

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

510ST PLENARY SESSION OF THE EESC ON 16 AND 17 SEPTEMBER 2015

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: Better regulation for better results — An EU agenda

(COM(2015) 215 final)

(2016/C 013/28)

Rapporteur: Bernd DITTMANN

On 1 June 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better regulation for better results — An EU agenda

(COM(2015) 215 final).

The Subcommittee on Better Regulation, set up under Rule 19 of the Rules of Procedure, which was responsible for preparing the Committee's work on the subject, unanimously adopted its draft opinion on 2 September 2015.

At its 510th plenary session, held on 16 and 17 September 2015 (meeting of 16 September 2015), the European Economic and Social Committee adopted the following opinion by 174 votes to 3, with 9 abstentions.

1. Conclusions and recommendations

1.1. Better and smart regulation is a common task for all the European institutions and the Member States, the main aim being to improve the quality of European legislation to the benefit of the public, business, consumers and employees. Better regulation does not, however, replace political decisions. Better regulation is a process under constant development. In this way much has been achieved, but there is still room for improvement.

1.2. The EESC has been closely concerned with the issue of better regulation for some considerable time, as can be seen from the list of the main opinions on better regulation ⁽¹⁾. It therefore has a special responsibility for securing civil society's support for and acceptance of European law and better regulation.

1.3. The EESC notes that the role and function assigned to it in the EU Treaties and the cooperation agreements with the European Commission and the European Parliament (EP) have not been given sufficient consideration within the better regulation agenda. It calls for the EU's consultative bodies to be included in the Interinstitutional Agreement on Better Regulation (IIA).

1.4. The EESC supports the comprehensive involvement of stakeholders through consultations throughout the lifecycle of a political initiative and therefore refers to its opinion on the evaluation of consultation guidelines. It wishes to stress that, in its view, selecting the right target groups and taking account of the representativeness of stakeholders are key elements of better regulation which should be improved.

⁽¹⁾ <http://www.eesc.europa.eu/?i=portal.en.int-opinions&itemCode=36193>

1.5. In selecting experts for the Regulatory Scrutiny Board, REFIT platform and for all other bodies, hearings, workshops and other situations, the EESC believes that the greatest possible independence, impartiality and transparency should be ensured.

1.6. The EESC calls for the inclusion of self- and co-regulation in the IIA, which should be considered on an equal footing alongside regulatory measures in order to resolve political issues.

1.7. The EESC calls for informal trilogues to be reserved for particular emergencies and for the majority of legislation to be decided via the ordinary legislative procedure.

1.8. The EESC calls for a stronger Commission focus on shortcomings in the transposition and application of EU law by the Member States and urges the use of regulations instead of directives.

2. The better regulation agenda — a general assessment

2.1. The EESC is convinced that better regulation measures and instruments should help to improve the quality and effectiveness of European legal acts and to establish simple, easily understandable and consistent rules that contribute to the achievement of the objectives set out in the EU Treaties and, in particular, to strengthening and completing the European single market, while providing added value for the public, businesses, consumers and employees in Europe.

2.2. Europe is a common legal area, which must guarantee an effective, reliable and applicable legal framework. The concept of better regulation, which is intended to focus both on ex ante measures at EU level and on the consistent transposition and application of EU law in the Member States, and which provides for better regulation measures throughout the entire life cycle⁽²⁾ of a legal act, will be of value to European integration and to the public, as long as not only are new technocratic procedures and instruments introduced, but in addition all European institutions and Member States commit to establishing a better regulation culture.

2.3. The Commission is presenting its communications and the related documents as a new beginning. The proposals can certainly be described as ambitious. The Committee would like to point out, however, that better regulation is not a new issue, but has been discussed and developed for many years. Improvements achieved through it have helped to ensure that EU law is generally of high quality, to the benefit of the public, business, consumers and employees in Europe. The EESC considers that, in comparison with the national legislators or the international level, the mechanisms and established procedures at EU level work well in ensuring high-quality legislation⁽³⁾. As this opinion will show, however, there continues to be room for improvement. The EESC acknowledges, however, that, with the help of better regulation, much has already been achieved.

2.4. Against the background of increasing criticism of the concept of better regulation, the EESC stresses that, in its view, it is not intended to be about 'more' or 'less' regulation in the EU, or about deregulating specific policy areas or giving other areas greater priority and thus calling into question the values for which the EU stands: social protection, environmental conservation and fundamental rights⁽⁴⁾. Better regulation is first and foremost a tool for ensuring that evidence-based political objectives can be achieved effectively, in the light of these values, without environmental or consumer rights or social standards being restricted or the shifting of responsibilities within the institutional structure by the establishment of new bodies. Better regulation cannot and must not be substituted for political decisions.

⁽²⁾ The life cycle embraces the emergence of an initiative at the Commission from the preparatory stage, through the drafting stage, the adoption of the proposal by the Commission, the legislative procedure, the entry into force of the legal act, transposition and application by the Member States, evaluation by the Commission, scrutiny under the REFIT programme and, if appropriate, the updating, revision, withdrawal and resubmission of a proposal.

⁽³⁾ *European Court of Auditors Report 2010: Commission's system represents EU and international best practice in terms of its transparency and its comprehensiveness.*

⁽⁴⁾ COM(2015) 215 final.

2.5. The EESC is actively cooperating in the area of the democratic shaping and implementation of EU law. The EESC has for many years done extensive work on the subject of better regulation and has drawn up a series of opinions that contain specific recommendations for the further development of this concept. A list of these recommendations is available ⁽⁵⁾ and is intended to be used as a source of ideas and inspiration for the further improvement of the better regulation agenda. This shows that the EESC has a special responsibility for securing civil society's support for and acceptance of the objectives of better regulation. The Committee is also willing to make its contribution to transparent, democratic and consistent better regulation.

2.6. The EESC finds it regrettable that the Commission Communication and the entire better regulation package take insufficient account of the role, function and representative nature of the EESC, as enshrined in the Treaties, and thus fail to exploit the potential for making use of the expertise and knowledge of the Committee's members and doing justice to the EESC's function. The EESC is involved in the better regulation agenda only in the context of the REFIT platform (ex post), which inadequately reflects the Committee's tasks and its responsibility for strengthening the democratic legitimacy and effectiveness of the institutions.

2.7. The EESC therefore asks to be appropriately taken into account in the better regulation agenda. This opinion contains proposals as to how and in which areas the EESC should be involved.

3. Interinstitutional Agreement — towards a common culture of better regulation

3.1. The Commission communication looks at the planned IIA measures. The EESC considers the proposal for an IIA to be one of the key elements of the better regulation agenda. The European Commission should be supported in its efforts to constantly promote the objectives of better regulation, involving the whole of civil society. But for this, the support of the legislative authorities, the Council and the EP, is in particular required. The proposal for an IIA is ambitious and can only succeed if there is a clear commitment on the part of all institutions to the objectives and content of better regulation and to consistent application of the proposals contained in the IIA in the light of the EU Treaties. Failure of the negotiations would be a major setback, potentially undoing even the commitments of the IIA of 2003.

3.2. Although the role and importance of the EESC is recognised by the EP ⁽⁶⁾, no account is taken in the IIA of the EESC or the CoR or of the function and role assigned to them by the Treaties. This is unacceptable.

3.3. Provided it is consulted in good time by the Commission, the Committee is ready to support the EU institutions with measures for improving regulation, to develop new ideas, to comment extensively on planned initiatives within its remit, to ensure they are of high quality and, where appropriate, to follow up the EU initiatives or, in specific cases, to act as a testing body for planned initiatives.

3.4. The EESC therefore calls for both EU consultative bodies to be included in the IIA in relation to the better regulation measures assigned to them in the EU Treaties and in the cooperation agreements with the Commission and the EP.

3.5. The specific substantive content of the IIA will be assessed in an own-initiative opinion once the IIA has been adopted by the Council and the EP.

4. Assessment of the communication on the better regulation agenda

4.1. Change in the way of working at European level

4.1.1. With its new internal configuration and the gearing of its measures to political guidelines, the establishment of a consistent EU-level work programme and greater interaction with the institutions, the Commission is seeking to achieve better regulation and better results.

⁽⁵⁾ <http://www.eesc.europa.eu/?i=portal.en.int-opinions&itemCode=36193>

⁽⁶⁾ Report on the regulatory fitness and performance programme (REFIT): State of Play and Outlook (2014/2150 (INI); Rapporteur: Sylvia Yvonne Kaufmann, point 19.

4.1.2. The EESC is pleased that the Commission has entered into a structured exchange with the Council and the EP on the annual work programme and multi-annual programming and, in accordance with the cooperation agreement, is consulting the EESC prior to the publication of the annual work programme. The exchange should cover the entire programming cycle and, through a regular dialogue between the EESC, the EP, the Commission and the Council, generate synergy effects, by ensuring that the work programme's measures can be monitored after their adoption and general cooperation improved. The EESC suggests that the planning of new initiatives and priorities should also take account of existing strategies and integration plans (such as, for example, the Europe 2020 strategy, the annual growth programme and the European Semester/country-specific recommendations) and include detailed information on how the planned measures are to be integrated into the existing strategies and can reflect their objectives. This will prevent certain policy areas and objectives being assigned higher or lower priority than existing strategies.

4.2. *Better consultation, more openness and transparency*

4.2.1. The Commission is planning to involve stakeholders throughout the entire life cycle of a policy measure through consultations. Road maps, initial impact assessments, legislative acts adopted by the Commission, ex post evaluations and fitness checks, as well as draft delegated legal acts and implementing acts, should be the subject of consultation with stakeholders. Statements of the reasoning behind legal acts are also to be improved.

4.2.2. The objective of greater transparency and a stronger involvement of stakeholders throughout the whole life cycle of a legal act is in principle welcomed by the EESC. The EESC has consistently stressed the importance of intensive and comprehensive consultation of all stakeholders⁽⁷⁾, which can contribute to the quality and suitability of legislation and make it possible to find a middle way between the achievement of political objectives on the one hand and streamlining administration on the other. Better consultation will raise awareness and so improve application⁽⁸⁾.

4.2.3. In July 2015, in an opinion on evaluation of European Commission stakeholder consultations⁽⁹⁾, the EESC put forward proposals for improving arrangements for consulting stakeholders, which are referred to in detail in this opinion. The EESC acknowledges, in this connection, that the guidelines are on the whole a good basis for carrying out high-quality consultations. As the opinion referred to above clearly shows, however, there are still many (also current) cases in which the new guidelines are not being consistently applied by the Commission's responsible departments. The EESC therefore urges that the application of the guidelines as quality standards for the consultation of stakeholders be made mandatory within the Commission.

4.2.4. Properly determining the target group of a consultation is essential to obtaining the necessary information. Within the limits of its remit and by cooperating effectively with the organisations concerned and the Commission, the EESC could help identify representative organisations within certain target groups⁽¹⁰⁾. The EESC considers that the enhanced mechanisms for consultation of stakeholders make it necessary to ensure transparency in the selection of experts in forums, conferences, workshops, etc. Similarly, there must be greater emphasis on the representativeness of the stakeholders and qualitative and quantitative weighting in the assessment of findings, depending on whether a response comes from an individual or an organisation representative of civil society. A correspondingly higher weighting should be given to feedback from an organisation.

4.2.5. The quality of questions (often suggestive), their selection and the Commission's feedback mechanisms often leave much to be desired⁽¹¹⁾. The EESC has tabled a comprehensive set of proposals on how these shortcomings can be remedied⁽¹²⁾. When questionnaires for consultations are being drawn up, it could, for example, influence the questions by submitting proposed questions, or be used regularly as a testing body to check whether the questions are relevant. Examination and monitoring of consultations and the development of an appropriate observatory by the EESC⁽¹³⁾ could make a suitable contribution to enhancing the quality of consultations.

⁽⁷⁾ OJ C 48, 15.2.2011, p. 48.

⁽⁸⁾ EESC opinion on the 'Evaluation of European Commission stakeholder consultations' (OJ C 383, 17.11.2015, p. 57).

⁽⁹⁾ See footnote 8.

⁽¹⁰⁾ See footnote 8.

⁽¹¹⁾ See footnote 8.

⁽¹²⁾ See footnote 8.

⁽¹³⁾ See footnote 8.

4.2.6. Appropriate time-frames for consultations are also important. The regulatory process should not be unnecessarily lengthened by consultations; otherwise periods of four, eight or 12 weeks for consultations on complex or very technical initiatives could be too short to collect relevant feedback. Structured and constantly updated planning of consultations (in the Commission's roadmaps) and the publication of their objectives, including a reliable time-frame, could help stakeholders to prepare their participation.

4.2.7. In order to further increase transparency and clarity for stakeholders, the EESC suggests that all current consultations by EU institutions, agencies and downstream bodies⁽¹⁴⁾, including consultations on delegated and implementing acts, be presented in a clear and uniform way on the central Commission website for consultations⁽¹⁵⁾ and be more effectively publicised throughout Europe in the framework of a comprehensive communication strategy.

4.2.8. Consultation on delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU) is particularly welcomed. Lack of transparency, obvious legal uncertainty and inadequate political control of the system of prior consultation on regulatory acts are quite rightly often criticised⁽¹⁶⁾. The EESC also calls for the introduction of a register of delegated acts, on the model of the comitology register. The use of delegated and implementing acts must be strictly limited and properly justified. Downstream measures must be consistently guided by the basic legal act. Political decisions must not be undermined by delegated and implementing acts.

4.2.9. Care should also be taken to ensure that there is no overlap between consultations or content of delegated and implementing acts and consultations on guidelines of EU agencies or their content.

4.2.10. In principle, consultations of the social partners — in accordance with the procedures on social dialogue laid down in the EU Treaties (Article 154, 155 TFEU) — should be distinguished from public consultations of all civil society stakeholders under Article 11(3) TEU. Both have their specific roles and different forms of legitimacy.

4.2.11. It is true that the text of the better regulation toolbox points out that social partner consultations must not fall below the minimum standards for consultations and thus the requirements for public consultations. The EESC would, however, like to emphasise that the communication must under no circumstances be used as a pretext for consultations of European social partners or their results being subject to ex ante or ex post checks by public consultations. Social dialogue is a special procedure provided for in the TFEU⁽¹⁷⁾, which must be respected. Public consultations cannot therefore be a substitute for social partner consultations⁽¹⁸⁾. The implementation of the results of the social partner agreements must be ensured in accordance with the requirements of Article 155 TFEU⁽¹⁹⁾.

4.3. *Better tools for better solutions*

4.3.1. The Commission will apply the new integrated guidelines on better regulation⁽²⁰⁾ to new measures, commits itself to testing non-legislative measures, such as co- and self-regulation, and will pay particular attention to the 'think small' principle, the 'SME test' and the possibility of exempting micro-enterprises from certain European requirements.

4.3.2. The EESC welcomes the fact that the better regulation guidelines have been drawn up, revised and clarified in a consolidated version, complemented by a toolbox. The EESC considers that these instruments could make a significant contribution to better regulation, provide broad support to, and enable consistent application by, Commission staff through their uniform presentation in a document. The Secretariat-General should ensure compliance by all the Commission's departments.

⁽¹⁴⁾ In particular, for example, the European supervisory authorities (EIOPA, ESMA, EBA).

⁽¹⁵⁾ http://ec.europa.eu/yourvoice/consultations/index_en.htm

⁽¹⁶⁾ EESC opinion on Delegated Acts (see page 145 of this Official Journal).

⁽¹⁷⁾ Articles 154(2) and (3) TFEU.

⁽¹⁸⁾ Report of the EP Committee on Legal Affairs on the regulatory fitness and performance programme (REFIT): State of Play and Outlook (2014/2150 (INI)), point 10.

⁽¹⁹⁾ Negative example: Hairdressing Agreement.

⁽²⁰⁾ SWD (2015) 111.

4.3.3. The Commission reiterates that the guidelines on better regulation should ensure that 'keeping the EU competitive and the EU's sustainable development remains a priority in all we do' ⁽²¹⁾. EU action should strike a balance between the overarching objectives of the EU and promoting competitiveness. For its part, the EESC calls for any legislative or non-legislative proposal to be subject to effective and consistent scrutiny, in line with the objectives of Article 3 TEU, and for regular 'competitiveness checks' to be carried out.

4.3.4. The EESC has always called for the procedure to be made more transparent and for economic, social, environmental and consumer considerations always to be considered in a more balanced way ⁽²²⁾. This should be consistently checked in the context of each *impact assessment*. The EESC could contribute to a balanced assessment of these instruments and procedures in the context of its competences.

4.3.5. Legislation should in principle be drawn up in such a way that it may be applied to all businesses equally. The Commission's renewed commitment to the 'think small first' principle and taking account of SME interests (including micro-enterprises) is to be welcomed.

4.3.6. It is beyond dispute that regulation by legislation is necessary for businesses of any size but it often causes problems when setting up and managing small companies, especially micro-enterprises. The EESC points out that micro-enterprises should not be given blanket exemptions. Rather, a case-by-case approach should be adopted to legislative proposals, following on from a thorough impact assessment exercise ⁽²³⁾. The interests of micro-enterprises must be respected in this process, and the rights of employees and consumers must not be restricted.

4.3.7. The EESC welcomes the replacement of the *Impact Assessment Board* by a Regulatory Scrutiny Board and urges that the greatest possible transparency, impartiality and independence of the experts be ensured. The presence of external experts is a step in the right direction. This will make the body more impartial; at the same time, the extension of its remit to include evaluations and fitness checks should make for greater coherence and synergy in impact assessments. But the aim must still be to establish a single independent impact assessment body acting for all EU institutions, engaging in exchange with the established consultative bodies, the EESC and the CoR. This independent body should make use of external experts, have an external chair and carry out checks on Commission proposals ⁽²⁴⁾. The Commission should make it clear that its goal is an independent, external body and that the current composition should be regarded only as a further interim step. This could ensure transparency and expertise and prevent EU legislation from being driven by special interests.

4.3.8. The EESC has highlighted the importance of self-regulation and co-regulation and their specific features in studies ⁽²⁵⁾ and opinions ⁽²⁶⁾ as a case of 'horizontal subsidiarity' ⁽²⁷⁾. The 2003 IIA on better law-making contained a specific chapter on this issue. The Committee also considers that, in some cases, self-regulation or co-regulation might prove to be an effective means of prevention or useful complement to legislation duly framed in a broad legislative framework that is clear, well-defined and rooted in the principles of transparency, independence, efficiency and accountability ⁽²⁸⁾.

4.3.9. More transparency through the application of better regulation measures is needed, particularly in the light of the huge increase in the use of informal trilogues ⁽²⁹⁾. This could be achieved if the results of a trilogue meeting were published before adoption by the Council and the EP. Whilst recognising that the legislative process is intended to be accelerated by the use of trilogues, this gives rise to the fundamental problem of the current legislative practice, the fact that 'negotiating boxes' containing different legal acts are repeatedly put together by the Member States in the Council in order to obtain majorities for individual directives. Too often, this happens in a non-transparent way under great time pressure and without sufficient involvement of experts from the Member States, the EP or the Commission, and without adequate analysis of the effects of key elements of these 'negotiating boxes'. This is not without implications for the quality and transparency of legislation.

⁽²¹⁾ COM(2015) 215 final, point 3.1.

⁽²²⁾ OJ C 230, 14.7.2015, p. 66.

⁽²³⁾ OJ C 327, 12.11.2013, p. 33.

⁽²⁴⁾ See footnote 23.

⁽²⁵⁾ <http://www.eesc.europa.eu/?i=portal.en.int-opinions.32948>

⁽²⁶⁾ OJ C 291, 4.9.2015, p. 29.

⁽²⁷⁾ See footnote 23.

⁽²⁸⁾ OJ C 230, 14.7.2015, p. 66, point 5.10.

⁽²⁹⁾ This applied to 80 % of legislation during the last EP term of office.

4.3.10. Therefore, in the context of the better regulation procedure, it needs to be ensured that informal trilogues are reserved for particular emergencies and that the great majority of legislation takes place via the ordinary legislative procedure. Only this will ensure full democratic legitimacy and participation.

4.4. *Strengthening of ex post evaluation, the REFIT programme and the REFIT platform*

4.4.1. The Commission also suggests placing an increased focus on evaluation and assessment of legislative acts throughout their whole life-cycle, making the REFIT programme more goal-orientated, embedding it in the work programme and carrying out fitness checks. The transposition of legislative acts is to be improved and a REFIT platform established, on which the EESC will have a seat.

4.4.2. The EESC welcomes the Commission's proposal to place emphasis on evaluations and to involve other EU institutions and civil society in this process. Ex post evaluations, in which the stated objectives are compared with the observed results, are important analytical tools, especially in the light of the fact that, in accordance with the life cycle model of a legal act, the conclusions drawn from evaluations can flow directly into a possible impact assessment of the revision of a legislative act. It welcomes the fact that the representatives of organised civil society, representatives of business, employees and consumers, who are normally the addressees of legislative acts, are to be involved in this process through targeted public consultations. The EESC points out, however, that evaluations should only be carried out after a reasonable period of implementation of a legal act to enable relevant data and information on its effect to be collected⁽³⁰⁾.

4.4.3. The EESC's involvement in this process is essential. The cooperation agreements with the Commission and the EP provide for involvement of the EESC in this respect, which could moreover lead to synergies in cooperation with the EP. In the light of the life cycle model of a legal act described above, this would ensure that the EESC's input is taken into account at an early stage. The EESC could, where necessary, carry out its own assessments, present the results in the REFIT platform with other stakeholders and the Member States, as well as the Commission, and thus improve its cooperation with the institutions and provide suggestions for evaluations for the REFIT programme. The inclusion of the REFIT programme in the Commission's successive annual work programmes would ensure a further EESC contribution to programming.

4.4.4. The EESC welcomes the Commission's efforts to improve the procedures and instruments of the REFIT programme. In this connection it refers to its previous opinions⁽³¹⁾.

4.4.5. It is already everyday practice for the Commission to repeal certain obsolete legal acts, and this should be continued. The carrying-out of fitness checks is also endorsed in principle⁽³²⁾. The Commission should present and publish all completed, ongoing and planned fitness checks on a website in a transparent way.

4.4.6. The establishment of a REFIT platform involving the EESC is expressly welcomed. The platform is to collect and analyse proposals on streamlining administration arising from Union rules and their transposition and application in the Member States. The EESC calls for balanced composition of the group of stakeholders; the success of the platform will depend on this. The EESC is represented by a high-level expert in the stakeholder group. However, the Commission should clarify how the representative mandate of the EESC and the CoR will relate to the REFIT platform. The specific institutional role of the EESC and the CoR should be taken into account, in comparison with other stakeholders. The participation of Member States in this body is in principle welcome; this should make it possible to engage in an exchange with the Member State representatives at any given moment. The EP should be regularly informed of the work of the REFIT platform and have the possibility to participate in the annual meeting of the platform.

⁽³⁰⁾ See footnote 22.

⁽³¹⁾ See footnote 22.

⁽³²⁾ See footnote 23.

4.4.7. In the view of the EESC, one of the main weaknesses of the European better regulation agenda is that the Member States are not sufficiently involved. This is not only a problem for the Member States but also for the EU; it is therefore hardly surprising that the Member States, in the absence of careful, evidence-based transposition measures and plans, as well as measures for effective application, sometimes transpose legislation hesitantly, late or not at all.

4.4.8. It is regrettable that the Commission communication does not address this issue or make proposals as to how these problems can be remedied. In 2013, for example, 1 300 Treaty infringement proceedings were brought against Member States. Currently infringement proceedings for late implementation are less of a problem (at the end of 2013 there were 390 cases pending); rather, as in 2012, most infringements (62 % of all cases) concerned non-compliance with EU law in the areas of the environment, taxation, transport and the single market and services⁽³³⁾.

4.4.9. One option would be for the Commission to place more emphasis on public information, as ultimately it is the governments of the Member States, which are transposing legislation incorrectly, late or not at all, which also adopted this same legislation in the Council. They are responsible for the universally poor application of the Community *acquis*, which is confirmed anew every year in the reports on the application of EU law. The Commission should also examine systematically what measures are essential for effecting a radical change in the current situation and should take account of earlier EESC proposals⁽³⁴⁾.

4.4.10. Where there is a need for regulation, it should be assessed on a case-by-case basis (depending on the relevant content and background) whether directives or regulations are more suitable. In order to avoid differing transposition measures or gold-plating⁽³⁵⁾, for example, greater use should be made of regulations as opposed to directives⁽³⁶⁾. This would make for greater legal clarity and certainty.

4.4.11. The transposition and application of EU legislation are key indicators for its later evaluation, which should be carried out by the respective governments. The requirement for the Commission to draw up implementation plans for major directives⁽³⁷⁾, where supporting Commission measures are intended to facilitate transposition in the Member States, is a welcome aspect of the new better regulation package. This includes the possibility for the Commission to ask Member States to submit explanatory documents on the national transposition strategy and to carry out a two-stage conformity assessment. The EESC considers that this is definitely a step in the right direction. How successfully these measures will function in practice remains to be seen.

Brussels, 16 September 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽³³⁾ 31st Annual Report on Monitoring the Application of EU Law (COM(2014) 612 final).

⁽³⁴⁾ See footnote 22.

⁽³⁵⁾ The EESC is finalising its own study on the subject, which deals with it in a comprehensive manner.

⁽³⁶⁾ Compared with the 2000-2004 legislative period, when more directives than regulations were used (155 regulations: 191 directives), in the last legislative period (2010-2014) there was a clear shift towards the use of regulations (383) in place of directives (136).

⁽³⁷⁾ Better Regulation Guidelines (SWD(2015) 111 final), Chapter IV:
http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf

ANNEX

Text of the Committee's draft opinion which was rejected in favour of an amendment adopted by the plenary assembly:

Point 4.3.10

The EESC acknowledges the initiative whereby relevant amendments tabled in the Council and the EP would be subject to impact assessments (an element of the 2003 IIA), as this could significantly improve quality of legislation. At the same time, it regrets that the Commission communication does not sufficiently address this issue. Therefore, in the context of the better regulation procedure, it needs to be ensured that informal trilogues are reserved for particular emergencies and that the great majority of legislation takes place via the ordinary legislative procedure. Only this will ensure full democratic legitimacy and participation.

Outcome: rejected by 106 votes to 59, with 19 abstentions.
