedure as essential to establishing whether the objectives have been achieved and whether the transparency and financial accountability rules contained in Article 8 of the proposal for a regulation have been complied with (7).

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

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(6) Pilot project launched in 2011 aiming to provide grants to support the development of a financial expertise centre to the benefit of end-users and non-industry stakeholders and enhance their capacity to participate in Union policy making in the field of financial services, in the Proposal for a Regulation of the European Parliament and of the Council on establishing a Union programme to support specific activities enhancing the involvement of consumers and other financial services end-users in Union policy-making in the field of financial services for the period of 2017-2020 COM(2016) 388 final — 2016/0182 (COD), p. 2.


(2017/C 034/19)

Rapporteur: Javier DOZ ORRIT

Referral

Legal basis
Articles 50 and 114 of the Treaty on the Functioning of the European Union

(2017/C 034/19)

Section responsible
Economic and Monetary Union and Economic and Social Cohesion

Adopted in section
5.10.2016

Adopted at plenary
19.10.2016

Plenary session No
520

Outcome of vote
182/0/1
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC believes that the fight against terrorism and its financing and efforts to combat money laundering and other related forms of economic crime should be permanent EU policy priorities.

1.2. The EESC welcomes in principle the measures included in the proposed amendment to the directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (1) and agrees that its transposition is urgent.

1.3. Given the global nature of these phenomena, the Committee calls on the EU and the Member States to take an even more prominent role in the future and to play a pioneering role in the international bodies and forums that are seeking to combat money laundering and the serious crime associated with it. Internationally and globally coordinated action and measures are needed to be able to act more effectively here and to achieve better results; Europe can lead the way in this process.

1.4. The Committee is aware of the effort that adapting to the directive demands of businesses and obliged entities, as well of the supervisory authorities. It is however an effort that all must make in order to achieve the objectives, which the EESC fully supports, that include protecting the financial system and other obliged entities from their use to commit crime. The Committee proposes that the impact of applying these measures be assessed.

(1) Hereinafter referred to as 5AMLD: COM(2016) 450 final.
1.5. The EESC is concerned that a number of factors may seriously limit the practical effectiveness of the fourth and fifth anti-money laundering directives (AMLD). Firstly, the list of high-risk third countries, published on 14 July 2016, does not include many of the countries or jurisdictions which — on the basis of credible evidence — are believed to be acting as tax havens for money laundering, or any of the 21 territories mentioned in the Panama papers. Given that the enhanced due diligence measures mentioned in 5AMLD are applied only to third countries which are deemed to be high-risk, the EESC proposes that either a new list of high-risk third countries be drawn up, or the scope of the measures under Article 18a of 5AMLD be broadened. The EESC considers creating public national registers of the beneficial owners of bank accounts, businesses, trusts and transactions, and access to them by obliged entities, to be a priority.

1.6. The EESC urges the European institutions to strengthen their policies aimed at closing down tax havens. In particular, the Committee believes that all obligations laid down in the 5AMLD, especially those relating to the identification of the beneficial owners of bank accounts, businesses, trusts and transactions, should be extended to all territories or jurisdictions whose sovereignty resides with the Member States, including those which have special tax laws.

1.7. The fight against money laundering should be linked more closely with the efforts needed to combat tax fraud and avoidance, corruption and other connected crimes — trafficking in arms, drugs, people, etc. — and against the organisations running the criminal economy. Fresh initiatives need to be launched against all of them and their connections with laundering. Measures to tackle unfair tax competition should also be put in place.

1.8. The fight against terrorism and money laundering requires closer cooperation between the various intelligence and security services of the Member States, and between these services and Europol.

1.9. The EESC considers that free trade and economic partnership agreements should include a chapter on measures to tackle tax fraud and avoidance, money laundering and terrorist financing. The EESC calls on the Commission to include it as an EU proposal in the ongoing negotiations, in particular those on the TTIP, and in the treaties already in force when they come to be revised.

1.10. The work of the Member States’ Financial Intelligence Units (FIUs) and their permanent coordination at European level are essential. The EESC believes that it would be useful to create a European tool for monitoring, coordinating and anticipating technological change.

1.11. Given the huge importance of the fight against money laundering and in order to ensure that the rules in this field are implemented uniformly and effectively across all Member States, it is crucial that the texts and concepts that frame the proposed measures be as clear as possible. This will also provide the necessary legal certainty for all those required to implement this legislation.

1.12. The legal treatment (definitions and penalties) of all crimes relating to money laundering, tax fraud, corruption and the financing of terrorism and its connections should be harmonised at European level, as should penalties resulting from failure to comply with the AML directives.

1.13. The EESC proposes the introduction of surveillance measures for the subsidiaries of obliged entities in high-risk third countries, so that not only their clients are monitored.

1.14. The Committee suggests that the Commission should explore additional steps to protect the rights of citizens against illegal use or abuse of the information recorded by the competent authorities or obliged entities.

1.15. The Committee welcomes the rapid processing of these proposals and hopes that they can come into effect quickly and in the short term without detriment to the quality of the results. A realistic timetable should be set out for the transposition and application of the legislation in the Member States and clear guidelines laid down.
2. Background and Commission proposal

2.1. The brutal terrorist attacks in France, Belgium and other European countries and the leaks concerning the laundering of money from criminal activities in tax havens, the most recent of which was the ICIJ (\(^2\)) Panama papers leak, have led the Commission to propose new measures for the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. On 5 July 2016, the Commission adopted, together with the proposed 5AMLD, another directive to facilitate access to anti-money-laundering information by tax authorities (\(^3\)) and a communication on further measures to enhance transparency and the fight against tax evasion and avoidance (\(^4\)).

2.2. A recent European Parliament study (\(^5\)) points out that ‘the “Panama Papers” have brought to light the role of offshore tax havens as enablers of tax avoidance, and the aggressive nature of some tax avoidance schemes, where the distinction between avoidance and evasion is masked. In that sense, opacity — resulting from secrecy, lack of traceability and failure to share tax information — has played an important role in cases of breaches of economic sanctions and obscured useful and necessary information regarding organised crime, including money laundering related to terrorist activity, corruption and the drugs trade’.

2.3. The ICIJ has published the Panama papers. Its Offshore Leaks Database (\(^6\)) lists 45 131 EU companies (\(^7\)). Of the 21 territories that Mossack Fonseca used for tax fraud and avoidance and money-laundering purposes, three are EU states and another three are dependent territories of one (\(^8\)).

2.4. The 5AMLD develops some of the proposals of the Action Plan for strengthening the fight against terrorist financing (\(^9\)), which involve amending the 4th directive (4AMLD) (\(^10\)) and of the Directive on the coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies (\(^11\)). The plan proposes to bring forward the date for transposing the 4AMLD from 26 June 2017 to 1 January 2017, which will also be the deadline for transposing the two proposals for directives of 5 July 2016.

2.5. The 5AMLD’s complex political and legislative framework includes, in 2015 alone, two other initiatives: the European Agenda on Security (\(^12\)) and the proposal for a Directive on combating terrorism (\(^13\)), which establishes a new classification of offences linked to terrorist financing.

2.6. On 14 July 2016, the Commission adopted the Delegated Regulation on identifying high-risk third countries and an annexed list (\(^14\)) comprising the list approved by the FATF at its meeting in Busan (South Korea) on 24 June 2016.

2.7. The proposed 5AMLD imposes some new due diligence obligations which obliged entities — financial institutions, related professionals, trust and gambling service providers, real estate agents, etc. — must apply to their clients, both new and existing. Above all, in Article 18a it provides for enhanced customer due diligence with respect to transactions involving high-risk third countries. Member States will also be able to apply countermeasures to high-risk jurisdictions, including a ban on establishing branches or representation offices or making financial transactions in these jurisdictions.

2.8. A new development is that virtual currency exchange platforms and custodian wallet providers will fall within the scope of the directive and will be considered as obliged entities for the purposes of the due diligence measures. Anonymity for the online use of prepaid cards is removed and the threshold for mandatory identification is reduced from EUR 250 to 150 when used face-to-face.

\(^1\) International Consortium of Investigative Journalists.
\(^4\) Offshore Leaks Database.
\(^5\) EPRS, op.cit., pp. 19 and 20.
\(^6\) EPRS, op.cit., p. 21.
\(^7\) COM(2016) 50 final.
\(^8\) OJ L 141, 5.6.2015, p. 73.
\(^9\) OJ L 258, 1.10.2009, p. 11.
\(^12\) C(2016) 4180 final.
2.9. The 5AMLD also proposes: strengthening the competences of the FIUs and promoting cooperation between them; facilitating the identification of holders of bank and payment accounts by establishing national central automated registers of these accounts; and imposing the identification and registration of the true beneficial owners of companies (reducing the threshold for shareholding from 25% to 10%) and of trusts, foundations and similar entities, as well as allowing public access to this information under certain conditions.

3. General comments

3.1. The various types of crime that use money laundering and tax havens to the detriment of the fundamental rights of the entire population are very serious. Money laundering is expanding continuously in spite of the efforts made by the European and national authorities.

3.2. The liberalisation of financial flows around the world and the speed with which the new digital technologies are applied to such transactions hampers action to counter the use of the financial system for criminal purposes. Investigations into the most recent jihadist terrorist attacks in Europe have thrown light on methods of funding terrorism that are not covered by the 4AMLD. This justifies proposing its amendment even before it has come into force, and bringing forward the deadline for its transposition.

3.3. The EESC agrees in principle with the measures proposed in the 5AMLD and believes that they may prove useful in helping to put an end to terrorism and money laundering.

3.4. One reservation might concern the impact on fundamental rights, in particular protection of personal data, of the improper use by the competent authorities of a large volume of sensitive information. The 5AMLD proposal provides some safeguards in this respect. An awareness of how certain governments have behaved, as revealed by WikiLeaks (2010 and 2012) and the Snowden papers (2013), prompts us to suggest that the Commission should look into the possibility of introducing further measures to protect citizens’ rights against the improper use of recorded information. More specifically, it should assess the practicality of a common classification of the unlawful use of personal information and data as a criminal offence. The EESC could help to carry out such a study.

3.5. Notwithstanding the current proposals and other initiatives and actions at European level that the Committee advocates in this opinion, it is crucial that, in future, the EU and the Member States take on a more leading and pioneering role and act as a driving force in the international bodies and forums working in the area of combating money laundering and the serious crime associated with it, which are global phenomena and generally cross-border in nature. Internationally and globally coordinated action and measures are needed to be able to act more effectively here and to achieve better results; Europe can lead the way in this process.

3.6. Many European citizens continue to suffer the impact of the crisis, adjustment policies and rising poverty and inequality, while learning how large multinational companies indulge in tax avoidance and evasion, and leading economic, political, cultural and sports figures evade taxes and launder money in tax havens. Some practices and territories are also used to fund terrorist organisations capable of committing the most atrocious crime in Europe and other parts of the world. This situation is completely unsustainable. Pressure must be put on European and national authorities to act effectively to put a stop to it.

3.7. Notwithstanding the comments made in point 3.2, achieving the objectives of the AML directives could be seriously compromised by the weakness of political action to close down tax havens, which are a crucial link in the money-laundering chain. This could also be caused by the insufficient link between initiatives to counter money laundering and those targeting the crimes that feed it (tax fraud, membership of terrorist or criminal organisations, trafficking in arms, drugs, people, etc.) against a backdrop of continuing unfair tax competition in the EU.
3.8. The list of high-risk countries published by the Commission on 14 July 2016 \(^{(15)}\) includes none of the countries appearing on the Panama papers list. This is paradoxical given that one of the arguments put forward by the Commission for proposing the 5AMLD is the revelations contained in the papers. Only one non-cooperating high-risk country appears on the list: North Korea. Iran is in Group II, which includes countries which have undertaken to address deficiencies and have sought technical assistance to implement the FATF Action Plan. Nine countries are included in Group I, countries which have already developed an action plan that will remove them from the list once they meet its conditions (four of them are currently embroiled in conflict: Afghanistan, Iraq, Syria and Yemen). Some of the money that finances terrorism passes through these countries. However, all analyses and investigations into the question show that the money laundering generated by other forms of crime does not take place in them.

3.9. It is regrettable that a body such as the FATF, which carries out such important work in analysing international financial crime and in proposing means to combat it, has not found an appropriate way of drawing up its lists of high-risk countries. It is logical that the Commission should make use of the Recommendations \(^{(16)}\) and other proposals of the FATF to combat money laundering. But in this case accepting its proposals could partially negate the effectiveness of the 5AMLD, given that the reinforced measures of Article 18a will apply only to high-risk third countries.

3.10. The EESC considers that, if the 5AMLD is to be effective, it will be necessary: either to revise the list of high-risk third countries to include countries or territories where the principal money laundering operations are carried out, or to extend the scope of application of Article 18a to all obliged entities and jurisdictions which, according to information in the possession of the FIUs, are suspected of money laundering. The EESC also proposes that a single list of jurisdictions that fail to cooperate in pursuing economic crime should be drawn up.

3.11. The fact that a significant proportion of money laundering operations are conducted in dependent territories of the Member States should encourage all the EU institutions to establish a firm political commitment to closing down tax havens on their territory. Specifically, the requirements for EU obliged entities under the 5AMLD proposal to identify the beneficial owners of bank accounts, companies, trusts and transactions should be extended to all territories whose sovereignty lies with Member States, including those with special tax regimes. It should be made possible for obliged entities also to rely on the data from the (official) national registers in order to comply with their obligations. Equally, the reinforced measures of Article 18a should apply to the dependent territories of EU Member States which carry out money laundering operations.

3.12. Tax evasion and avoidance are closely related to money laundering. Laundered money comes in part from tax fraud and avoidance. It is necessary to coordinate measures to prevent and prosecute both types of offence, through legislative and political action and the work of intelligence and police services and the courts. The EESC has welcomed the latest Commission initiatives to combat tax evasion and avoidance in the EU, but these are still insufficient, so that further measures are needed, to be coordinated with measures to tackle money laundering.

3.13. The fight against money laundering and the financing of terrorism require close cooperation between the various intelligence and security services of the Member States, and between these services and Europol. It has to be acknowledged that current levels of cooperation are insufficient. Despite public statements by national and European decision-makers and public support for closer cooperation, after every terrorist attack major failures of coordination come to light. Sometimes there are coordination failures between the different services of the same Member State. Every effort must be made to put an end to this situation.


\(^{(16)}\) International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation.
3.14. In recent years, the EU has negotiated or signed major free trade and economic association treaties. Currently, an important treaty, the TTIP, is being negotiated. These treaties offer an excellent opportunity to lay down bilateral or bi-regional measures for tackling tax evasion and avoidance, money laundering and financing of terrorism. The EESC calls on the Commission to study ways of incorporating chapters of this nature into the treaties currently under negotiation and when reviewing those that are already in place. On this point the EESC fully agrees with the conclusions of the EP study mentioned above (17).

4. Specific comments

4.1. Member States’ FIUs must make significant efforts in the areas of information, surveillance and prevention, including anticipating rapid changes in technologies that could be used for money laundering and terrorist financing. Rapid national responses and the pooling of Europe’s various investigations are absolutely necessary. The ongoing and flexible coordination of the FIUs is essential. The EESC believes that it would be useful to set up a European tool for surveillance, coordination and anticipating technological change.

4.2. The obliged entities, as defined in the 4th and 5th AMLDs, must carry out duties linked to the surveillance of and checks on suspicious persons and movements. However, these directives do not cover requirements or obligations relating to the activities of obliged entities in high-risk third countries. There should be an end to the situation whereby clients are subjected to more supervision than the entities themselves.

4.3. The following recommendations of EESC opinion CCMI/132 — Fighting corruption (18) — are particularly useful in relation to the present opinion: (a) developing a coherent and comprehensive 5-year anti-corruption strategy and accompanying action plan; (b) creating a European Public Prosecutor’s Office and strengthening the capabilities of Eurojust; and (c) requiring multinational companies to report key financial data in the countries where they operate.

4.4. In the EESC’s opinion it is necessary to harmonise at European level the legal treatment — definitions and penalties — of all offences relating to money laundering, tax fraud, corruption and the financing of terrorism and its connections. The Commission and the European Banking Authority should also promote the harmonisation of penalties for the failure of an obliged entity to fulfil an obligation.

4.5. The fight against money laundering is of major importance and should be carried out decisively, thoroughly and efficiently. It is therefore crucial that the texts and concepts in the proposed measures are as clear as possible. This both improves the necessary legal certainty for all those required to apply these texts and helps ensure uniform application throughout the European Union.

4.6. The Committee welcomes the speed of the work on these proposals and hopes they can be adopted and enter into force quickly and in the near future. At the same time, this should not impact on the quality of results. This calls for a realistic timetable for the transposition of the legislation and its application in the Member States and clear guidelines.

Brussels, 19 October 2016.

The President
of the Economic and Social Committee
Georges DASSIS

(17) EPRS, op. cit., p. 59.
Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the Council amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities’

(COM(2016) 452 final — 2016/0209 (CNS))

(2017/C 034/20)

Rapporteur: Petru Sorin DANDEA

Consultation Council of the European Union, 27.7.2016

Legal basis Articles 113 and 115 of the Treaty on the Functioning of the European Union

((COM(2016) 452 final — 2016/0209 (CNS))

Section responsible Section for Economic and Monetary Union and Economic and Social Cohesion

Adopted in section 5.10.2016

Adopted at plenary 19.10.2016

Plenary session No 520

Outcome of vote 227/3/2

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s initiative and supports its efforts to combat tax evasion and money laundering, a practice which erodes Member States’ tax bases and is one of the main sources of funding for organised crime and terrorism at global level.

1.2. Given the serious impact of tax fraud and tax evasion, the EESC endorses the rules laid down by the proposal for a directive amending the Directive on Administrative Cooperation (DAC). Information on the beneficiaries of financial transactions which may arouse suspicion as to their legality during checks, reviews and audits, or might even constitute money-laundering operations, is to be included in the categories of information to be exchanged between Member State tax administrations, which will enhance their administrative capacity and boost the effectiveness of the fight against money laundering.

1.3. Since the amendment of the DAC Directive can only be fully implemented if the draft directive amending the Fourth Anti-Money Laundering Directive (4AMLD) (1) is also approved, the EESC recommends that the Member States and the European Parliament approve the Commission’s proposed legislative package in its entirety.

The EESC calls on the Member States to ensure that their tax administrations have the human, financial and logistical resources needed to successfully implement the new anti-money-laundering rules.

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(1) COM(2016) 450 final.
2. European Commission proposal

2.1. In July 2016, as part of its agenda to combat tax evasion and tax avoidance and its action plan on fighting terrorist financing, the European Commission presented a legislative package aimed at improving tax administrations’ access to anti-money-laundering (AML) information. This package includes the proposal for a Council directive (2) amending Directive 2011/16/EU (DAC) as regards access to anti-money-laundering information by tax authorities.

2.2. The Commission’s proposal amends Article 22 of the DAC Directive, including information on financial transactions that promote money laundering among the information to be exchanged between Member State tax administrations.

2.3. The objective of this initiative is to enable tax authorities to consistently access AML information for the performance of their duties in monitoring the proper application of the Directive on Administrative Cooperation by financial institutions.

2.4. The proposal for a directive lays down rules against tax avoidance practices that directly affect the functioning of the internal market. The proposed directive also aims to ensure that tax administrations can access information on the beneficiaries of financial transactions which may arouse suspicion as to their legality during checks, reviews and audits, or might even constitute money-laundering operations of which the beneficiaries are criminal or terrorist organisations.

3. General and specific comments

3.1. The proposal for a directive calls for the uniform implementation across the Member States of the rules on the exchange of information between Member State tax administrations with regard to the beneficiaries of financial transactions suspected of being money-laundering operations. As it has pointed out in previous opinions (3), the EESC welcomes the Commission’s initiative and supports its efforts to combat tax evasion and money laundering, a practice which erodes Member States’ tax bases and is one of the main sources of funding for organised crime and terrorism at global level.

3.2. The EESC endorses the rules on tax administrations’ access to mechanisms, procedures, documents and information on financial transactions suspected of being money-laundering operations. In its statement of 18 April, the G20 called on the Financial Action Task Force to make proposals to improve the implementation of the international standards on transparency, including as regards the availability and international exchange of information on beneficiaries. Therefore, the EESC recommends that the Commission and the Member States step up international negotiations in the framework of institutions such as the OECD or the G20, so that these rules can be applied at global level.

3.3. Given that the proposal for a directive amending the DAC Directive can only be fully implemented if the draft directive amending the Fourth Anti-Money Laundering Directive (4AMLD) (4) is also approved, the EESC recommends that the Member States and the European Parliament approve the Commission’s proposed legislative package in its entirety.

3.4. In view of the increase in terrorist activities at global level, and in attacks that have led to the loss of lives in a number of Member States, the EESC feels that the rules proposed by the Commission should be approved as a matter of urgency. The introduction of better rules to combat money laundering will eliminate one of the main sources of funding for terrorist organisations.

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(2) COM(2016) 452 final.
(4) See footnote 1.
The EESC calls on the Member States to provide the human, financial and logistical resources needed to implement the new rules set out in the package presented by the European Commission as regards combating money laundering. Furthermore, the EESC considers that developing programmes for the exchange of best practice between experts in the Member States’ tax administrations could help achieve better results in the implementation of the new rules.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on the ‘Report from the Commission to the European Parliament and the Council on unfair business-to-business trading practices in the food supply chain’

(COM(2016) 32 final)

2017/C 034/21

Rapporteur: Peter SCHMIDT

Consultation
European Commission, 4.3.2016

Legal basis
Article 43(2) of the Treaty on the Functioning of the European Union

Section responsible
Agriculture, Rural Development and the Environment

Adopted in section
30.9.2016

Adopted at plenary
19.10.2016

Plenary session No
520

Outcome of vote
221/0/5
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC highlights the fact that the weak position of the most vulnerable players in the food supply chain must be addressed by putting an end to unfair trading practices (UTPs) by food retailers (NB in this document the word ‘retailers’ refers to the large-scale retail sector) and some transnational companies, which increase risk and uncertainty for all operators along the food supply chain and therefore generate unnecessary costs.

1.2. The EESC acknowledges that avoiding UTPs alone would not make it possible to solve the structural market problems in the food supply chain, such as temporary market imbalances, the vulnerable situation of farmers, etc.

1.3. The EESC reiterates the concerns and recommendations set out in its previous opinion on ‘The current state of commercial relations between food suppliers and the large retail sector’ (¹). In particular, the EESC calls once again on the Commission to adapt European legislation to the specific features of the different parties in the food sector.

1.4. The EESC draws attention to the existence of market failures as the situation continues to deteriorate in a system that is insufficiently regulated (²).

1.5. The EESC strongly supports the European Parliament’s resolution of 7 June 2016 (³) highlighting the need for framework legislation at EU level in order to tackle UTPs of food retailers and some transnational companies and to ensure that European farmers and consumers have the opportunity to benefit from fair selling and buying conditions. The EESC believes that due to the nature of UTPs it is both a requirement and a necessity to have EU legislation to prohibit them.

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¹) OJ C 133, 9.5.2013, p.16.
²) See footnote 1.
³) European Parliament resolution of 7 June 2016 on unfair trading practices in the food supply chain (2015/2065(INI)).
1.6. The EESC calls on the Commission and the Member States to take swift action to prevent UTPs by establishing an EU harmonised network of enforcement authorities with this aim, so as to create a level playing field within the single market.

1.7. The EESC welcomes the creation of the EU-wide Supply Chain Initiative (SCI) and other national voluntary systems, but only as an addition to effective and robust enforcement mechanisms at Member State level. However, there is a need to ensure that all stakeholders (e.g. farmers and trade unions) can participate and that complaints can be lodged anonymously. It is also necessary to establish dissuasive penalties. In addition, such platforms should be able to react independently. The EESC also proposes the establishment of an Ombudsman with regulatory powers in pre-trial mediation.

1.8. The EESC calls for a ban on abusive practices, for example those listed in point 3.3 of this opinion.

1.9. In particular, the EESC recommends that suppliers, such as farmers, be paid a price that is not below the cost of production. The EESC also calls for an effective ban on food retailers selling below cost price.

1.10. The EESC recommends that alternative business models that play a role in shortening the supply chain between producers of food and the end consumer be encouraged and supported, e.g. through Member State public procurement policies.

1.11. The EESC suggests that the role and position of cooperatives and producer organisations should be strengthened in order to restore the balance of power, because they are a suitable and important type of business enabling farmers as owners to collectively improve their market position — including under the conditions of the EU single market — and actively rebalance the distribution of bargaining power in the food supply chain.

1.12. The EESC urges food chain operators to develop fair trade relations based on long-term and stable contracts and to cooperate with each other, working together to satisfy consumer needs and demands.

1.13. The EESC calls for the protection and guaranteed anonymity of whistle-blowers who expose UTPs.

1.14. The EESC recommends the introduction of the right to bring class actions.

1.15. The EESC proposes to launch a Europe-wide information and awareness-raising campaign on ‘the value of food’. This would be necessary to ensure a long-term change in consumers’ behaviour.

2. **Introduction**

2.1. The agro-food supply chain connects important and diverse sectors of the European economy that are essential for economic, social and environmental welfare as well as for the health of Europeans. However, in recent years there has been a shift in bargaining power in the supply chain, mostly to the advantage of the retail sector and some transnational companies and to the detriment of suppliers, in particular primary producers.
2.2. A small number of companies now dominate the marketing and sale of food. For example, many grocery markets in a strongly increasing number of Member States are majority controlled by between three and five retailers, with a collective market share of between 65 and 90% among modern retailers (4), (5).

2.3. The concentration of bargaining power has led to the abuse of positions of dominance causing weaker operators to become increasingly vulnerable to Unfair Trading Practices (UTPs). This transfers economic risk from the market up the supply chain and has a particularly negative impact on consumers and some operators, e.g. farmers, workers and SMEs.

2.4. The EESC already discussed UTPs in its opinion on 'The current state of commercial relations between food suppliers and the large retail sector' in February 2013 (6). Since then the situation of UTPs has little improved. On the contrary, the power of the large retail sector has even increased, and this might lead to abuse vis-à-vis some operators, e.g. farmers, workers and SMEs.

3. Unfair Trading Practices and their impact

3.1. UTPs can broadly be defined as practices that significantly deviate from good commercial conduct and are contrary to good faith and fair dealing (7).

3.2. UTPs can occur at any stage in the supply chain between a variety of operators. However, they are more prevalent at later stages of the supply chain where there is a greater concentration of power amongst retailers and some transnational companies. Where UTPs are found at earlier stages of the supply chain they are often the result of a transfer of risk originating from UTPs at later stages.

3.3. Examples of such practices include, but are absolutely not limited to:

— unfair transfer of commercial risk,

— unclear or unspecified contractual terms,

— unilateral and retroactive changes to contracts, including price,

— lower product quality or consumer information without communication, consultation or agreement to the buyers,

— contributions to promotional or marketing costs,

— delayed payments,

— listing or loyalty fees,

— charges for shelf-positioning,

— claims for wasted or unsold products,

— use of product cosmetic specifications to reject consignments of food or reduce the price paid,

(4) Friends of the Earth, 2015. Eating from the Farm.
(6) See footnote 1.
— pressure to cut prices,

— charges for fictitious services,

— last minute order cancellations and forecast volume deductions,

— threats of delistings,

— flat-rate charges that companies levy on suppliers as a requirement for inclusion in a list of suppliers (‘pay to stay’).

3.4. UTPs have wide-ranging effects on operators, consumers and the environment. However, such practices are profitable by their very nature and therefore attract short-term gains for those who apply them, to the detriment of other stakeholders in the supply chain. In the long run, food chain operators must have sustainable supply relationships and work to prevent supply chain disruption in order to compete and continue to meet ever-changing consumer demands.

3.5. Impact of UTPs on suppliers

3.5.1. The various types of the impact of UTPs on the operators that suffer from them are diverse and far-reaching and can lead to reduced income for suppliers, either through price deductions or because of the increased costs incurred as a result of these practices. UTPs have been estimated to cost suppliers EUR 30-40 billion (8). In addition to the continued price pressures applied to suppliers, such practices create uncertainty, thus stagnating innovation and investment in the supply chain, and they can put competent, responsible suppliers out of business.

3.5.2. The pressure exerted on farmers and food processors, and the consequent downward pressure on prices, also leads to reduced wages both in the agricultural sector and for employees in the food manufacturing industry. In the case of more permanent labour, the race to the bottom for lower prices also leads to reduced wages in order for suppliers to make their margins.

3.5.3. SMEs are often the most vulnerable to UTPs, e.g. in the global banana trade, where the small scale farmers’ produce is used to ‘top up’ larger plantation volumes, these suppliers are at risk of being the first to be cut out of a sale if an order is cancelled without due notice (9).

3.5.4. There are some areas of food production and manufacturing where contractual freedom no longer exists. In Germany recent developments show that retail prices have unilaterally been reduced without negotiations with suppliers. In the UK, milk is often a ‘loss-leader’ in the grocery sector and British dairy farmers have faced being paid ever-lower prices for their milk, in some cases below the cost of production. In Spain, for the processing industry, paying below cost is legal, which is seriously eroding price formation along the chain.

3.5.5. The fresh produce sector is particularly susceptible to UTPs due to the high perishability of the produce it supplies to the European market. Farmers have a limited time in which to sell their produce to ensure adequate shelf-life for the end client and ultimate consumer, and this is often abused by commercial buyers for retailers and middlemen by imposing negotiable price deductions on receipt of goods.

(8) Europe Economics. Estimated costs of Unfair Trading Practices in the EU Food Supply Chain.

3.5.6. Several investigations have established certain operators having clear buyer power that leads to abuses through unfair trading practices (10). These abusive practices can arise at any stage in the supply chain, and they are also evident in relations between farmers and the food industry, as companies from this sector also have ‘buyer power’ due to the relative concentration of power (11).

3.5.7. The increase in sales of ‘own-brand’ (white labels or retailer-owned brands) products by retailers allows them to change suppliers frequently if they find a cheaper producer either during or after contractual relations have begun. However, ‘own-brand’ products are not unfair in themselves and can assist SMEs entering the market and offer consumers a variety of choice.

3.5.8. The expansion of some retail activities through vertical integration into procurement and processing can lead to retailers undercutting prices. This is an example of an increase of bargaining power through the continuous concentration of power.

3.5.9. In case of selling below the cost of production, and the use of basic agricultural products, such as milk, cheese, fruit and vegetables as ‘loss leaders’ (i.e. below the purchasing cost) by large-scale retailers and some transnational companies, are a threat to the long-term sustainability of European agricultural production.

3.6. Impact of UTPs on consumers

3.6.1. UTPs have a significant negative effect on European consumers. Larger operators often absorb the costs presented by UTPs, but smaller businesses are placed under increased pressure and are unable to invest and innovate, excluding them from high-value markets (12). This results in reduced consumer choice and availability and ultimately increased consumer prices.

3.6.2. The lack of transparency on labels is to the detriment of consumers, who are unable to make informed purchasing choices despite having, on several occasions, expressed the desire to favour healthy, environment-friendly and quality agri-food products that are linked to their local area. This opacity has a negative impact on consumer confidence levels, further exacerbating the crisis affecting the agricultural sector.

3.6.3. Price pressures force processors of food to produce as cheaply as possible — which can affect the quality of food available for consumers. To reduce costs, in some cases companies use cheaper raw materials, which affect the quality and value of foodstuffs — for example, the use of trans fats in many products replacing healthier oils and fats from Europe.

3.7. Impact of UTPs on the environment

3.7.1. The impact of UTPs on the environment needs to be recognised. UTPs encourage overproduction as a means for suppliers to insure themselves against uncertainty. This overproduction can lead to food being wasted, causing an unnecessary depletion of resources, including land, water, agrichemical and fuel (13), (14).

(11) See footnote 1.
4. Summary of the Commission report on unfair business-to-business trading practices in the food supply chain

4.1. The Commission has produced a report (15) assessing the existence and effectiveness of national frameworks established to enforce measures to counter UTPs, and also the role played by the EU-wide voluntary Supply Chain Initiative (SCI) and its national voluntary platforms.

4.2. The 2016 Commission report highlights the fact that a large majority of Member States have already introduced regulatory measures and public enforcement systems to deal with UTPs. Some Member States have gone further than others, yet many are still unable to address the ‘climate of fear’ experienced by victims of UTPs. Since different approaches could address UTPs effectively, the Commission has concluded that, at this stage, specific EU legislation would bring no added value.

4.3. The Supply Chain Initiative (SCI) (16) is a joint initiative of eight EU associations. They represent the food and drink industry, branded goods manufacturers, the retail sector, SMEs, and agricultural traders. The SCI was launched in the framework of the ‘High Level Forum for a better functioning of the food supply chain’ (17) with the aim of helping stakeholders address UTPs.

4.4. The report concludes that the SCI has created awareness about UTPs and is potentially a faster, cheaper alternative to judicial proceedings. It could also help resolve cross-border issues. The Commission also highlights areas for potential improvement of the SCI, such as enhancing the impartiality of the governance structure and enabling individual confidential complaints.

5. General Comments

5.1. The EESC’s position on the EC report is in line with the European Parliament’s resolution on UTPs in the food supply chain, adopted on 7 June 2016 with strong cross-party support (18). The Parliament highlights the need for framework legislation at EU level and calls on the Commission to put forward proposals to tackle UTPs in the food supply chain, so as to ensure fair earnings for farmers and a wide choice for consumers. The Parliament also highlights the fact that the SCI and other national and EU voluntary systems should be promoted not as an alternative but ‘as an addition to effective and robust enforcement mechanisms at Member State level, ensuring that complaints can be lodged anonymously and establishing dissuasive penalties, together with EU-level coordination’ (19).

5.2. The Commission considers that the Supply Chain Initiative is still too recent to assess its success. However, the EESC notes that the SCI has not been effective in reducing UTPs and abuses of buying power for the following reasons:

5.2.1. The leadership of the retail industry in the SCI is a major deterrent for any farmer to engage effectively with the platform given the mistrust between these stakeholders. The SCI therefore does not provide suppliers with the anonymity they require to overcome the ‘climate of fear’. Furthermore, the SCI cannot proactively investigate supply chains and so relies on operators to make complaints, thus placing the burden of proof upon the victims of UTPs.

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(16) http://www.supplychaininitiative.eu/de/homepage
(18) European Parliament resolution of 7 June 2016 on unfair trading practices in the food supply chain (2015/2065(INI))
5.2.2. The Commission suggests that the SCI allows for the self-regulation of UTPs. However, the lack of financial sanctions means that purchasers are not deterred from using otherwise profitable UTPs. For example, Tesco PLC was recently found to be conducting unfair trading practices when dealing with its suppliers despite being a member of the SCI. Whilst Tesco has been non-financially penalised by British legislation (The Groceries Code Adjudicator), it has not received any sanctioning from the SCI. The SCIs only deterrent is the ability to remove the membership of an offending business, which it is yet to utilise with regard to Tesco PLC. This is a clear example of how the SCI does not prevent UTPs.

5.2.3. The EESC also notes the absence of farmers and trade unions in the SCIs membership. Whilst some organisations have never joined the initiative or its national counterparts, the Finnish Central Union of Agricultural Producers and Forest Owners (MTK), a founding member of the national platform implementing the SCI in Finland, quit the initiative arguing that it did not work as it increased risk for farmers due to a lack of anonymity.

6. Current enforcement mechanisms for preventing UTPs in Europe

6.1. Twenty Member States have legislative provisions and regulatory initiatives, but their success is still moderate (20). Fifteen of these Member States have introduced measurements in the last 5 years, demonstrating the significant prevalence of UTPs in the supply chain. However, there is great disparity between the different levels of regulation, and many national enforcers are unable to issue financial sanctions or accept anonymous complaints.

6.2. The UK’s Groceries Supply Code of Practice (21) (GSCOP) is regarded as one of the most progressive legislative measures for preventing UTPs (22). Prior to the establishment of this code, a voluntary code of practice existed but was found to be ineffective at preventing UTPs due to its lack of regulation. GSCOP is regulated by the Groceries Code Adjudicator (GCA) who has the legal power to receive anonymous complaints regarding UTPs, launch investigations ex officio, publicise malpractice conducted by these businesses, and fine retailers up to 1% of their annual turnover for breaches of GCSOP. However, despite its achievements, the GCA can only regulate the relationship between retailers and their direct suppliers (largely based in the UK). This issue presents ‘moral hazards’ in which both retailers and their direct suppliers transfer risk to indirect suppliers by UTPs.

6.3. Similar investigations to that of the UK’s competition commission have been conducted in Spain (23), Finland (24), France (25), Italy (26) and Germany each showing a high prevalence of UTPs in the food supply chain.

6.4. Many of Europe’s operators trade in multiple Member States giving these businesses the chance to ‘forum shop’, thereby undermining Member State-level legislation. The unharmonised legislative landscape across the EU has created an uneven playing field within the single market. In addition, where legislation only regulates between direct suppliers and retailers, the use of middlemen organisations by retailers to purchase food reduces the effectiveness of such legislation, as is the case in the UK. This further builds the case for European-wide legislation.

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(20) See footnote 15.
(22) The code was established as result of an investigation conducted by the UK Competition Commission that found retailers to have a disproportionate amount of power in the supply chain leading to the transfer of risk up the supply chain.
(23) Comisión Nacional de los Mercados y la Competencia, Informe sobre las relaciones entre fabricantes y distribuidores en el sector alimentario, 2011.
(24) Finnish Competition Authority (FCA), ‘FCA study shows that daily consumer goods trade uses its buying power in several ways that are questionable for competition’, 2012.
6.5. Overseas suppliers generally supply EU retailers indirectly via importers and other intermediaries. As such, there is little awareness of the existence of such authorities (27) and those that are aware lack access to most enforcement authorities in order to seek remediation regarding UTPs.

7. Call for a European network of national enforcers to prevent UTPs

7.1. In recognition of the comments raised above, the EESC calls for the establishment of a European network of enforcement authorities to prevent UTPs. The nature of UTPs both requires and warrants EU legislation to prohibit them, so as to protect all food suppliers, wherever they are located, including in third countries. In order for this to be effective, enforcement authorities within the network must have the following functions:

— free access to all players and stakeholders in the EU food supply chain, regardless of geographical location,

— measures to effectively protect the anonymity and confidentiality of stakeholders who wish to submit complaints about UTPs,

— ability to investigate businesses ex officio with regard to abuses of buying power,

— ability to issue financial and non-financial penalties to offending businesses,

— EU-level coordination between Member States’ enforcers,

— potential for international coordination with non-EU enforcement bodies to prevent UTPs that occur both inside and outside the single market.

7.2. It should be the objective of all Member States to establish national enforcement bodies to deal with complaints relating to UTPs. These bodies should be designed with the above functions as a minimum standard.

7.3. Legislative measures for preventing UTPs can and should be cost-effective.

7.4. The European Parliament’s resolution also calls on to the Commission to ensure effective enforcement mechanisms, such as the development and coordination of a ‘network of mutually recognised national authorities at EU level’ (28).

7.5. The British Institute of International and Comparative Law (BIICL) has recommended that the EU should adopt a directive to establish common objectives amongst Member State enforcement authorities to prevent UTPs and include rules for European-coordination of these bodies (29).

8. Current industry good practice to prevent unfair trading practices

8.1. Fixed pricing or minimum guaranteed pricing contracts based on fair negotiations between buyers and suppliers offer the latter a greater degree of security than when selling produce on the open market. However, whilst these types of contract guarantee set prices for suppliers, this practice would be enhanced if volumes of produce were fixed or had minimum guarantees. Currently, volumes can be retrospectively amended and produce can be rejected by buyers when market demand changes, sometimes at the last minute leading to unforeseen costs for remarketing, repackaging or disposing of food.

8.2. Some suppliers to the EU have begun to employ third-party agents to inspect produce on arrival at destination so as to prevent spurious product rejection claims from importers. Such claims are made when forecasted supply and demand has changed, thus increasing the risk for buyers at the latter stages of the supply chain. There is seasonality with this issue, since when supply is high and therefore prices are low, suppliers are at greater risk of receiving claims compared to when supply is scarce. Whilst the use of third-party agents certainly reduces the frequency of such rejection claims for exporters, such services are an additional cost for suppliers, thus further limiting their capacity for investment and innovation in their business. Furthermore, smaller suppliers are generally unable to afford such assistance and so do not benefit from this practice.

9. Alternative food supply chains

9.1. There are many examples of alternative supply chains where fairer trading practices exist and a fairer balance of distribution or reallocation occurs. There are some promising approaches in the cooperative area, but these are increasingly threatened by the growing power of business groups and multinationals.

9.2. To increase fairness in the EU’s food supply chain, a combination is required of steps to address the power hold of large businesses in the supply chain preventing UTPs, and to strengthen countervailing power by encouraging the development of cooperatives and alternative channels for food distribution.

9.3. Cooperatives and farmer associations in Europe and overseas have allowed suppliers to aggregate production volumes in order to increase selling power, enter mainstream markets, and negotiate better prices. Such business models allow small suppliers greater control of the production and marketing of their products and offer an alternative to large-scale growing operations. The European Parliament has called on the Commission to encourage business models in order to increase their bargaining power and position in the food supply chain (30). In addition, there is a need for stronger sector and region orientated promotion of cooperation between producers and cooperatives (31).

9.4. Community-supported agriculture (CSA) schemes and other farmer-consumer cooperatives allow consumers to contribute directly to the production of the food that they eat. Recent figures suggest there are currently 2,776 of these CSA schemes operating in Europe, feeding 472,055 consumers (32). Larger models of product ‘box schemes’ also benefit from short supply chains to deliver produce directly either to consumer households or to centralised collection points.

9.5. The direct sale of agri-food products by farmers, for example at farmers’ markets, have a dual advantage: for producers abusive practices are absent and they can benefit from a greater degree of autonomy and increased revenue, while consumers may have access to fresh, genuine and sustainable products, the origin of which is certain. In one study (33), it was found that farmers received much higher incomes for their produce using these supply chains rather than traditional markets. Such initiatives should be further supported by public funding, such as from the CAP’s second pillar payments, as they generate growth and jobs, as well as responding to consumers’ needs.

9.6. Member States should develop ways to improve the situation of farmers and local food businesses through direct contracts with public authorities when implementing new directives on public procurement, going beyond the logic of the maximum discount.

(33) http://www.foeurope.org/sites/default/files/agriculture/2015/eating_from_the_farm.pdf
9.7. Furthermore, a Europe-wide information and awareness-raising campaign on the value of food should be launched. Greater awareness among consumers about the importance of food production and increased appreciation of food are proving to be increasingly necessary and might contribute to fairer trading practices.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
Opinion of the European Economic and Social Committee on 'Proposal for a Regulation of the European Parliament and of the Council defining characteristics for fishing vessels (Recast)'

(COM(2016) 273 final — 2016/0145 (COD))

(2017/C 034/22)

Rapporteur: Gabriel SARRÓ IPARRAGUIRRE

Referral
Council, 1 June 2016
European Parliament, 6 June 2016

Legal basis
Article 43(2) of the Treaty on the Functioning of the European Union.

Committee Bureau decision: 14 June 2016

Section responsible
Section for Agriculture, Rural Development and the Environment

Adopted in section 30 September 2016
Adopted at plenary 19 October 2016
Plenary session No 520
Outcome of vote (for/against/abstentions) 222/0/2

1. Conclusions
1.1. The EESC agrees with the current proposal for a Regulation of the European Parliament and of the Council defining characteristics for fishing vessels (recast), as it considers it both necessary and appropriate for EU law.

2. Background

2.2. This codification follows on from the Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirming the Commission’s decision that all acts (both the original act and subsequent amendments) should be codified after no more than ten amendments.

2.3. Codification is necessary in order to make EU law simpler, clearer and more transparent, and in doing so render it more accessible and easier to understand for citizens. In this way, they will be given new opportunities and the chance to make use of the specific rights afforded to them.

2.4. Codification must be undertaken in full compliance with the approval procedure for Union acts.

3. General comments
3.1. The Commission’s proposal fully preserves the content of the acts being codified.

3.2. However, the proposal also makes a substantive amendment to Article 5(3) of Regulation (EEC) No 2930/86, with a view to delegating powers to the Commission for adapting the requirements for the determination of continuous engine power to technical progress. Therefore, the proposal is being presented in the form of a recast.
3.3. The recast proposal was drawn up on the basis of a preliminary consolidation, in 23 official languages, of Regulation (EEC) No 2930/86 and the instrument amending it, carried out by the Publications Office of the European Union, by means of a data-processing system.

3.4. The proposal contains three annexes, which set out the amendment to the (adapted) annex of Regulation (EC) No 3259/94 and the correlation, in cases where articles have been re-numbered, between the proposal’s new numbers and the previous ones.

4. Specific comments

4.1. The EESC agrees with the amendments made to Article 5(3), which empowers the Commission to adopt delegated acts for adapting the requirements for the determination of continuous engine power to technical progress in accordance with the requirements adopted by the International Organisation for Standardisation in its recommended International Standard ISO 3046/1, 2nd edition, October 1981.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

Rapporteur: Thomas McDONOGH

Consultation
Council, 30.6.2016

Legal basis
Articles 43(2) and 304 of the Treaty on the Functioning of the European Union
(COM(2016) 401 final — 2016/0187 (COD))

Committee Bureau decision
12.7.2016

Section responsible
Agriculture, Rural Development and the Environment

Adopted in section
30.9.2016

Adopted at plenary
19.10.2016

Plenary session No
520

Outcome of vote
224/1/3
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes the transposition into EU law of the measures adopted since 2008 by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Committee urges the European Commission to play a more assertive role in this and other regional fisheries management organisations (RFMOs).

1.2. The EESC calls on all interested parties to enforce these and other conservation measures with the utmost strictness. The majority of fishermen play by the rules and deserve a level playing field.

1.3. The EESC asks the European Commission to check and if necessary delete Article 7(2), and also to change, along the lines suggested in this opinion, Articles 9(1), 31, 32, 34 to 36, and 38(4). The exception for at-sea transhipment proposed in Articles 52 to 59 should also be carefully reassessed and possibly removed if the general obligation of in-port transhipment is to prevail.

2. Background

2.1. In addition to bilateral agreements such as sustainable fisheries partnerships or reciprocity agreements, the Common Fisheries Policy (CFP) gives the EU the option of entering into multilateral agreements within RFMOs. The aim of these agreements is to strengthen regional cooperation in order to guarantee the conservation and sustainable exploitation of fish resources.
2.2. ICCAT is responsible for the conservation of tunas and tuna-like species (about 30 in all) in the Atlantic Ocean and adjoining seas. The EU has been a contracting party since 1997, replacing individual Member States.

2.3. ICCAT has the authority to adopt binding recommendations which must be enacted into EU law in so far as they are not covered by previous legislation.

3. Observations

3.1. Article 7(2) of the proposal, limiting replacement to vessels of equivalent or lower capacity, is based on ICCAT Recommendation 14-01, which is no longer in force. Recommendation 15-01, the new recommendation for tropical tunas, does not include in its current form any limitation with regard to replacements.

3.2. Article 9(1) about management plans for fish-aggregating devices (FADs) sets the time limit for transmission to the ICCAT Secretariat as 1 July each year, which was the date set in Recommendation 14-01. The limit set in Recommendation 15-01 is 31 January; since this applies to the Commission, Member States should be given an earlier deadline, for example 15 January.

3.3. Articles 31, 32, 34, 35 and 36, which impose a landing ban for non-authorised sharks, could include a reference to article 15(4) of the CFP basic regulation (1), which sets out exceptions to the general discard ban.

3.4. Article 38(4) should begin, as in ICCAT Recommendation 07-07, with the words ‘where practical’. This should not preclude the negotiation of a more binding compromise within ICCAT.

3.5. Articles 54 and 55 are intended to introduce the ICCAT exceptions for longline vessels with regard to at-sea transhipment, but in the case of the EU fleet the general rule of making all transhipment operations in-port should apply.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

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(1) Regulation (EU) No 1380/2013.
Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)’

(COM(2016) 270 final — 2016/0133(COD))


(COM(2016) 271 final — 2016/0131(COD))

and on the ‘Proposal for a regulation of the European Parliament and of the Council on the establishment of “Eurodac” for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes (recast)’

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Rapporteur: Mr José Antonio MORENO DÍAZ

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Section responsible Section for Employment, Social Affairs and Citizenship

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1. Conclusions

1.1. The EESC considers it essential to carry out an efficient and effective reform of the Common European Asylum System (CEAS) and improve the legal means of accessing the European Union based on the principle of respecting persecuted people’s human rights.

1.2. To that end, a genuine common and obligatory system for all Member States should be proposed in order to harmonise national legislation or — failing this — to introduce at the very least a common system for the mutual recognition of resolutions on asylum between all the EU Member States. This would make a genuine Common European Asylum System possible.

1.3. In any case, the EESC approves of the proposed objective to improve and speed up the determination procedures in the interest of better efficiency, but believes that protective provisions should be clarified and included on procedural issues, individual treatment of applications, maintenance of discretionary clauses, maintenance of the deadline for the cessation of obligation for a Member State to assume responsibility, the rights of applicants and the limitation of the corrective allocation mechanism.
1.4. Care must be taken to ensure that the provisions proposed in the regulation are consistent with existing provisions in this area and related measures that the EC intends to roll out as part of the fundamental transformation of the CEAS, and that they are consistent with other EU policies.

1.5. All Member States should be responsible for providing applicants with detailed and up-to-date information regarding the procedures under the Dublin system, in line with the requirements set out in Article 4.

1.6. The principle of proportionality should be assured so that the system is sustainable in practice, with regard to applicants’ quick access to the asylum procedure and the capacity of Member States’ administrations to apply the system.

2. Background

2.1. On 6 April 2016, the Commission published a communication which outlined the shortcomings in the formulation and application of the Common European Asylum System, in particular the ‘Dublin’ provisions, and proposed five priority areas for improving the situation.

2.2. With a view to establishing a system which is fairer and more efficient and sustainable, the Commission proposes to reform the Common European Asylum System by revising the current Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.

2.3. The Commission notes that the Dublin system was not set up to guarantee that responsibilities with regard to applicants for international protection across the whole of the EU were distributed sustainably, fairly and efficiently. The so-called ‘Dublin System’ has not worked properly or uniformly: the last few years have demonstrated that in cases of massive migratory flows, a small number of Member States have to examine the majority of applications for international protection, which on occasion has led to growing breaches of EU asylum standards.

2.4. To mitigate these shortcomings, the Commission proposes that the regulation be modified to include the following objectives:

— bolstering the efficacy of the system by making a single Member State responsible for assessing each individual application for international protection;

— discouraging abuse of the asylum system and preventing secondary movements of applicants within the EU;

— establishing a fairer distribution system through a corrective mechanism which will automatically identify whether a Member State is faced with a disproportionate number of applications for asylum;

— providing a clarification of the obligations of applicants for asylum in the European Union and of the consequences of failing to comply with those obligations;

— modifying the Eurodac Regulation to bring it into line with the changes to the Dublin system and to ensure that it is applied correctly;

— strengthening the mandate of the European Asylum Support Office (EASO) by establishing the European Union Agency for Asylum.

3. Analysis

3.1. The Dublin criteria put forward to determine the responsibility of the Member State

Under the current Regulation (EU) No 604/2013, the general criterion most commonly used to determine transfers is documentation and place of entry, leading to a significant assumption of responsibility on the part of Member States with external borders. The information contained in Eurodac and the Visa Information System (VIS) is accepted as proof by the majority of the Member States; however on some occasions it is not considered enough evidence.
In the proposal, the criterion for determining the Member State will be applied only once and Article 9 stipulates that an applicant must apply in the Member State in which they first arrived regardless of whether their entry was regular or irregular. The hierarchy criteria outlined in Articles 10 to 17 support similar provisions:

3.1.1. **Minors:** The proposed reform preserves the established considerations but only for unaccompanied minors who have applied for international protection.

3.1.2. **Family members:** The proposal broadens the definition of members in two respects: it extends to siblings and takes into consideration families formed before arrival in the Member State, but not necessarily in the country of origin as defined in Dublin Regulation III (DR III). Both considerations are of utmost importance, in particular with regard to those hardship cases that occur when siblings are not considered to be ‘family members’, which in many cases affects unaccompanied minors whose only family connections in a Member State are their siblings.

3.1.3. **Residence or visa documents:** The proposal maintains the Member State’s responsibility to assess applications for international protection when issuing such documents, although it also introduces considerations in an effort to clarify the responsibility criteria.

3.1.4. **Irregular entry through a Member State:** The proposal removes the provisions on the cessation of responsibility 12 months after the date of the unauthorised border crossing.

3.1.5. **Discretionary clauses:** The proposal limits the Member States’ room for manoeuvre and makes it possible for them to assume responsibility for an application for international protection for which they are not responsible only on the basis of family relations which are not taken into account in the definition of members of the family unit.

3.1.6. Regarding dependent persons, no modifications have been put forward in the proposal. Therefore, if an applicant is dependent on assistance from children, siblings or parents who reside legally in one of the Member States owing to pregnancy, recent child-birth, serious illness, serious disability or old age, or in cases where the abovementioned persons are dependent on assistance from the applicant, the Member States will always bring them together or group them with the applicant if there were ties in the country of origin and the persons in question can provide the abovementioned assistance and declare so in writing.

3.2. **Process of determining which Member State is responsible for examining an application for international protection**

3.2.1. The aim of the proposed reform of the Dublin Regulation is to establish a fairer and more sustainable system by simplifying the procedure and increasing its effectiveness, although the modifications introduced are not always geared towards achieving these objectives.

Article 3 of the proposed reform introduces analysis of the admissibility criteria for an application for international protection before the Member State responsible has been determined, without assessing the existence of family in another Member State or the needs of minors.

The admissibility criteria which can be assessed in advance are: safe third country, first country of asylum, safe country of origin, and the indeterminate legal concept of danger to security.

The proposal introduces changes to deadlines which will reduce them significantly, and speeds up readmission procedures.

3.2.2. The reform removes the circumstances in which responsibility ceases that are laid down in the current Article 19 (if the applicant voluntarily leaves the EU for more than three months or has been expelled). This implies that the same Member State will be responsible for any application submitted at any time, even if the applicant has returned to their country of origin for an extended period of time, their personal and familial circumstances have changed in the interim or the conditions in the Member State in question have altered substantially.
3.3. **Procedural guarantees and guarantees of fundamental rights in the process of determining the Member State responsible**

3.3.1. **The right to information:** Article 6(1) reinforces the right to information on the part of applicants for international protection who are subject to the process determining which Member State is responsible, and sets out the information that must be provided.

3.3.2. **Right to an effective remedy:** Article 27 of the reform stipulates that the applicant must be notified in writing of the decision to transfer them to the Member State responsible without delay. This notification also informs them that the decision can be appealed. Article 28 guarantees the suspensive effect of appeals against decisions to transfer applicants for international protection, and establishes deadlines for the review procedure, although these are too short (only seven days are given to lodge an appeal).

3.3.3. **Right to freedom of movement and detention of applicants subject to the process of determining the Member State responsible for examining an application:** Article 29 of the proposal halves the period for procedures in cases where the person applying is being detained. It also reduces from six to four weeks the time in which the transfer must be made, or in the opposite case, the time in which the person must be released.

3.4. **Obligations and sanctions**

3.4.1. The proposal expressly introduces the obligations of applicants for international protection, who must:

— apply for international protection in the first country that they entered irregularly or in the country in which they are authorised to stay legally;

— present all the information and all the proof required as soon as possible and at the very latest during the interview to determine which Member State is responsible, and cooperate with the authorities of the Member State tasked with determining the Member State responsible;

— be present and available to the authorities of the Member State that is determining which Member State is responsible;

— comply with the transfer to the Member State responsible.

3.4.2. In cases of non-compliance, Article 5 lays down disproportionate procedural and reception consequences which are not in line with the standards in the current directives on asylum procedures (Directive 2013/32/EU) and on reception (Directive 2013/33/EU), and with the Charter of Fundamental Rights of the EU:

— In cases where the application is not carried out in the Member State in which the applicant is authorised to stay or in the Member State which he or she entered irregularly, the assessment of the application will take place through the accelerated procedure outlined in Article 31.8 of Directive 2013/32/EU. However, the Article in question does not provide for such cases specifically, meaning that a procedure is applied to a wider range of cases. In practice this leads to shorter deadlines within which to assess the basis for the application, a reduction in guarantees and greater difficulty in identifying vulnerable individuals owing to the shorter deadlines. This is of particular importance with regard to the obligation laid down in Article 24(3) of Directive 2013/32/EU not to apply accelerated procedures in cases where applicants are particularly vulnerable.

— Only information and documentation submitted before the interview to determine which state is responsible for examining their application is taken into account. However, in order for family ties to be certified, proof of a child-parent relationship is needed in many cases, and that can take time.

— The reception conditions laid down in Articles 14-19 of Directive 2013/33/EU are excluded in any other Member State: among the reception conditions which would be excluded is the schooling of minors (Article 14 of Directive 2013/33/EU) which is a clear breach of the right to education of minors (Articles 14 and 24 of the Charter of Fundamental Rights of the European Union), health care not limited to emergencies (Article 19 of Directive 2013/33/EU) and an adequate standard of living which guarantees their livelihood and protects their physical and mental health (Article 17 of Directive 2013/33/EU).
The possibility for appeal against a rejected application for international protection is excluded for applicants who have been rejected and then transferred to another Member State (Article 20(5) of the proposal). This provision may infringe Article 46 of Directive 2013/32/EU and Article 47 of the Charter of Fundamental Rights.

3.5. Corrective allocation mechanism

A corrective mechanism is established to counter the potentially disproportionate number of applicants that each Member State must process according to the previous criteria. To assess the situation in question, a reference value is calculated — on the basis of GDP and population — of the number of applications and resettlements that each Member State has the capacity to take on. If this figure exceeds 150%, the corrective mechanism is activated automatically, relocating the applicants for international protection in the (benefiting) Member State in question to other Member States (of allocation) which have fewer applicants.

3.6. Consolidating the Eurodac system

The Commission proposal includes a plan to adapt the Eurodac system with the aim of improving the system set up in 2000 for the organisation and use of European databases in which the fingerprints of applicants for international protection and various categories of illegal immigrants are recorded. The purpose of the system is to facilitate the application of the Dublin Regulation by making it possible to determine which Member State was the first point of entry into the EU by an applicant for international protection. It provides for the possibility to increase the scope of action and to include and store data about individuals coming from third countries who have not applied for international protection and are residing in the EU irregularly.

3.7. New mandate for the EU asylum agency

The Commission proposes that the EASO mandate be modified in order to facilitate the functioning of the Common European Asylum System and the Dublin Regulation. The Commission suggests that the mandate of the European Asylum Support Office is extended to increase its functions and monitor the effective implementation of the Common European Asylum System.

4. Specific recommendations

4.1. Unaccompanied minors

The provisions go against ‘the best interests of the minor’ given that, in many cases, unaccompanied minors do not have access to the international protection procedure owing to a variety of circumstances. Neither do they ensure an assessment of their individual needs.

4.2. Irregular entry via a Member State

Removing the cessation of responsibility of 12 months after the date of the unauthorised border crossing appears to be at odds with one of the main objectives of the reform, namely to guarantee that responsibilities are distributed in a sustainable manner and that the system is fairer. Eliminating the cessation would not guarantee the abovementioned fairness to Member States with external borders.

4.3. Discretionary clauses

4.3.1. The EESC does not agree with limiting this clause only to cases of family connections that differ from the definition of family members, as it is essential to take into account the fact that problems can arise in a Member State which are not only quantitative — owing to the number of applicants for international protection — but also qualitative. These problems affect issues related to the effective application of Directive 2013/32/EU on common procedures for granting and withdrawing international protection with regard to access to the asylum procedure for applicants for international protection, information and advice, procedural guarantees and special procedures for people who require them. In addition, the recast Directive 2013/33/EU on reception conditions contains common standards to guarantee comparable living conditions in all the Member States to applicants for international protection and guarantee that their fundamental rights are upheld.

4.3.2. Circumstances can arise in which a Member State is not in a position to guarantee the provisions contained in the directives in question. The wording of DR III must consequently be preserved with regard to the decision of any Member State to assess an application for international protection which is presented to it even when the assessment is not that state's responsibility.
4.3.3. Furthermore, it should be taken into account that many applicants for international protection are seriously ill and/or disabled, and do not have family ties in any Member State; however, due to their particular circumstances, these applicants cannot, for medical reasons, be transferred to the Member State responsible for examining their application, which establishes the relationship of dependency with the Member State in which they applied for international protection. Such cases must be included in the new proposed draft of the discretionary clauses.

4.3.4. The assumption of responsibility on humanitarian or cultural grounds must be preserved in order to guarantee assistance to people applying for international protection who are in particularly vulnerable situations, in accordance with Directive 2013/32/EU, and to guarantee differentiated treatment in accordance with the assessment of specific circumstances.

4.4. **Process of determining which Member State is responsible for examining an application for international protection**

4.4.1. Assessing admissibility without prior analysis of the existence of family members in another Member State or the needs of minors, when this results in an application for international protection being rejected, may be at odds with the right to family life recognised under Article 7 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention on Human Rights.

4.4.2. Automatically applying the concepts of safe third country, first country of asylum, safe country of origin and the legal concept of endangering security may lead to situations of discrimination on the basis of nationality or migratory routes. In addition, in the case of safe country of origin and security risk, Article 3(3) stipulates that an accelerated procedure should apply. This accelerated procedure may not under any circumstances cause the procedural guarantees to be undermined due to the speed of deadlines. Nor can it result in a non-individual assessment of the application for international protection, as this is prohibited under Article 10(3)(a) of Directive 2013/32/EU.

4.4.3. Article 33 of the proposal does not introduce any improvement with regard to exchanges of information between Member States on vulnerable cases, medical situations and other individual cases for the applicants who are to be transferred, in spite of the fact this is one of the biggest shortcomings observed in the practical application of the Dublin system.

4.4.4. The provision regarding the cessation of responsibility in cases where the applicant voluntarily leaves the EU for more than three months, or has been expelled, may lead to situations in which family ties formed in the country of origin after the original application for international protection in the EU are not taken into account, or in which the reception and procedural conditions which were fulfilled during the first application are not guaranteed in the Member State responsible during the second application.

4.5. **Procedural guarantees**

4.5.1. Regarding the right to information, the provision on the transmission of information via an information brochure does not take into account the fact that in the majority of Member States this brochure only contains general information, in terms which are barely comprehensible to applicants. This information must always be provided in the interview.

4.5.2. With regard to the right to an effective remedy, we feel that this remedy should not be limited to the three cases specified, given that access to a fair trial would be restricted in the following situations:

- the risk of inhumane or degrading treatment in the Member State responsible for flaws in the asylum policy;

- transfer decisions on the basis of the criterion on minors (Article 10), on the family criterion (Articles 11, 12 and 13) and on the criterion on dependent persons (Article 18);

- decisions to assume responsibility for the assessment (non-transfer), when the family criteria have not been applied.

4.5.3. Regarding the right to freedom of movement and the possible detention of applicants subject to the process of determining the Member State responsible, the limitation upon time in detention (two weeks) does not introduce new provisions on exceptional cases in which detention is to be ordered. Given the divergence in state practices that the Commission itself has observed, clear and specific criteria should be established on the exceptional circumstance of detention and the assessment of the necessity and proportionality of the measure.
4.6. **Corrective allocation mechanism**

4.6.1. Using such a high figure, 150% of the capacity of the Member State in question, could compromise the reception and procedural conditions of applicants for international protection who are already in the Member State until the figure is reached. If, according to the criteria, reception capacity has been established, it seems logical to activate the mechanism when that capacity is exceeded rather than wait until it reaches 150%. Furthermore, to make this mechanism effective, allocation should apply to every person who has the right to seek asylum, regardless of country of origin.

4.6.2. The mechanism is applied prior to determining which Member State is responsible, which is carried out subsequently by the Member State to which the applicants have been allocated. This implies that, after being transferred from the benefitting Member State to the Member State of allocation, the applicant for international protection may be transferred again to a third Member State where he or she has family members, which would result in a lack of efficiency in the system and a greater delay in accessing the procedure to determine the status of international protection.

4.6.3. In addition, because it is automatic, the mechanism does not take into account the individual circumstances of applicants for international protection or special needs, for example vulnerability, which may make transfer to the Member State of allocation inadvisable.

4.6.4. The corrective mechanism takes no account of applicants who arrived before the reform entered into force, and applicants who were rejected before the application of the criteria for determining the Member State responsible, under Article 3, are excluded from allocation, as are applicants who arrived in a Member State before 150% of reception capacity was reached. The above points may be obstacles to the ultimate aim of the mechanism and have a very limited effect on the distribution of responsibility to assess applications and on reception.

4.6.5. The fact that Member States may choose not to take part in the corrective mechanism by paying a certain amount for each applicant for international protection who is not allocated to their territory may lead to instances of discrimination by allowing Member States to choose which applicants to accept or reject on the basis of religion, ethnicity or nationality.

4.7. **The Eurodac System**

Any consideration with regard to adapting the regulation should justify the necessity and proportionality of the measures adopted given the sensitivity of the data involved, particularly with regard to applicants for international protection and the confidentiality of the procedure.

4.8. **Mandate for the EU asylum agency**

The EESC supports the proposals given that, since EASO was set up, the goals set have not been fulfilled. We believe that the role of the existing Consultative Forum for organisations, whose capacity has been severely weakened in practice, should be strengthened and developed in the new proposal. The future EASO should take into account the information from the organisations in question and the work they carry out in each of the Member States in order to monitor the correct application and implementation of the Common European Asylum System.

Brussels, 19 October 2016.

The President
_of the European Economic and Social Committee_

Georges DASSIS
1. Conclusions and recommendations

1.1. A strategy focussing on heating and cooling, with their direct, everyday impact on all EU citizens, is long overdue and is most welcome. If best practice is followed and a consistent policy framework established and supported by available finance there are many opportunities across Europe for improvement.

1.2. This comprehensive EU strategy is extremely ambitious. It implies that achieving the EU’s climate and energy targets will, to a significant extent, depend on effective and consistent application of this strategy at Member State level. It suggests that reinforcing the role of renewable energy in heating and cooling could be the single biggest contributor to achieving medium and long term targets and should be recognised as such in the continuing programme of the Energy Union.

1.3. The EESC therefore recommends that the annual state of the Energy Union report should contain a specific section identifying progress on this strategy.

1.4. The Committee appreciates the work undertaken by the Commission in identifying and collating data relevant to heating and cooling. Such data is vital. Eurostat should prioritise work on a more comprehensive data set collection, particularly on energy used in heating.

1.5. The role that the consumer has to play in making any overall strategy effective is critical and the Committee urges further development of its proposal for a comprehensive European Energy Dialogue to greatly improve awareness and the creation of clear incentives for consumers to stimulate behaviour change. Not only should such incentives be financial but they should also emphasise the positive social impact of the many measures contained in the strategy and be targeted at the vulnerable and energy poor.
1.6. The Committee recommends that an urgent comparative analysis of public and private sector schemes designed to support efficient, low carbon heating and cooling programmes is undertaken.

1.7. A new approach to urban planning policy, consistent with the strategy proposed, needs to be put in place at regional and municipal level in all Member States to ensure delivery of the strategy. The Committee highlights the Covenant of Mayors’ role in this respect.

1.8. High level EU energy and climate targets need to be translated into explicit contributions by Member States with implementation in national plans through, for example, 5 year targets, specified by sector, with metrics developed specifically for heating and cooling.

2. Introduction

2.1. The Heating and Cooling Strategy provides the first dedicated EU level assessment for the sector as a whole. Heating and cooling account for about 50% of total EU energy consumption and will remain the largest long-term driver for energy demand, with building heating comprising the biggest single sector. The durable nature of heating technologies for buildings means they will play an important role in whether the EU can achieve its medium and long-term climate and energy goals. Space and domestic water heating for buildings is currently one of the largest sectoral energy uses — and is the most problematic to decarbonise. Heating is currently mainly achieved with fossil fuel energy directly delivered to buildings, creating local safety and emission issues.

2.2. All sectors of civil society are involved. The energy requirements of most large process industries, where heat is usually applied extensively, directly affect their competitiveness; cooling is essential in much of the food processing, distribution and retail and storage chain, whilst the cost and efficiency of domestic heating and cooling are of concern to all.

2.3. A growing number of households across Member States are spending a high share of income on energy, increasing the level of energy poverty. In particular the elderly, the vulnerable and low income groups are susceptible and the EESC has suggested establishing an energy poverty observatory to analyse and deal with this problem (1). A combination of social, financial and technical measures all have to work in synergy for effective results. A greater emphasis on the collection of accurate heating data will aid the drive against energy poverty.

2.4. Heating and cooling, as such, are not easily or economically transportable. This leads to highly localised and fragmented ‘markets’. Cooling constitutes just 5% of energy demand, heating 95%, with heating demand considerably exceeding cooling, though cooling is vital in the warmer Member States. Capital investment in heating and cooling systems tends to be for the medium to long term but the development of technology and innovation in this sector is rapid.

2.5. The EESC in previous Opinions (2) has called for an integrated and consistent policy approach across the energy sector and also a greater role for — and dialogue with — civil society on these issues. This is now formally prioritised through the Energy Union Package and the identification of heating and cooling as a vital sector offers the opportunity for the cross referencing and consistency in the many climate and energy-related legislative packages under development.

3. Overview of the Commission communication and comments

3.1. The Communication assesses the potential of the sector to contribute to the EU’s strategic climate and energy objectives and is supported by an accompanying staff working document which provides an analytical and scientific base. It aims to prioritise heat as a policy area for energy efficiency and encourages an informed debate and consensus on this topic and the related issues of energy demand reduction and decarbonisation.

3.2. This strategic framework identifies four critical areas for action. The thermal efficiency of buildings; efficient and sustainable heating technology; integrating the unused potential from industry whilst improving its efficiency; and a closer synergy with the electricity system where heat pumps and other RES (Renewable Energy Systems) have an important role to play. Many possible actions are outlined but detailed solutions will be brought forward as part of the legislative review package comprising the Energy Union.

3.3. The dominant vision is the decarbonisation of buildings through renovation, more efficient heating and cooling systems, the expansion of district heating and a transition from fossil fuels to low carbon energy sources. Residential buildings make up the largest portion of Europe’s building stock, with 60-70% of EU housing stock dating to 1980 or earlier, and homes having the largest specific consumption (kWh/m$^2$/year). The low building refurbishment rates increase the high financial burden for consumers. EU households spend on average 6,4% (COM(2014) 520 final) of their disposable income on home-related energy use, about two thirds for heating and one-third for other purposes. An increasing number of households have problems in meeting energy costs. Affordable heating and cooling is crucial to maintain a good quality of life for household consumers.

3.4. As not all industry can follow a low carbon energy route, particularly as energy dense fossil fuels are required for many process industries, it will be essential to use a much greater proportion of the waste heat produced by some industrial and power generation installations as a by-product. The working document recognises the use of waste industrial heat in district heating systems and also the developing role of new technologies and alternative fuels as having the potential to make an important contribution.

3.5. The strategy identifies several significant challenges. Fossil fuels account for over 80% of the energy employed making this sector critical in achieving low carbon objectives and a transition to a more efficient and secure energy system. Two thirds of the EU’s buildings — the majority of which will still be in use in 2050 — were constructed prior to the introduction of energy efficiency requirements. Incentives to ‘improve’ can be fragmented by ownership or tenancy arrangements and weakened by lack of appropriate finance schemes. There is a lack of market driven competition in the heating sector, a lack of training and expertise amongst constructors and installers and a lack of awareness of the potential benefits amongst domestic consumers. The rate of building renovation is low (0,4-1,2 % pa) and in addition energy poverty is a growing problem across the EU.

3.6. Nearly 50% of buildings have boilers with efficiencies below 60% compared with current technology levels (now legally required on replacement) in excess of 90%. In addition household heating (fossil and biomass) has a major effect on air pollution in some parts of Europe. However, a significant proportion of boilers are operating well beyond their technical lifetime. Cost remains a big factor in replacement and even though pay-back is invariably very good difficulties exist in finding the initial capital, particularly when switching to a renewable heat source such as solar- or geo-thermal or heat pumps. In this century industry has made big energy efficiency savings but SMEs in particular have problems in prioritising and financing improvement.

3.7. District heating, currently providing 9% of EU heating, is highlighted as capable of substantial expansion and by the use of waste heat, more able to switch to renewable or mixed heat sources than individual households. The co-generation of heat and power is likewise under-developed and the potential of smart buildings — domestic, service or industrial — when combined with a smart grid also offers prospective efficiencies as well as the opportunity for greater participation of households as ‘prosumers’. The strategy indirectly suggests developing ‘prosumerism’ at individual household level through new heating technologies and increased awareness.

3.8. Tools and solutions are proposed. Consistent integration, revision and implementation of EU instruments within the developing Energy Union programme will provide the building blocks of the strategy. In particular the Energy Efficiency Directive (EED), the Energy Performance of Building Directive (EPBD), the EU Ecodesign and Energy labelling framework, the Renewable Energy Directive, and the Emissions Trading System (ETS) can be highlighted. The strategy should be instrumental in more effective coordination of these measures.
3.9. Specific actions are detailed which the Commission will undertake in meeting the challenges outlined and in supporting the legislative measures already in place. Amongst these are promoting renewable energy, incentivising citizen participation, greater cooperation with consumer associations, enhanced commitment to innovation through, for example, the Strategic Energy Technology (SET) plan and encouraging new approaches to the financing of measures. The strategy must be consumer driven and emphasise the shift to decarbonised systems based on renewable energy and waste heat.

4. General comments

4.1. Heating and cooling plays a vital role in industry, in food processing and storage and in the tertiary services sector. It also impacts on every EU citizen through the universal desire to have comfortable living and working conditions. The cost and availability of heating and cooling determines not only the degree to which energy poverty is present in a society but also the competitiveness of entire business sectors. The EESC therefore welcomes this first strategic overview of heating and cooling in the EU.

4.2. The vision of the document is that the implementation of the strategies which are outlined will be instrumental in delivering lower costs, improving energy security, reducing import dependency and delivering climate targets. The Committee fully supports this vision but notes the extent and complexity of the challenges outlined in the strategy, some of which may be underestimated such as: the substantial demands that will be placed on Member States; the changes required in citizens’ behaviour; the effectiveness of financial support schemes; the push-back against uncertainty in energy prices; and defining and implementing the most effective technical solutions.

4.3. Consumers in many Member States are served by district heating schemes which can have considerable benefits in terms of cost, efficiency and the use of waste heat. The Committee urges the EU’s institutions to recognise the strategy’s clear and positive emphasis on this sector and support the development and improvement of municipal district heating systems through financial measures and provision for renovation and technical improvement. Modernisation of thermal plants can bring significant benefits in terms of energy use and emissions and the new market design rules under development should require the application of Best Available Technologies. In particular potential synergies between Waste to Energy (with its considerable potential) and district heating should be brought about.

4.4. Greater attention could be given in the strategy to the role of consumers and in particular to the importance of education and training in behavioural change. Awareness of heating use and costs in multi-occupancy buildings is a particular challenge. Smart buildings and smart heating need smart occupants with effective digital literacy skills. The strategy does not sufficiently emphasise the role that the consumer has to play in making any overall strategy effective. The tendency to trade efficiency savings for ‘comfort’ and a reluctance amongst consumers to significantly alter their lifestyles to maximise the benefits of new technology need recognition by further in-depth research into the triggers of behavioural change.

4.5. The strategy makes it clear that targeted finance packages will be essential in encouraging the necessary public and private investment. The EESC notes that only a very small proportion of the EIB approved financing for the energy sector through the European Fund for Strategic Investments is directed to relevant heating and cooling projects. The working document contains no examples or analysis of the relevant schemes, in Member States, only some of which have been successful in encouraging investment.

4.6. Given the overwhelming importance of heating and cooling in achieving the EU’s climate and energy targets, the EESC suggests that the annual state of the Energy Union report should contain a specific section identifying progress and the way forward based on the challenges identified in section three of the strategy. This would have two significant advantages:

— it would indicate the central role of heating in delivering targets and require all aspects of the Energy Union programme to recognise this,
— it would provide a concrete consumer focus to the report and support the aspiration to put consumers and vulnerable groups at the centre.

5. Specific comments

5.1. The accompanying working document uses data from numerous sources to build a picture of how energy is applied to heating and cooling across the EU. Estimates and reasonable inferences are made but the picture is largely of the sector as it can be identified in 2012/13. More data indicating trends in the last 10 years would have been helpful. Eurostat should prioritise work on a more comprehensive data set collection, particularly on energy used in heating (3).

5.2. It should also be noted that if 90 % of the assumed growth in RES energy used in heating by 2020 comes from biomass, then the reduction of particle and gas emissions of the biomass combustion process remains a challenge. The conclusions of the updated EU policy on sustainable bioenergy for the period 2020-2030 will be particularly important (to form part of the EU renewable energy package foreseen before the end of 2016) and should take into account the negative health impacts of some biomass alongside other issues.

5.3. Significant variations between Member States exist in energy systems, legal structures, building technology and business models. The forthcoming legislative packages relevant to delivering the strategy should provide scope for national adjustments.

5.4. Recognising this diversity across Member States it is important that, having set the required targets, technology neutrality is maintained in how they are best achieved at national and local level. The extensive experience of cities and local authorities in developing sustainable energy plans, as articulated through the Covenant of Mayors, offers valuable insights.

5.5. The strategy suggests that retail banks make special loan finance available for the renovation of privately rented buildings but European mortgage lenders (The European Mortgage Federation-European Covered Bond Council) have plans to enable homeowners to qualify for reduced repayment rates on their mortgages if they undertake energy efficiency renovations, and lower interest rates on loans to pay for them. The EESC urges European regulators to urgently and positively consider this initiative.

5.6. The Committee in various Opinions has noted the growth of energy service companies (ESCOs) (4) and the role they can play in promoting energy choice and efficiency for consumers. Whilst welcoming this contribution the EESC urges the Commission to encourage Member States to ensure proper supervision and monitoring of ESCOs or similar private bodies protecting the interests of customers. The trust of consumers in such services and other energy advisory programmes is a vital issue (5).

5.7. The EESC highly appreciates the European Commission’s initiative with the Citizens’ Energy Forum in London and urges greater citizen participation supported by greater cooperation with European consumer associations. The complex legislative, regulatory, technological, societal and behavioural developments underpinning the energy transition will require public understanding and ownership to deliver their full potential. The case for greater emphasis on citizen participation is set out in the EESC’s European Energy Dialogue proposal which meets such aspirations.

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(3) OJ C 264, 20.7.2016, p. 117.
(5) OJ C 383, 17.11.2015, p. 84.
5.8. This strategy calls for the highest priority to be given to a radical, coordinated approach to heating and cooling. Such an approach needs to be incorporated into current legislative reviews and packages. Therefore the reviews of Directive 2012/27/EU on energy efficiency (EED), Directive 2010/31/EU on energy performance on buildings (EPBD), the new renewable energy directive (REDII) for the period 2020-2030 and the updated EU bioenergy sustainability policy must make specific reference to the centrality of heating and cooling and adopt the coordinating measures proposed in this strategy.

5.9. The Committee therefore notes with concern the missed opportunity to prioritise energy efficiency in the recently published proposed Effort Sharing Regulation (COM(2016) 482 final). Member States in eastern Europe could make more use of building renovation as a solution to problems of pollution, energy dependency and energy poverty and this regulation could channel resources to enable this to happen.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
1. Conclusions and recommendations

1.1. The EESC recognises that, given the developments in the audiovisual market resulting from the emergence of new forms of services and new stakeholders and the development of new forms of ‘on-demand’ consumption, it is now essential that the European regulatory framework for audiovisual media services be adapted. It supports the European Commission’s efforts to update the 2010 Audiovisual Media Services Directive (AVMSD), subject to the remarks below.

1.2. Audiovisual media services must not be treated as having purely commercial value. The EESC believes that measures taken to protect minors and adolescents, as well as measures to ensure the participation of people with disabilities and elderly, poor and excluded people in social and cultural life, cannot be subordinated to economic considerations.

1.3. The EESC takes note of the plan to delete the current Article 7 of the AVMSD on accessibility for persons with disabilities and replace it with the proposal for a Directive on the approximation of laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015) 615 final). Should the Commission’s proposal not come to fruition, Article 7 should be upgraded to oblige Member States to promote, inter alia, sign language, subtitling, audio description and easily understandable menu navigation.

1.4. The EESC welcomes the fact that, in a spirit of cultural diversity, the Union is promoting the dissemination of European works and that major audiovisual media service providers will be obliged to offer them in their programmes and catalogues in accordance with a quota. The Committee nevertheless proposes that the minimum 20% quota imposed on major video-on-demand (VOD) providers be increased to 50%, in line with the minimum quota set for television broadcasting. It also proposes that a minimum 20% quota be set for providers with a low turnover or low audience numbers, together with clarification of what is meant by ‘low turnover’ and ‘low audience’.
1.5. The EESC is opposed to the option granted to Member States to impose on on-demand services in their jurisdictions, as well as those established in a different Member State but targeting their national audiences, financial contributions in the form of direct investments in works or levies allocated to national film funds. This could distort competition, depending on whether or not a Member State introduces such contributions, and could penalise the audiovisual services of a Member State intended for its citizens established in another Member State.

1.6. With regard to the protection of minors, the EESC welcomes the fact that the draft Directive plans to align the standards of protection applicable to video-sharing platform providers with those applicable to television broadcasting. However, it calls for the opportunity to be taken to clarify the provision in Article 27 of the AVMSD (2010/13/EU), which requires Member States to take appropriate measures to ensure that, at times when minors are likely to be watching, broadcasts do not include any programmes which might seriously impair their physical, mental or moral development. The EESC suggests setting a specific time period, and including a ban on alcohol advertising during that period.

1.7. The EESC approves the proposed amendment in the new Article 6, stating that audiovisual media services may not ‘contain any incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. However, it draws attention to the fact that, in the new Article 28a dealing with video-sharing platform services, the references to sex, sexual orientation and disability have been forgotten and that the terminology used is sometimes different. It is proposed that Article 28a(1)(b) use the same wording as in Article 6.

1.8. With a view to protecting everyone from content containing incitement to violence or hatred, and to protecting minors from material likely to be harmful to their development, the EESC supports the promotion of co-regulation and self-regulation by means of codes of conduct, provided that the European Regulators Group for Audiovisual Media Services (ERGA) is actually set up and equipped to effectively perform its functions, in particular as laid down in Article 30a(3)(c).

1.9. The EESC is opposed to the European Commission’s proposal to allow audiovisual media services more space and flexibility for advertising, to the detriment of consumers, who will be faced with more and longer commercial breaks during peak viewing hours. These new rules on commercial breaks also risk harming the integrity of works and the moral rights of authors.

1.10. In the EESC’s view, the rules concerning monitoring by national regulatory authorities have failed with regard to fictitious companies in one Member State that use the satellite capacity of a third country to reach a wide audience in another Member State; it believes that these rules need to be revised, and supplemented with a provision stating that operators who have an audiovisual licence in one Member State but provide audiovisual services in another, are subject to the legislation of both Member States.

2. Introduction

2.1. Since 1989, EU rules have governed audiovisual media and safeguarded cultural diversity and the free flow of content within the EU. The AVMSD, which has been updated several times to reflect technological and commercial developments, harmonises all national legislation on audiovisual media at EU level. It currently covers television programmes and VOD services.

2.2. However, the audiovisual media landscape is changing at a rapid pace due to ever-increasing convergence between television and services distributed via the internet. New business models, new technological instruments for communication and new stakeholders are emerging, particularly VOD providers and video-sharing platforms, offering online audiovisual content.

2.3. TV broadcasting and VOD are subject to different rules and varying levels of consumer protection. This is why the Commission is committed to establishing a better balance between the rules applicable to traditional television broadcasting bodies, VOD service providers and video-sharing platforms.
3. Content of the Commission proposal

3.1. As part of its Digital Single Market Strategy, the Commission has proposed updating the AVMSD in order to create a fairer environment for all stakeholders on the market, to promote European cultural diversity and European films, to better protect minors, to tackle hate speech and incitement to violence, to safeguard the independence of audiovisual regulatory authorities and to offer greater flexibility to broadcasters with regard to advertising. The amended AVMSD will also apply to online platforms and video and content sharing sites.

3.2. The Commission has proposed the following measures:

3.2.1. Responsibility of video-sharing platform providers
Video platforms should protect minors from harmful content and protect all citizens from incitement to violence, hatred or racism. The Commission will invite all video-sharing platforms to cooperate as part of the Alliance to better protect minors online, in order to develop a code of conduct for the industry. National audiovisual regulatory authorities will have powers to enforce the rules, which, in accordance with the applicable national legislation, could also result in fines. Consumer protection measures provided for in the E-Commerce Directive will also apply to video-sharing platforms.

3.2.2. An enhanced role for national audiovisual regulatory authorities
From now on, the Directive will guarantee the autonomy of national regulatory authorities. The role of ERGA, made up of the 28 national audiovisual authorities, will be defined in EU legislation. ERGA will assess codes of conduct in the area of co-regulation and will advise the European Commission.

3.2.3. Further developing European creativity
The Commission would like broadcasters to continue to allocate at least half of their viewing time to European works and it will oblige on-demand service providers to guarantee at least a 20% share of European works in their catalogues. The proposal also specifies that Member States will be able to ask on-demand services available or distributed in their territory to contribute financially to the production of European works.

3.2.4. Greater flexibility for advertising by television broadcasters
The new audiovisual rules do not increase the total duration of advertising time permitted for TV broadcasters between 7 a.m. and 11 p.m. but give them greater flexibility over the timing of commercial breaks. It is thus proposed that the hourly limit be abolished and that a daily limit of 20% advertising between 7 a.m. and 11 p.m. be introduced instead. Broadcasters and on-demand service providers will also have more flexibility to use product placement and sponsorship.

4. General comments

4.1. The EESC is committed to the diversity of audiovisual media services (AMS) and promoting the free circulation of information, cultural development and the freedom to form opinions, under conditions that safeguard the plurality of information and cultural and linguistic diversity.

4.2. It also welcomes the fact that the directive takes care to respect fundamental rights and to observe the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to freedom of expression, the freedom to conduct a business, the right to judicial review, and promotion of the application of the rights of the child.

4.3. It supports the Commission’s efforts to promote Europe’s heritage and develop Europe’s audiovisual creativity, and to increase the production and circulation of high-quality European programmes, while respecting the principles of human dignity and ensuring a high level of protection for minors, consumers and personal data, as well as equitable and fair competition.

4.4. The EESC recognises that, given the developments in the audiovisual market resulting from the emergence of new forms of services, new technological instruments for communication and new stakeholders and the development of new forms of ‘on-demand’ consumption, it is now essential that the European regulatory framework for audiovisual media services be adapted.
4.5. Given the complexity of the legislative provisions relating to the supply of audiovisual media services, the EESC considers that it would be appropriate, for reasons of clarity and rationality, for the amendments and additions that the Directive will introduce into Directive 2010/13/EU of 10 March 2010 (the AVMSD) to be set out in a consolidated text.

4.6. Audiovisual media services are essential economic, social and cultural public services that embody values and meaning, which to a large extent come under human rights and must not be treated as having purely commercial value. This is particularly true for children and adolescents, whose training and education depend increasingly on the media, taking into account the influence of audiovisual media services on viewers’ opinions, but it also applies to people with disabilities and elderly, poor and excluded people and to their participation in and integration into social and cultural life, which is inextricably linked with the provision of accessible and affordable media services.

4.7. The EESC acknowledges that the current Article 7 of the AVMSD, which is extremely vague and not particularly meaningful, is being deleted and will be replaced by the Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (COM(2015) 615 final), which is currently only at the proposal stage.

4.8. Should the Commission’s initiative to adopt a European legislative act establishing a general framework for accessibility of products and services, in accordance with the United Nations Convention on the Rights of Persons with Disabilities, not come to fruition, stricter legislative provisions obliging Member States to promote, inter alia, sign language, subtitling, audio description and easily understandable menu navigation, in line with recital 46 of the 2010 AVSMD, should be set out in a new Article 7 of the AVSMD. The EESC would point out in this context that, in Member States where broadcasts are generally subtitled, a particularly high proportion of the population are bilingual or multilingual.

4.9. The EESC welcomes the fact that, in a spirit of cultural diversity, the Union is promoting the dissemination of European works and that major audiovisual media service providers are obliged to offer them in their programmes and catalogues in accordance with a quota.

4.10. With regard to the 20% minimum quota for European works applied to major VOD service providers, this obligation does not require an additional effort on their part as they have already reached this level (see the statistics from the European Audiovisual Observatory). In addition, this quota is very modest compared with the requirement applicable to linear television broadcasters, who are still obliged to respect a minimum quota of 50% of European programmes. The minimum quota for VOD services should therefore be the same as that for television broadcasting.

4.11. The EESC has reservations about the possibility of granting exemptions on European works to small- and medium-sized enterprises with a low turnover or low audience numbers, as this could constitute a new form of unfair competition. It considers that a minimum 20% quota should be set, and calls for clarification of what is meant by ‘low turnover’ and ‘low audience’.

4.12. Member States will be permitted to impose financial contributions, in the form of direct investments in works or payments to national film funds, on on-demand services falling within their jurisdiction, or those situated outside of their borders that target their national audience.

4.13. The EESC is opposed to making this measure voluntary, as it could distort competition rules, depending on whether a Member State decides to introduce these contributions, and it could penalise audiovisual services from one Member State designed for their citizens living in another.

4.14. With regard to the protection of minors, the EESC welcomes the fact that the draft Directive plans to align the standards of protection applicable to video-sharing platform providers with those applicable to television broadcasting. However, the EESC calls for the opportunity to be taken to clarify the provision in Article 27 of the AVMSD (2010/13/EU), which requires Member States to take appropriate measures to ensure that, at times when minors are likely to be watching, broadcasts do not include any programmes which might seriously impair their physical, mental or moral development. The EESC suggests setting a specific time period, and including a ban during that period on advertising alcohol, over-the-counter medicines and foods considered harmful because they contribute to child obesity.
4.15. With a view to protecting everyone from content containing incitement to violence or hatred, and to protecting minors from material likely to be harmful to their development, the EESC supports the promotion of co-regulation and self-regulation by means of codes of conduct, which much be designed such that they are widely accepted by the main stakeholders. The EESC reiterates its point (1) that, in order for these regulatory instruments to be valid, recognised tools in any legal system, their configuration and ambit must be defined by specific precepts that are legally binding and enforceable, whether at national or European Union level, respecting at the same time the nature of these instruments, especially the voluntary agreement of the participants. The need to set up ERGA and equip it to effectively perform its functions, in particular as laid down in Article 30a(3)(c), is especially important in this regard.

4.16. The European Commission aims to give more space and flexibility for advertising to all audiovisual media services. Thus, films made for television, cinematographic works and news programmes may be interrupted by advertising or teleshopping once in each scheduled period of at least 20 minutes, whereas at present the corresponding period is at least 30 minutes; this would mean one more commercial break per hour. In addition, the current limit on advertising in any hour-long period, currently 20% or 12 minutes per hour, will be replaced by a daily limit on commercial breaks and teleshopping slots of 20% between 7 a.m. and 11 p.m., i.e. 192 minutes in total. Isolated spots will also be allowed and provisions on sponsorship and product placement will be made more flexible.

4.17. Thus, it will be possible for the broadcasts in question to be interrupted more frequently and for longer during hours chosen by the TV broadcasters, within the limit of 192 minutes of advertising between 7 a.m. and 11 p.m.

4.18. It is obvious that from now on there will be frequent interruptions for advertising during peak viewing hours, while early in the morning and late in the evening advertising will be more intermittent, in order to create the room for manoeuvre required to comply with the 20% limit on advertising during the day. These new rules on commercial breaks also risk harming the integrity of works and the moral rights of authors.

4.19. The EESC is opposed to these new advertising rules and asks that the rules currently in force in this area be retained or even strengthened, as previously recommended by the EESC.

4.20. The differentiation between ‘linear’ and ‘non-linear’ services, which has been rendered obsolete by digital developments, could be dropped.

4.21. The EESC welcomes the steps taken to guarantee the independence of national audiovisual regulatory authorities, given that, in some Member States, their legal separation and functional independence from any other public or private body was not guaranteed and was subject to abuse.

4.22. In the EESC’s view, the rules concerning monitoring by national regulatory authorities have failed with regard to fictitious companies in one Member State that use the satellite capacity of a third country to reach a wide audience in another Member State. To avoid such abusive practices, the EESC recommends adding to the directive a provision stating that operators who have an audiovisual licence in one Member State but provide audiovisual services in another, are subject to the legislation of both Member States.

Brussels, 19 October 2016.

The President of the European Economic and Social Committee
Georges DASSIS

1. Conclusions and recommendations

1.1. The EESC has consistently supported eliminating any specific charges for roaming mobile communications. It supports the Commission’s initiatives to achieve ‘roam-like-at-home’ from 15 June 2017 as well as its efforts to eliminate the failures of the wholesale roaming market, which risk jeopardising this objective, before that point.

1.2. Along with abolishing roaming charges, pre-emptive measures will be necessary to prevent operators from compensating for the drop in revenue resulting from the abolition of roaming charges by increasing domestic charges or by means of other improper practices. Similarly, it will be important to ensure that domestic charges, especially bundled offers, are made more transparent and that the regulatory authorities work with consumer organisations to develop a standard format for presenting the breakdown of charges.

1.3. The EESC considers that the Commission’s proposed maximum average wholesale charges that the visited operator may levy on the roaming provider for the provision of a call, SMS message and data roaming services, are reasonable and should allow for a sufficient margin to enable healthy competition between wholesale mobile roaming service providers.

1.4. However, the EESC expresses serious reservations about the new possibility given to operators by the proposal in question to negotiate ‘innovative wholesale pricing schemes’ outside the regulated prices (caps) that would not be directly linked to the actual volumes consumed. Commercial negotiations based on flat payments, up-front commitments or capacity are likely to lead to cartels and abuses of dominant positions by large operators and by those with access to a network that has national coverage, to the detriment of small operators and virtual mobile network operators, which will serve only to bolster the existing oligopolies and bilateral roaming agreements that the Commission considers to be the source of the market’s current failures.

1.5. The EESC welcomes the proposal in this regulation that, in the event of a dispute between operators about wholesale roaming markets, national regulatory authorities should be obliged to seek the opinion of BEREC on action to be taken, as this will lead to greater consistency between the regulatory approaches adopted by these national authorities. The EESC suggests that the provisions dealing with disputes should be fleshed out and national authorities should be asked to encourage the parties involved, where appropriate, to first resort to resolving disputes via an alternative dispute resolution procedure.
2. Introduction

2.1. The EU's objective of achieving a connected continent based on state-of-the-art infrastructure and affordable fixed and wireless service prices has come up, among other things, against excessively high European mobile communications prices for roaming which are significantly higher than the domestic rates charged for the same service.

2.2. The Commission first urged mobile operators to reduce excessive charges for roaming mobile communication in 2006, but since that and the many other subsequent calls proved fruitless, in 2007 the EU started to introduce a cap on charges (the Eurotariff) covering both the wholesale and retail markets for voice calls within Europe, then for SMS messages and finally for the transmission of roaming data. All of this was done in the hope that healthy competition would develop and that users would no longer be forced to pay excessive charges.

2.3. The maximum roaming charges for voice calls, sending SMS messages and using data services, including MMS messages, therefore had to be successively lowered (see the table below) with a view to the ultimate objective of achieving complete abolition of roaming charges and aligning the charges for communications within Europe with the charges applied domestically.

<table>
<thead>
<tr>
<th></th>
<th>Voice calls EUR/minute excluding VAT</th>
<th>SMS messages EUR/SMS message excluding VAT</th>
<th>Data EUR/kilobyte excluding VAT</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Wholesale charge</td>
<td>Retail charge for calls made</td>
<td>Wholesale charge for calls received</td>
</tr>
<tr>
<td><strong>Average charge before 1.9.2007</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Max. charge 31.8.2008</td>
<td>0,30</td>
<td>0,49</td>
<td>0,24</td>
</tr>
<tr>
<td>Max. charge 30.6.2009</td>
<td>0,28</td>
<td>0,46</td>
<td>0,22</td>
</tr>
<tr>
<td>Max. charge 30.6.2010</td>
<td>0,26</td>
<td>0,43</td>
<td>0,19</td>
</tr>
<tr>
<td><strong>Regulation (EC) No 544/2009</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Max. charge 30.6.2011</td>
<td>0,22</td>
<td>0,39</td>
<td>0,15</td>
</tr>
<tr>
<td>Max. charge 30.6.2012</td>
<td>0,18</td>
<td>0,35</td>
<td>0,11</td>
</tr>
<tr>
<td>Max. charge 30.6.2013</td>
<td>0,14</td>
<td>0,29</td>
<td>0,08</td>
</tr>
<tr>
<td><strong>Regulation (EU) No 531/2012</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Max. charge 30.6.2014</td>
<td>0,10</td>
<td>0,24</td>
<td>0,07</td>
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<tr>
<td>Max. charge 30.6.2015</td>
<td>0,05</td>
<td>0,19</td>
<td>0,05</td>
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<tr>
<td>Max. charge 30.6.2017</td>
<td>0,05</td>
<td>0,19</td>
<td>0,05</td>
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<td>Max. charge 30.6.2022</td>
<td>0,05</td>
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</tbody>
</table>
2.4. No mobile network covers all EU Member States. As a consequence, in order to be able to provide mobile communications services to their domestic customers travelling in another Member State, roaming providers have to purchase such wholesale services from, or exchange roaming services with, operators active in the visited country.

2.5. The cap on charges in the EU was accompanied by structural measures, inter alia, for the wholesale roaming market (1). Thus, visited mobile network operators have to:

— meet all reasonable requests for access to roaming services and may only refuse requests for wholesale roaming access on the basis of objective criteria;

— publish a sufficiently detailed reference offer, in line with the guidelines of the Body of European Regulators for Electronic Communications (BEREC), and make it available to companies requesting wholesale roaming access;

— provide companies requesting access with a draft contract for this access at the latest one month after the initial receipt of the request by the mobile network operator. The wholesale roaming access is to be granted within a reasonable period of time not exceeding three months from the conclusion of the contract;

— reply within a period not exceeding two months to an operator’s request to enter into commercial negotiations to also include components not covered by the reference offer.

2.6. Finally, Regulation (EU) 2015/2120 states that with effect from 15 June 2017, but subject to fair use and to a positive outcome of a review of the proper operation of the market, roaming providers may no longer levy any surcharge in comparison to the domestic retail price on roaming customers in any Member State for any regulated roaming voice call made or received, for any regulated roaming SMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad.

2.7. However, in specific and exceptional circumstances, with a view to ensuring the sustainability of its domestic charging model, where a roaming provider is not able to recover its overall actual and projected costs of providing regulated roaming services, it may apply for authorisation to apply a surcharge. That surcharge may be applied only to the extent necessary to recover the costs of providing regulated retail roaming services, taking the applicable maximum wholesale charges into account.

2.8. However, it is apparent from the report on the review of the wholesale roaming market (COM(2016) 398) that the planned structural measures were not sufficient, as regards the internal market for roaming services, to boost competition and achieve an internal mobile communication services market with no distinction between domestic and roaming tariffs.

2.9. This analysis of the markets shows that a number of market failures still affect the functioning of wholesale markets, due to their oligopolistic character combined with the bilateral nature of roaming agreements, the lack of substitutes at wholesale level and prices that are substantially higher than estimated costs, particularly for data services.

2.10. As there is a close correlation between the wholesale and retail markets, and in the absence of a sufficient margin between wholesale and retail prices, the objective of ‘roam-like-at-home’ becomes impracticable and structurally non-viable, particularly for small operators, virtual mobile network operators and operators with high net outgoing traffic.

2.11. The Commission has therefore been forced to propose fresh EU regulatory intervention on wholesale roaming markets.

2.12. Article 6d of Regulation (EU) 2015/2120, amending Regulation (EU) No 531/2012, calls on the Commission, among other things, to put forward an implementing act by 15 December 2016 laying down detailed rules on operators’ application of a fair use policy with regard to the consumption of regulated retail roaming services provided at the applicable domestic retail price. For the time being, this implementing act is outstanding, as an initial proposal was withdrawn by the Commission.

3. Content of the Commission proposal

3.1. The proposal for a review of Regulation (EU) No 531/2012 stipulates:

— the reduction, for the period from 15 June 2017 to 30 June 2022, of the average maximum wholesale roaming charges:
  — from EUR 0.05 per minute to EUR 0.04 per minute for a call;
  — from EUR 0.02 to EUR 0.01 for an SMS message;
  — from EUR 0.05 per megabyte to EUR 0.0085 per megabyte for data service;
— the possibility for the two parties to a wholesale roaming agreement to expressly agree not to make the application of the agreement subject to the maximum wholesale price set out in the regulation for a specific period;
— in the event of a dispute between visited network operators and other operators concerning wholesale roaming services, the obligation for national regulatory authorities to consult BEREC on the action to be taken;
— the Commission to draft a report, to be submitted every two years from 15 June 2017 to the European Parliament and the Council, on the basis of data collected by BEREC on the development of competition in EU roaming markets.

4. General comments

4.1. In its previous opinions, the EESC has consistently supported the Commission’s proposals on capping roaming charges, considering them to be a step in the right direction, i.e. towards the removal in the medium term of any specific form of charge on roaming mobile communications. Thus it can only endorse the Commission’s new proposals seeking to eliminate the shortcomings of the wholesale roaming market, which are in danger of jeopardising the implementation of ‘roam-like-at-home’, from 15 June 2017.

4.2. As regards ‘roam-like-at-home’, the EESC points out that it has consistently warned against possible counter-productive effects and that it has called on regulatory authorities to take pre-emptive measures to prevent operators from compensating for the drop in revenue resulting from the abolition of roaming charges by increasing domestic charges or by means of other improper practices detrimental to consumers, such as charging to access a network (an activation fee) without communication having taken place.

4.3. So that consumers can effectively benefit from ‘roam-like-at-home’, and ensure that there is no increase in domestic charges, the EESC reiterates its suggestion that the regulatory authorities should work with consumer organisations to develop a standard format for presenting the breakdown of charges, so as to make charges — particularly bundled offers — more transparent.

4.4. The EESC is keenly aware that the maximum wholesale charges should enable operators to recover their costs while leaving a reasonable profit margin. However, as the Commission acknowledges (\(^2\)), assessing the costs of providing wholesale roaming services is a complex task that entails a large number of choices and assumptions and it is not free from uncertainties.

4.5. Given the different elements that are an integral part of the cost of providing wholesale roaming services (mobile termination rate in country of origin and destination country), as well as other costs, in particular unregulated transit costs, the ceilings proposed by the Commission seem reasonable and should leave a sufficient margin to enable healthy competition between providers of wholesale roaming services.

4.6. The EESC expresses serious reservations about the new possibility given to operators by the proposal in question to negotiate ‘innovative wholesale pricing schemes’ outside the regulated prices (caps) that would not be directly linked to the actual volumes consumed. Commercial negotiations based on flat payments, up-front commitments or capacity are likely to lead to cartels and abuses of dominant positions by large operators and by those with access to a network that has national coverage, to the detriment of small operators and virtual mobile network operators.

4.7. The EESC welcomes the proposal that, in the event of a dispute between operators about wholesale roaming markets, national regulatory authorities should be obliged to seek the opinion of BEREC on action to be taken, as this will lead to greater consistency between the regulatory approaches adopted by these national authorities. The EESC suggests that the provisions dealing with disputes should be fleshed out and national authorities should be asked to encourage the parties involved, where appropriate, to first resort to resolving disputes via an alternative dispute resolution procedure.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
1. Conclusions and recommendations

1.1. The EESC welcomes in general the Commission’s proposal for amending Directive 2009/45/EC on safety rules and standards for passenger ships. As the fitness report (REFIT, Adjusting Course: EU Passenger Ship Safety Legislation Fitness Check, COM(2015) 508 final) identifies, Directive 2009/45/EC in some parts lacks clarity in a number of definitions and requirements and has outdated or overlapping requirements, which has led to the inconsistent implementation of the legal framework for passenger ships. The amendments proposed aim to simplify the legislation, remove overlaps and redundancies, and clarify requirements and the scope of application, while preserving the current level of safety.

1.2. Given that 120 million people are transported by domestic passenger ships every year, the EU legislation on passenger ship safety is very important. However, the proposal for amending Directive 2009/45/EC excludes all small ships below 24 meters from the scope of the directive, while at present, only existing passenger ships are excluded, not new ones.

1.3. The rationale given for this proposal is, firstly, that Directive 2009/45/EC currently only applies to 70 out of 1,950 small ships and, secondly, the principle of subsidiarity: these ships are constructed for a wide range of services and establishing a common set of rules will be extremely challenging. As such, Member States would be in a better position to regulate.

1.4. The EESC notes the abovementioned rationale, but recommends that the application to new ships below 24 meters in length be retained in the interests of passenger safety.

1.5. The proposal for amending Directive 2009/45/EC clarifies that, for the purpose of this directive, aluminium is a material equivalent to steel and the corresponding fire safety standards are therefore applicable. At present, not all Member States certify aluminium ships under this directive, which creates an uneven situation. The EESC welcomes this clarification.
1.6. The EESC warmly welcomes the importance that the current EU rules on passenger ship safety attach to accessibility for persons with reduced mobility (paragraph 17 of the recitals to Directive 2009/45/EC) and expresses its satisfaction with the fact that EU standards represent an important added value when compared to international standards, which do not include any mandatory provision in this regard. The EESC highly commends this provision and believes this should apply to all kinds of domestic passenger service ships.

1.7. The EESC welcomes the Commission's clarification made in new point (za). This point clarifies that 'equivalent material' means aluminium alloy or any other non-combustible material that maintains structural and integrity properties equivalent to steel at the end of the applicable exposure to the standard fire test due to the insulation provided. As some Member States have not been certifying aluminium ships under this directive, the EESC welcomes this clarification in principle. However, the EESC recommends that the corresponding technical standard included in the Annex to Directive 2009/45/EC be further clarified in cooperation with national experts.

2. Introduction and background

2.1. Europe's geographical configuration as a vast peninsula gives an indication of how crucial maritime transport services, including the carriage of passengers, are. More than 400 million people pass through EU ports every year, out of which 120 million are transported by domestic passenger ships. Hence the importance of ensuring the highest safety standards in EU waters, given that ship safety legislation has considerable implications, notably for the environment, labour law, the mobility of EU citizens and the facilitation of trade in passenger vessels, since the latter meet the same standards across the EU.

2.2. Following the Estonia disaster, the International Maritime Organization adopted a series of amendments to the International Convention for the Safety of Life at Sea (SOLAS), including requirements to improve the stability of ro-ro ships when they are damaged.

2.3. However, incidents continue to occur, which has led Europe in the last two decades to introduce further rules for passenger ship safety, including some specific rules, such as the register of persons on board, alongside SOLAS on international journeys, which also cover journeys between two or more Member States, as well as many more EU rules for national journeys.

2.4. The proposals flow from the REFIT programme being carried out by the Commission in respect of this legislation on passenger ship safety. The abbreviation REFIT stands for Regulatory Fitness and Performance.

2.5. The aim was to simplify and streamline where possible existing European rules on passenger ship safety so as to:

— maintain EU rules only where necessary and proportionate;

— ensure correct, uniform implementation;

— eliminate overlaps and contradictions.

These aims reflect the EESC's recommendations concerning REFIT, as set out in the recent exploratory opinion (SC/044, 26 May 2016).

2.6. This coherent package of proposals serves to achieve these objectives. The package on passenger ship safety includes proposals for reviewing nearly all European safety regulations on passenger ships, excluding of course the purely technical Directive 2003/25/EC on specific stability requirements for ro-ro passenger ships.

2.7. The package comprises the following 3 proposals:

— to limit and clarify the scope of Directive 2009/45/EC (technical standards for seagoing passenger ships on national routes);
— to improve and clarify reporting obligations arising from Directive 98/41/EC (on the registration of persons sailing on board passenger ships) in relation to other instruments (Directive 2010/65/EU on reporting formalities and Directive 2002/59/EC on the Community vessel traffic monitoring and information system), as well as removing overlaps with these areas;

— to clarify and simplify the EU system of surveys and inspections for ro-ro ferries (ferries capable of transporting cars and trains as well as passengers) and high-speed passenger craft.

2.8. It is this first proposal that is the focus of this opinion.

2.9. Directive 2009/45/EC, dated 6 May 2009 is a recast of Directive 98/18/EC, which had to be repealed in the interests of clarity. It introduces a uniform level of safety for passenger ships undertaking domestic voyages. However, after 15 years, the Commission deemed it necessary to review this directive after having concluded a fitness check that pointed out the need — strongly endorsed by the EESC — to simplify and clarify the current requirements.

2.10. The EESC has actively participated in the area of maritime safety legislation by producing several opinions. On the particular issue of the safety of passenger ships, it is worth noting that on 29 May 1996, the Committee delivered an opinion on Safety rules and standards for passenger ships (1), followed on 11 December 2002 by a Committee opinion on The specific stability requirements for Ro-Ro Passenger Ships, and on a revision of Directive 98/18/EC on Safety Rules and Standards for Passenger Ships. Furthermore, it should be noted that more recently, on 16 January 2008, the Committee unreservedly endorsed the proposal on the abovementioned recast of Directive 98/18/EC.

2.11. In light of the significance of the review exercise carried out by the Commission today, the EESC wishes to demonstrate the great importance it attaches to the continued improvement in the safety of passenger ships involved in domestic trade.

3. Gist of the Commission’s proposal

3.1. Directive 2009/45/EC on safety rules and standards for passenger ships applies to ships made of steel and equivalent material, and to high-speed craft, irrespective of their length. Implemented at EU level and applying to domestic voyages only, this directive establishes technical requirements for vessel construction, stability, fire protection and life-saving equipment based both on the provisions of the SOLAS Convention (International Convention for the Safety of Life at Sea, 1974, as amended) and on some requirements driven by a number of shipping casualties involving loss of human lives, hence the need to address the somewhat fragmented nature of the legislation.

3.2. Following a fitness check carried out in the spirit of the REFIT (European Commission’s Regulatory Fitness and Performance programme) and Better Regulation agenda, the Commission came to the conclusion that there was scope for further enhancing the level of safety, efficiency and proportionality afforded by the abovementioned directive. The suggested review therefore aimed at simplifying and streamlining the existing regulatory framework which, although meeting its objectives and remaining highly relevant, needs to eliminate some outdated, ambiguous or overlapping requirements and definitions.

3.3. The Commission is suggesting a limited number of changes to the current directive in the following areas:

— Exclusion of ships below 24 metres in length from the scope of the directive concerned on the grounds that small ships are built mainly from materials other than steel and are already certified under national legislation;

— Clarifying the scope of the directive: by specifying that aluminium is a material equivalent to steel (with implications for fire insulation requirements), and by making it clear that offshore service vessels for wind-farms are excluded as is the case for traditional ships;

— Clarifying and simplifying the sea areas definition in Directive 2009/45/EC while removing the reference to ‘where shipwrecked persons can land’, as well as the notion of ‘place of refuge’.

3.4. Furthermore, the REFIT report recommends developing guidelines or standards for small vessels and vessels built in non-steel or equivalent materials, based on functional requirements as part of a goal-based standard framework.

3.5. Finally, it is worth noting that the Commission proposal seeks to preserve the current common level of safety established by Directive 2009/45/EC for ships operating on domestic voyages within EU waters, which facilitates the transfer of ships between national registers and allows competition in domestic voyages to take place on an equal footing.

4. General comments

4.1. The EESC notes that the fitness check applied to the EU safety rules and standards for passenger ships may well have been affected by the lack of data and therefore asks for better data collection and monitoring systems in future, in order to make EU post-implementation assessments more robust.

4.2. Despite noting the rationale behind the exclusion of small ships (below 24 meters in length) from the scope of the directive, the EESC believes that the application to new vessels below 24 meters in length should be retained.

4.3. In the REFIT report, as well as in paragraph 17 of the recitals to Directive 2009/45/EC, it is noted that EU standards provide for access to passenger ferry services in domestic trade for persons with reduced mobility, an element which is recommended but not mandatory in international standards. The EESC highly commends this requirement and believes this should apply to all kinds of domestic passenger service ships.

4.4. The EESC also believes that it is essential that all passengers on board ships be informed about details concerning safety on board the vessel. It is of vital importance to ensure that these details are also available to persons with a disability.

5. Specific comments on the proposed amendments to Directive 2009/45/EC

5.1. **Article 2 — Definitions**

5.1.1. **Point (h)** — The definition of a ‘new ship’ as a ship, the keel of which was laid or which was at a similar stage of construction on or after 1 July 1998 is outdated; however, no change has been proposed.

5.1.2. **Point (u)** — The change from ‘host state’ to ‘port state’ is not explained. The EESC recommends that the Commission provide an explanation for this change of terminology and possible change of substance.

Furthermore, the directive seems in this point not to draw any distinction between EU-flags and non-EU flags, which may have relevance, as the vessels in question are performing maritime cabotage (Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage).

5.1.3. **New point (za)** — This point clarifies that ‘equivalent material’ means aluminium alloy or any other non-combustible material that maintains structural and integrity properties equivalent to steel at the end of the applicable exposure to the standard fire test due to the insulation provided. As some Member States have not been certifying aluminium ships under this directive, the EESC welcomes this clarification in principle. However, the EESC recommends that the corresponding technical standard included in the Annex to Directive 2009/45/EC be further clarified in cooperation with national experts.

Finally, the EESC believes that the new definition of ‘equivalent material’, especially the reference to ‘any other non-combustible material’, may be confusing as it does not adequately specify which type of material a material must be equivalent to in order to fall under the scope of the amended directive.

5.1.4. **New point (zd)** — The proposed definition of ‘pleasure yacht/craft’ reads ‘a vessel carrying no cargo and not more than 12 passengers not engaged in trade regardless of the means of propulsion’. The EESC believes that, for the sake of clarity, the present wording ‘passengers for commercial purposes’ should be retained.
5.2. **Article 3 — Scope**

5.2.1. Paragraph 1, point (a) — [This Directive applies to] 'new and existing passenger ships of 24 meters in length and above'. The proposal for amending Directive 2009/45/EC thus excludes all small ships, while the present regulation only excludes existing ships, not 'new' ships below 24 meters in length. See 5.1.1 above for the definition of 'new ship'.

5.2.2. The rationale given for the exclusion is that Directive 2009/45/EC currently applies only to 70 out of 1 950 small ships.

5.2.3. Another rationale given for the proposed exclusion is the principle of subsidiarity on the grounds that, as these ships are constructed for a wide range of services and establishing common set of rules will be extremely challenging, Member States would therefore be in a better position to regulate.

5.2.4. The EESC struggles to understand these arguments. If 96 % of the fleet of smaller ships are not covered by the directive as they are built from materials other than steel or equivalents or are ships operating exclusively in port areas etc., then exempting vessels below 24 meters is of no benefit to these ships. However, what about the other 4%?

5.2.5. If harmonised rules are not suitable for certain ships below 24 meters, then Member States are already free to allow exemptions under Article 9 of the directive. However, if the proposal for amending the directive on this point is accepted, there will be some ships measuring up to 24 meters in length that will no longer be covered by the directive.

5.2.6. A 24 meter passenger ship is not necessarily an insignificant vessel as it could accommodate up to 250 passengers on board. It could be argued that passengers should have the same right to safety regardless of whether their ship measures 23.9 meters or 24.1 meters in length. For these reasons, the EESC believes that the application to new ships below 24 meters in length should be retained and that Member States can continue to allow exemptions if they see fit.

5.3. **Article 5**

As regards the amendment to Article 5, paragraph 3 on inspection, the EESC is of the opinion that reference should also be made to ro-ro ferries and high-speed passenger craft on domestic voyage on a regular service as defined under the scope of the new proposed Directive (COM(2016)371 final) repealing Directive 1999/35/EC (see Article 1). With the aim of further rationalising the inspection effort of national administrations, maximising the time in which the ship can be commercially exploited and eliminating potential overlaps between the specific inspections under the proposed new directive (COM (2016)371 final) repealing Directive 1999/35/EC and the surveys required under Article 12, it is suggested to:

— replace term 'survey' by 'inspection' under Article 5, and
— make a clear reference under Article 5 to the inspection requirements under the proposed new Directive (COM(2016) 371 final) repealing Directive 1999/35/EC.

Brussels, 19 October 2016.

*The President*

of the European Economic and Social Committee

Georges DASSIS

[Rapporteur: Vladimír NOVOTNÝ](#)

Consultation
European Parliament, 09/06/2016
Council of the European Union, 22/06/2016

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Transport, Energy, Infrastructure and the Information Society

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Outcome of vote
(for/against/abstentions)
205/9/15

1. Conclusions and recommendations

1.1. The EESC believes that the proposed amendment will lead to improved safety for shipping, and particularly for travellers in EU waters, and will contribute to making rescue work more efficient in the event of shipping disasters.

1.2. The EESC supports adding nationality to the information registered so that, in the event of shipping disasters, families can be informed more quickly about relatives who were on board and uncertainty regarding their fate can be avoided.

1.3. The EESC, in line with the results of the Commission’s working consultation, points out the issue of small carriers and the need to protect them against increasing red tape. In the Committee’s view, the proposal ensures that competition in EU waters can continue on an equal footing for all operators.

1.4. The EESC appreciates the fact that the proposal for a directive is accompanied by an implementation plan listing the actions needed to implement the simplification measures and identifying the main technical, legal and time-related challenges connected with the introduction of these new procedures.

1.5. The EESC welcomes the proposal to amend Council Directive 98/41/EC as a significant contribution towards the implementation of the Commission’s Regulatory Fitness and Performance Programme (REFIT) and the programme to improve the EU’s regulatory environment.

2. Introduction

2.1. Following the fitness check on EU passenger ship safety, the European Commission is putting forward a set of proposals to simplify and streamline the existing regulatory framework for the safety of passenger ships in the EU, in order to prevent the potential overlap of obligations and inconsistencies between different pieces of legislation, while at the same time maintaining EU regulations and ensuring their correct application.
2.2. The aim of this package of proposals, which includes an amendment to Directive 2009/45/EC on technical requirements for passenger ships, a proposal for a directive to replace Directive 1999/35/EC on passenger ships providing a regular service, and, most importantly, an amendment to Directive 98/41/EC on the registration of persons sailing on board passenger ships, is to provide for a clear, simple and up-to-date legal framework that is easier to use, monitor and enforce, thus increasing the overall safety level in the shipping sector.

2.3. The proposed amendments are based on the Commission’s Regulatory Fitness and Performance Programme (REFIT) and contribute to the realisation of the programme to improve the EU’s regulatory environment.

2.4. The proposal delivers on the Commission’s Better Regulation Agenda by ensuring that the existing legislation is simple and clear, does not create an unnecessary burden and keeps pace with evolving political, societal and technological developments. It also seeks to deliver on the goals of the 2018 Maritime Transport Strategy by ensuring quality ferry services in regular intra-EU passenger transport.

3. The Commission document

3.1. Council Directive 98/41/EC provides for the counting and registration of all passengers and crew on board passenger ships operating to and from EU ports. According to the current requirements, this information has to be stored in the company’s information system and be readily available — at all times — for transmission to the competent safety authority responsible for search and rescue. The recorded data does not always include information on nationality (i.e. in addition to name, age and sex), making the assistance provided to potential victims and their relatives more difficult.

3.2. As a result, operators that already transmit such data to the National Single Window are exposed to a double reporting regime. The existing rules ignore the development of systems such as SafeSeaNet and the National Single Window and require the competent national authority to contact the shipping company in the event of an emergency. This is fully in line with the Commission’s REFIT programme and aims to exploit the digitalisation potential of recording, transmitting, accessing and protecting data.

3.3. An effective search and rescue operation requires immediate access to accurate data regarding the persons on board. The current wording of the directive does not guarantee this sufficiently. The Commission is therefore proposing to update, clarify and simplify the existing requirements for counting and registration of passengers and crew on board passenger ships in order to enhance the level of safety that they provide for.

3.4. The proposal’s requirement that information about the persons on board should be recorded in an existing electronic system (which in the event of an emergency allows the data to be immediately accessed by the competent authority) is seen as a leap forward in comparison to the current safety level, without generating significant costs for operators or authorised administrations.

3.5. The European Commission proposes eliminating the requirement for double reporting of passengers and aligning the existing reporting requirements for all operators, by enabling the information on the number of persons on board to be recorded in an existing electronic system. In the event of an emergency or accident, this allows data to be immediately transmitted to the competent authority instead of retrieved from the company system, prior to departure or arrival at any EU port. It also ensures that the required information on crew and passengers — for every voyage greater than twenty nautical miles — will be recorded in the same electronic system instead of in the company system, prior to departure or arrival at any EU port.

3.6. It also proposes the following provisions: avoiding overlaps and requiring — for every voyage greater than twenty nautical miles — the nationality of passengers to be registered and transmitted to the competent authority, using the same means and criteria as are in place for recording and transmitting the data on name, age, etc. (which is already required); clarifying the definitions of passenger registration requirements in Directive 98/41/EC, such as length of voyage; eliminating the requirement for the approval of the passenger registration systems from Directive 98/41/EC; and streamlining the reporting mechanism of exemptions/equivalencies under Directives 2009/45/EC and 98/41/EC. The proposal also refines the corresponding definitions and requirements of Directive 98/41/EC.
3.7. The proposal ensures that competition can continue to take place in EU waters on the same footing for all operators.

4. General comments

4.1. The EESC welcomes the proposal to amend Council Directive 98/41/EC as a significant contribution towards the implementation of the Commission's Regulatory Fitness and Performance Programme (REFIT) and the programme to improve the EU's regulatory environment.

4.2. The Committee considers that the proposed use of modern electronic communication methods for reporting is appropriate and will increase the efficiency and effectiveness of the system for registering and reporting persons sailing on board passenger ships.

4.3. The EESC believes that the proposed amendment will lead to increased safety for shipping in EU waters and will contribute to making rescue work more efficient in the event of shipping disasters.

4.4. The EESC supports the proposal to add nationality to the information registered so that, in the event of shipping disasters, families can be informed more quickly about relatives who were on board and uncertainty regarding their fate can be avoided.

4.5. The EESC welcomes the approach of the European Commission, which in the course of preparing the proposed amendment to the directive has carried out targeted consultations with professionals working in the shipping industry as well as representatives of the travelling public. The results of these consultations are summarised and evaluated in the Commission's working document, which is annexed to the proposal for amending Council Directive 98/41/EC. The conclusions of the consultations are incorporated into the proposed directive.

4.6. The EESC considers it necessary to reinforce protection of personal data that is subject to registration, as well as to completely modernise Directive 98/41/EC in keeping with the legal developments in the area of personal data protection, in particular the Regulation (EU) 2016/679.

5. Specific comments

5.1. In the EESC's view, concurring with the European Commission, the protection of personal information should be counterbalanced by requirements concerning the restricted accessibility of such data that is to be provided to the relevant national authorities upon request (the exchange mechanism in the event of an emergency or in the aftermath of an accident being the SafeSeaNet system as defined in Directive 2002/59/EC). Like the National Single Window, SafeSeaNet is based on EU law on the protection of personal data and provides for clearly defined security and access rights. The EESC recommends specifying the retention period in detail in the proposal for a directive.

5.2. The EESC feels that the proposed transmission to the National Single Window should rigorously ensure that the confidentiality requirements (as defined in Article 8 of Directive 2010/65/EU) are complied with and that data transmission complies with EU law on the protection of personal data.

5.3. The EESC, in line with the results of the Commission's working consultation, points out the issue of small carriers and the need to protect them against increasing red tape. For this reason the EESC supports the Commission's proposal, which should enable small carriers to satisfy registration requirements by using an internet connection as a cheaper and more flexible option, or choosing to transmit the number of persons on board via the Automatic Information System, a maritime broadcast system based on the transmission of very high frequency radio signals. This would allow the local search and rescue centre to easily retrieve the number of persons on board, at any point in time, regardless of the availability of a contact person.
5.4. The EESC appreciates the fact that the proposal for a directive is accompanied by an implementation plan listing the actions needed to implement the simplification measures and identifying the main technical, legal and time-related challenges connected with the introduction of these new procedures.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

[COM(2016) 371 final — 2016/0172 (COD)]
(2017/C 034/30)

Rapporteur: Jan SIMONS

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Section for Transport, Energy, Infrastructure and the Information Society

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19/10/2016

Plenary session No
520

Outcome of vote
222/2/6
(for/against/abstentions)

1. Conclusions and recommendations

1.1. The EESC welcomes as a whole the purposes of the Commission’s Regulatory Fitness and performance (REFIT) Programme with the overarching objective to provide for a clear, simple and consistent legal framework on passenger ship safety that is easier to implement, monitor and enforce, ensuring the overall safety level for passengers and the ship’s crews.

1.2. The EESC places great importance on having an EU inspection regime applicable to passenger ships operating both on domestic and/or international voyages maintaining an equal level playing field in EU waters for all passenger ships irrespective of their flag. Nevertheless, the EESC is of the opinion that the EU should primarily endeavour to maintain appropriate standards of maritime safety and marine environment protection at a global level, which in turn are applied to ships trading in EU waters.

1.3. The EESC considers that there is further need for clarification and for additional provisions under the new proposed directive in order to avoid any redundancy in inspections or impose unnecessary additional burden to Member State administrations, minimising a ship’s commercial operations or causing additional fatigue on crews. This includes the need for:

— Avoiding any potential redundancy in inspections between the new proposed directive and Directive 2009/16/EC on Port State Control;

— Appropriate coordination between Member State competent authorities in scheduling inspections.
1.4. Whilst the new proposed directive appropriately aims at reducing ship’s crew fatigue, the EESC recommends that compliance with the minimum requirements for seafarers to work on board a ship, including medical and training certification covered by STCW (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers), is essential in terms of maritime safety. Such a compliance should be assured in accordance with the existing international conventions such as the 2006 Maritime Labour Convention which is implemented into EU law with Council Directive 2009/13/EC.

1.5. In light of the above, the EESC recognises that the amount of clarification provisions will require both Member States and shipping companies to adjust their current processes. Consequently, the EESC would therefore support the role of EMSA and the use of the existing Passenger Ship Safety Expert Group (PSS EG) to the Maritime Safety Group in order to facilitate the implementation and transposition processes in conjunction with the corresponding expert groups dealing with Port State Control inspections and National Single Window implementation.

1.6. The EESC has seven specific technical comments to make. For these, please see section 5 of this opinion.

2. Introduction

2.1. Europe’s geographical configuration as a vast peninsula gives an indication of how crucial maritime transport services, including the carriage of passengers, are. More than 400 million people pass through EU ports every year, out of which 120 million are transported by domestic passenger ships. Hence the importance of ensuring the highest safety standards in EU waters, given that ship safety legislation has considerable implications, notably for the environment, labour laws, the mobility of EU citizens and the facilitation of trade in passenger vessels, since the latter meet the same standards across the EU.

2.2. Still etched in the collective memory — especially of those interested in shipping matters — are the tragic accidents of the deep sea ferries Herald of Free Enterprise and the Estonia, in 1987 and the night of 27 to 28 September 1994, respectively; the former was sailing out of Zeebrugge, Belgium, the latter out of Tallinn on course to Stockholm, foundering off the Finnish coast. The Herald of Free Enterprise hit a sandbank; 193 people were killed. In the Estonia, a record 852 people lost their lives. Cause: the bow doors through which people and vehicles are loaded and unloaded (roll-on-roll-off, hence the term RO-RO-ships) were not closed properly and ripped off in a heavy storm respectively. Consequence: the ships took on water and listed rapidly then capsized, all within half an hour.

2.3. Following the Estonia disaster, the International Maritime Organization adopted a series of amendments to the International Convention for the Safety of Life at Sea (SOLAS), including requirements to improve the stability of ro-ro ships when they are damaged.

2.4. However, incidents continue to occur, which has led Europe in the last two decades to introduce further rules for passenger ship safety, including some specific rules, such as the register of persons on board, alongside SOLAS on international journeys, which also cover journeys between two or more Member States, as well as many more EU rules for national journeys.

2.5. The proposals flow from the REFIT programme being carried out by the Commission in respect of this legislation on passenger ship safety. The abbreviation REFIT stands for Regulatory Fitness and Performance.

2.6. The aim was to simplify and streamline where possible existing European rules on passenger ship safety so as to:

— maintain EU rules only where necessary and proportionate;

— ensure correct, uniform implementation;
— eliminate overlaps and contradictions.

These aims reflect the EESC’s recommendations concerning ‘REFIT’, as set out in the recent exploratory opinion (SC/044, 26 May 2016).

2.7. This coherent package of proposals serves to achieve these objectives.

The package on passenger ship safety includes proposals for reviewing nearly all European safety regulations on passenger ships, excluding of course the purely technical Directive 2003/25/EC on specific stability requirements for ro-ro passenger ships.

2.8. The package comprises the following 3 proposals:

— to limit and clarify the scope of Directive 2009/45/EC (technical standards for seagoing passenger ships on national routes);

— to improve and clarify reporting obligations arising from Directive 98/41/EC (on the registration of persons sailing on board passenger ships) in relation to other instruments (Directive 2010/65/EU on reporting formalities and Directive 2002/59/EC on the Community vessel traffic monitoring and information system), as well as removing overlaps with these areas;

— to clarify and simplify the EU system of surveys and inspections for ro-ro-ferries (ferries capable of transporting cars and trains as well as passengers) and high-speed passenger craft.

2.9. It is this last proposal that is the focus of this opinion.

3. Summary of the Commission proposal for an inspection system

3.1. The aim of the proposal is to clarify and simplify the EU system of surveys and inspections for ro-ro-ferries and high-speed passenger craft, which are currently carried out in accordance with Directive 1999/35/EC (mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services) and Directive 2009/16/EC (port State control).

3.2. The proposal is in line with Directives 2009/21/EC and 2009/45/EC (flag State surveys of seagoing vessels making international and domestic voyages, respectively). Here again, it appears that the directive’s implementation varies from one Member State to another.

3.3. The proposal wishes to have the concept of ‘host State’ removed (under Directive 1999/35/EC, it is the host State or the State where the ship operates, under the flag of another country, that is responsible for inspecting ro-ro-ferries). Inspections are to be incorporated into the flag- and port-State control inspections. Finally, it is to be clarified when the 2 annual inspections stipulated in the current Directive 1999/35/EC should take place.

3.4. It is therefore proposed that Directive 2009/16/EC be amended and Directive 1999/35/EC repealed and that they be replaced with a new Directive. The key points of the new Directive are the following:

— to limit the scope of the directive to ships providing regular ro-ro ferry and high-speed passenger craft services between ports within a Member State or between a port in a Member State and a port in a third State where the flag of the vessel is the same as that of the Member State in question;

— to remove a number of redundant definitions and references such as ‘passenger’, ‘host state’, ‘international voyages’, ‘exemption certificate’, and to delete the reference to the investigation of marine casualties which is now covered by Directive 2009/18/EC of the European Parliament and of the Council;

— to provide for system of ship (rather than company) based inspections prior to the commencement of a regular service. The vessel must undergo an inspection in accordance with Annex II and a number of safety management issues set out in Annex I must also be verified;

— to stipulate that ships falling within the scope of the directive are inspected twice per year with a certain time-lag between inspections and that one of these inspections should be an in-service inspection during a regular crossing.
— to provide that Member States can, if they wish, combine the inspection with a flag State survey which would have to be
carried out in respect of a vessel on a yearly basis;

— to bring into line the provisions relating to the inspection reports, prohibitions of departure, appeals, costs, the
inspection database and penalties with those provided in Directive 2009/16/EC;

— to align the directive with the provisions of the Treaty on the Functioning of the European Union concerning the
exercise of the Commission’s powers in relation to delegated acts;

— to amend Directive 2009/16/EC to ensure that the current content and frequency of ro-ro ferries and high-speed
passenger craft inspections is maintained;

— to provide for assessment of the directive by the Commission.

4. General comments

4.1. The EESC welcomes as a whole the purposes of the Commission’s Regulatory Fitness and performance (REFIT)
Programme with the overarching objective to provide for a clear, simple and consistent legal framework on passenger ship
safety that is easier to implement, monitor and enforce, ensuring the overall safety level for passengers and the ship’s crews.
Consistently, these REFITs and evaluations also complement the objectives of the European Maritime Transport Strategy
COM(2009) 8 final to exploit the full potential of the growing demand for short-sea shipping and sea transport services for
business and citizens in Europe.

4.2. As evidenced by the accident statistics, the existing regulatory framework has achieved a high level of passenger ship
safety in EU waters. The EESC endorses the renewed emphasis placed on addressing specific safety-related characteristics of
ro-ro ferries and high speed passenger craft through the proposal for this new directive and amending Directive 2009/16/
EC. The REFIT outcome clarifies and simplifies the existing requirements under the current Directive 1999/35/EC surveys,
the expanded port state control inspections and the annual flag state surveys, while maintaining the same level of safety for
passengers travelling on ro-ro ferries and high speed passenger craft in regular service throughout the EU waters.

4.3. The EESC places great importance on having an EU inspection regime applicable to passenger ships operating both
on domestic and/or international voyages maintaining an equal level playing field in EU waters for all passenger ships
irrespective of their flag.

4.4. The EESC welcomes the fact that the envisaged simplification will not only provide further legal clarity but will
equally further rationalise the amount of inspections to be conducted by national administrations and, at the same time,
maximise the ship’s commercial operations.

4.5. Since 2009, the New Inspection Regime (NIR) under the Paris MoU has been focusing on the performance of
shipping by performing increased inspections for low standard ships and increased intervals for high standard ships. The
EESC acknowledges the above NIR achievement, especially considering that administrative burden has been a growing
concern for ships in short sea trade and that each additional inspection increases this burden.

4.6. The EESC stresses that compliance with the minimum requirements for seafarers to work on board a ship, including
medical and training certification covered by STCW, is essential in terms of maritime safety and therefore should be assured
in accordance with the existing international conventions such as the 2006 Maritime Labour Convention which is
implemented into EU law with Council Directive 2009/13/EC. This directive has also amended the specific legislation for
seafarers on working time, i.e. Directive 1999/63/EC aimed to protect the health and safety of seafarers by laying down
minimum requirements with regard to working time. In parallel, Directive 1999/95/EC aims to improve safety at sea,
combat unfair competition from third-country shipowners and protect the health and safety of seafarers on board ships
using EU ports.
4.7. The EESC recognises that the amount of clarification provisions will require both Member States and shipping companies to adjust their current processes. Consequently, the EESC would therefore support the role of EMSA and the use of the existing Passenger Ship Safety Expert Group (PSS EG) to the Maritime Safety Group (permanent expert group on maritime safety set up by DG Mobility and Transport) in order to facilitate the implementation and transposition processes in conjunction with the corresponding expert groups dealing with Port State Control inspections and National Single Window implementation. The EESC welcomes the opportunity recently offered to stakeholder’s organisations to take part in the PSS EG as such platforms of discussion, followed by the example of the European Sustainable Shipping Forum (ESSF), can prove very useful as it will bring together the European Commission, industry and NGO stakeholders and Member States competent authorities.

4.8. As for regular inspections under Article 5, it may happen that a regular ship subject to inspections under the scope of this proposed new directive may also be subject at the same time to port state control inspections carried out in accordance with Directive 2009/16/EC as amended by this directive through Article 14 on inspection of ro-ro ferries and high speed passenger craft in regular service. This proposed new directive should avoid, for the sake of rationalising, the potential redundancy in inspections between the two abovementioned directives.

4.8.1. Notwithstanding that the risk parameters in the current PSC system can imply that the ship is not eligible for an expanded PSC inspection at the time when this proposed new directive’s inspection is scheduled, appropriate coordination between Member States will however be required in order to satisfy the time-lag between the two inspections as required under Article 5 § 1(b).

4.8.2. Under Article 10 of the proposed new directive, the Commission is requested to establish an inspection database. Clarification should be made whether such an inspection database will be maintained in parallel to the Paris MoU-EMSA THETIS system, and in particular how inspections performed under this new directive, will influence the ship risk profile under Paris MoU.

4.8.3. In referring to Article 1 § 1, clarification should be made on the definition of ‘third State’ whether it means non-EU Member State or both EU Member State and non-EU Member State. The EESC understanding is that ‘third State’ should be defined as a non-EU Member State only in order to avoid confusion with ro-ro ferries and high speed passenger crafts subject to Port State Control inspections under Article 14 of this new proposed directive.

4.9. The EESC believes that the EU has primarily the role of ensuring that any amendments to the international instruments referred to in Article 2 of this new proposed directive will maintain an appropriate standard of maritime safety and marine environment protection at a global level. Therefore, the EESC finds that the provisions on possible future deviation from international legislation as referred under Articles 12 and 13 of the new proposed directive should be used as a last resort and should entail, as appropriate, European action to ensure that any conflict between the Community maritime legislation and international instruments results eventually into a compatible solution at international level.

5. Specific comments

5.1. As per definition of ‘regular service’ under Article 2(5)(a) and Article 14 of the new proposed directive, the EESC suggests clarifying the definition as follows: ‘according to publicly available or planned list of times of departures and arrivals’.

5.2. There are redundant and confusing requirements between the Pre-commencement inspections under Article 3 § 2 and Exception to the pre-commencement inspection obligation under Article 4 § 1. The EESC proposes merging these two paragraphs under a new Article 4 § 1 in order to refer consistently to the conditions for the ship to be dispensed with inspections provided that previous inspections or surveys of the ships are found satisfactory by the Member State. This new paragraph shall also refer to the pre-commencement inspections required for ro-ro ferries and high speed passenger craft under Directive 2009/16/EC as amended by Article 14 by the proposed new directive.
5.3. Whilst the proposed new directive establishes a procedure in case a replacement ro-ro ferry or high speed passenger ferry craft must be introduced rapidly following unforeseen circumstances (Article 4 § 3), the EESC proposes to have a dedicated procedure for a replacement ship for a limited time period, when paragraph 1 of Article 4 is not applicable, in case of scheduled maintenance of the ship on the regular service.

5.4. The regularity of the two annual inspections as required under Article 5 § 1(b) should be equally specified under Article 14a § 2 in order to ensure time wise a common safety level between this directive and Directive 2009/16/EC. Furthermore, the regularity of the two annual inspections which should be performed over a 12-month period is not specified for ships operating on seasonal service and should be further clarified.

5.5. The reference under Article 5 § 1(b) to the ‘sufficient number of the items listed in Annexes I and II’ to be covered by the inspection during a regular service is confusing. The EESC suggests that the inspector shall use his professional judgement to decide which items must be inspected, and to what extent, in order to check overall condition in these areas and avoid duplication of items that may have been already mandatory checked under other international regulations. It is suggested to make the same amendment to Article 14a § 2(b). Furthermore, Article 5 § 1(b) and Annex III could for the sake of clarity indicate that this is an in-service inspection that will take place during a regular crossing. In particular, in service inspections on very short-distance sea routes should be considered in both practical terms and the limited time available during the crossing.

5.6. Whilst clearly inspired by Article 19 on rectification and detention under Directive 2009/16/EC, the proposed new directive should specify that ‘when inspection is exercised under this directive, all possible efforts shall be made to avoid a ship being unduly detained or delayed’.

5.7. As ro-ro ferries and HSC are defined separately under Article 2 of the proposed new directive, the EESC suggests for clarity purposes to always and exclusively refer to ‘ro-ro ferry and high speed passenger craft’. Recital (6) of the proposal should therefore be amended accordingly.

Brussels, 19 October 2016.

The President
of the European Economic and Social Committee
Georges DASSIS

[COM(2016) 547 final — 2016/0261 (COD)]

(2017/C 034/31)

Consultation Council, 07/09/2016
Legal basis Article 148(2) of the Treaty on the Functioning of the European Union

[COM(2016) 547 final — 2016/0261 (COD)]
Section responsible Employment, Social Affairs and Citizenship
Adopted in plenary 19/10/2016
Plenary session No 520
Outcome of vote 228/2/5
(for/against/abstentions)

Since the Committee unreservedly endorses the content of the proposal and has already set out its views on the subject in its Opinion on new psychoactive substances (EESC-2013-06166-00-00-AC-TRA), adopted on 21 January 2014 (1), it decided, at its 520th plenary session of 19 and 20 October 2016 (meeting of 19 October) to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned document.

Brussels, 19 October 2016.

The President of the European Economic and Social Committee
Georges DASSIS

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