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## I

(Resolutions, recommendations and opinions)

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 495TH PLENARY SESSION OF THE EESC ON 21 AND 22 JANUARY 2014

**Opinion of the European Economic and Social Committee on ‘Collaborative or participatory consumption, a sustainability model for the 21st century’ (own-initiative opinion)**

(2014/C 177/01)

Rapporteur: **Bernardo HERNÁNDEZ BATALLER**

On 14 February 2013 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

*Collaborative or participatory consumption, a sustainability model for the 21st century.*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 121 votes to 2 with 3 abstentions.

**1. Conclusions and recommendations**

1.1 Collaborative or participatory consumption is spreading to a growing number of communities and cities around the world, which are using technological networks to do more with less, through activities such as hiring, lending, exchanging, bartering, giving away or sharing products on a previously unimaginable scale.

1.2 The economic impact of this <sup>(1)</sup> goes hand in hand with a conceptual shift regarding labour, according to which collaborative or participatory consumption is viewed as a major potential source of jobs in the coming years.

1.3 Collaborative or participatory consumption therefore represents an innovative complement to a production economy in the form of a use-based economy offering economic, social and environmental benefits. It also offers a way out of the economic and financial crisis, by enabling people to exchange things for others that they need.

1.4 Given the complexity and importance of the emergence of collaborative or participatory consumption, the relevant institutions need, on the basis of the necessary studies, to regulate the practices carried out within these forms of consumption, in order to establish the rights and responsibilities of all the stakeholders involved. Firstly, collaborative or participatory consumption can meet social needs in situations where there is no commercial interest and, secondly, it can help, as a for-profit activity, to create jobs, while complying with the rules on taxation, safety, liability, consumer protection and other essential rules.

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<sup>(1)</sup> <http://www.web-strategist.com/blog/2013/07/27/collaborative-economy-industry-stats>.

1.5 The Commission should address the issue of collaborative or participatory consumption in its work programme, tackling it in different stages:

- As a first step, the basic rights and principles already enshrined in EU law to protect the public should be compiled, as has been done for the EU code of online rights.
- Next, the relevant studies need to be drawn up. This is an essential step to enable the Commission to identify any potential barriers to the operation of these activities and any problems that would need to be solved, emphasising the European added value of adopting a measure with European scope. The Commission would have to allocate sufficient financial resources to this, via both DG SANCO and DG JUSTICE.
- A database containing exchanges of experiences and best practices in collaborative or participatory consumption should also be set up and made accessible to all consumers. The Commission could also organise awareness-raising and information campaigns on these forms of consumption.
- Lastly, and on the basis of the experience that is gained, it could endeavour to harmonise legislation on cross-border issues and those bringing European added value to the matter.

## 2. Introduction

2.1 The gradual depletion of the current system and its inability to meet people's individual and collective demands suggest a need for alternatives that reflect the requirements and challenges posed by a future anchored in digital networks.

2.2 This own-initiative opinion is in line with the provisions of the Europe 2020 Strategy, which proposes that the consumption of goods and services should take place in accordance with smart, sustainable and inclusive growth and should also have an impact on job creation, productivity and economic, social and territorial cohesion. Other EU strategies also have a direct or indirect impact on the field of collaborative consumption, such as the Communication on the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan <sup>(2)</sup>, the Social Innovation Europe initiative and the Digital Agenda for Europe.

2.3 Collaborative or participatory consumption could prove resilient in the current economic and financial climate, and provide a response to the growing uncertainties caused by the economic crisis. It could also represent an opportunity to get back on track towards sustainable economic, social and human development in an environmentally-friendly way.

2.4 Moreover, the excesses of hyper-consumption have helped produce an inequality gap between producing and consuming regions, where social exclusion and obesity, and waste and deprivation, exist unhappily side by side. Collaborative or participatory consumption can offer an additional market tool for kick-starting and regenerating the single market, cleaning it up and making it more balanced and sustainable, provided that it has fixed structures.

2.5 Overproduction and overconsumption are clearly unsustainable. Collaborative or participatory consumption thus promotes cooperative values and solidarity in practice. Forbes magazine recently estimated that revenue streams in collaborative consumption will exceed USD 3,5 billion this year, which represents an increase of over 25%.

2.6 Supply and consumption are thus viewed not simply as the ownership of goods but as shared access to their benefits, in order to meet real needs and secure the personal fulfilment that is worlds apart from symbolic consumption and the pursuit of artificially created desires.

2.7 While in conventional consumer society, products are intended for individual ownership, rapid consumption and early disposal, the hallmark of collaborative or participatory consumption is the creation of durable products designed for intensive use either by several people or throughout the life of a single consumer or user, leading to more environmentally friendly behaviour in terms of the life cycles of the goods that people use. The new technologies (both peer-to-peer and social networks) demonstrate the importance of both virtual and real communities.

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<sup>(2)</sup> COM(2008) 397 final.

2.8 The economic crisis is boosting the trend of people owning less, watching their spending and keeping an eye on value for money when considering their needs, on the understanding that accumulating possessions is not going to guarantee their wellbeing.

2.9 The key issue is linking people who need access to a resource with others that have these resources, which are under-used and can be borrowed, given away, swapped, rented, etc. This relationship is based on a sense of community, sharing and participation among users, where trust is the link making it possible to establish connections, develop an alternative form of consumption and, over the long term, maintain the relationships that are created. All this must take place in a context of transparency, especially as regards financial matters and in terms of the responsibility of the platforms that promote collaborative consumption.

2.10 The power of collaboration and sharing through technology will consequently change the way we think about ownership and business relations <sup>(3)</sup>. The product is no longer just sold, but is also hired, redistributed or shared, as occurs with services.

2.11 Consumers want to own less but gain more. The perceived rational benefits all centre on reduction and practicality, but the emotional ones deliver affirmation and a sense of belonging <sup>(4)</sup>. By offering convenient and often cheaper alternatives, collaborative consumption initiatives make the best use of existing resources and prevent the unnecessary manufacture of new products. In short, sharing is both financially sound and sustainable.

2.12 One only has to consider the digitisation of content (photos, music, videos, books, etc.) to see that it has made many people realise that often what they want is not the disc itself, but the music recorded on it. They are happy to be able to access the music whenever they need it: even more so if it takes up less of their personal time and space.

2.13 The concept of collaborative or participatory consumption also provides an opportunity for the most vulnerable groups, especially families experiencing financial hardship or who may have been excluded from the traditional credit channels for purchasing the goods they need, given the current social climate. It is also an option, however, for those who are able to access the goods and services market in the normal way, but who consciously choose not to do so, out of commitment to their personal values.

2.14 Sustainable consumption has been recognised as a basic consumer right by the United Nations since 1999. As EU consumer protection legislation pre-dates this, it does not mention this right as such. However, it should be recognised, as called for expressly by the EESC <sup>(5)</sup>, by means of an amendment to the Treaties that includes the 'principle of developing a policy for sustainable consumption'.

The EESC has also adopted opinions on the green economy <sup>(6)</sup> and on planned obsolescence <sup>(7)</sup>. In its recent Resolution on the Consumer Agenda, the European Parliament specifically asked the Commission to address this issue.

### 3. Collaborative or participatory consumption: a conceptual approach

3.1 The most common definition of collaborative or participatory consumption is the traditional way of sharing, swapping, lending, renting and giving away, redefined through modern technology and communities.

This definition makes it clear that this form of consumption is by no means a new idea; it is actually the revival of a practice that benefits from today's technology to make services much more efficient and scalable. At the same time, the impetus for collaborative or participatory consumption must come from those involved and participation must be voluntary.

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<sup>(3)</sup> Rachel Botsman, 'What's Mine Is Yours: The Rise of Collaborative Consumption'

<sup>(4)</sup> Study carried out by Carbonview Research for Campbell Mithun, 2012.

<sup>(5)</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:185:SOM:EN:HTML> OJ C 185, 8.8.2006, p.71.

<sup>(6)</sup> OJ C 271, 19.9.2013, p.18.

<sup>(7)</sup> CESE 1904/2013 on Product lifetimes and consumer information (opinion not yet published in the OJ).

3.2 Collaborative or participatory consumption represents a third wave of the Internet, where people meet online to share offline. It is also aptly described as putting into circulation everything that exists.

3.3 Collaborative or participatory consumption is clearly underpinned by three precursors: the economic (and values-related) crisis, the growth of social networks and collaborative or participatory online behaviours. However, for this form of consumption to grow in the developed economies, the following factors are essential: trust in the common good, idle capacity and technology <sup>(8)</sup>.

3.4 Trust between strangers is perhaps the most crucial aspect in the success of collaborative or participatory consumption. Meanwhile, technology enables people to access online services that also help create offline connections with a higher degree of trust.

3.5 Sharing resources requires trust and a good reputation, especially when it comes to attracting new users. Collaborative or participatory consumption initiatives have to ensure that their communities are safe.

3.6 Online sharing can thus be expected also to be a good predictor of offline sharing. In the offline world, the simplest way of building trust when sharing is to limit the size of the community or to use an existing community in which there is already a degree of trust and rapport. Some collaborative or participatory consumption schemes make it possible to create closed groups to meet users' needs and build trust, by being simpler to manage.

3.7 When a sense of community is created among service users, trust in the service itself and among its users is also enhanced. Users take care in their actions and interactions in order to build and protect their reputation, as this is what enables them to interact with the community and use the system, as in all markets.

3.8 It is impossible to eliminate all risks, but platforms facilitating exchanges must ensure that their members are aware of these risks and have sufficient information to manage them effectively.

3.9 Moreover, technology is a key factor in optimising the sourcing of goods and services, bringing together groups of people with common interests and building communities. Mobile and real-time technologies make it faster and easier both to add information on locations and to facilitate easy payment systems where necessary.

3.10 When designing service flow, however, it is important to ensure that it is accessible and easy to use, promotes a close relationship of trust between user and service provider, provides adequate and reassuring security measures and offers user-focused experiences to establish reputation banks through appropriate centralised databases.

3.11 The aspect of reputation is of particular importance as a catalyst for economic and social change. It has been estimated that 'reputation capital' <sup>(9)</sup> could act as a second currency, whose value lies in providing trust. Reputation capital could be said to be emerging as the cornerstone of the twenty-first century economy, through projecting the old power of 'word of mouth' onto the viral capacity of a network society.

3.12 People are already expressing their needs and interests by behaving and consuming in a more relevant and transparent way, incorporating clear social considerations into their purchasing criteria and actively adding emotional content to their decision-making.

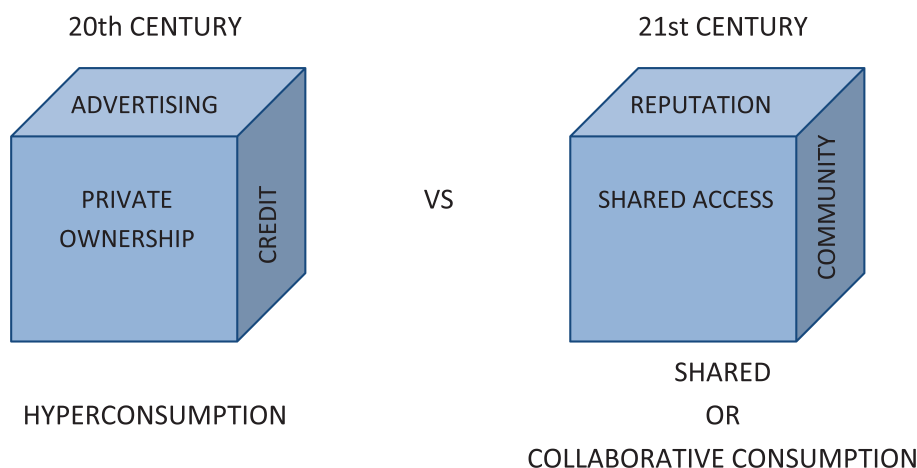
3.13 Lastly, the committed consumer lends his or her influence and support to the brand, playing an active part in the success of the shared initiative, which strengthens and feeds back into the process.

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<sup>(8)</sup> Albert Cañigueral [www.consumocolaborativo.com](http://www.consumocolaborativo.com).

<sup>(9)</sup> Rachel Botsman defines 'reputation capital' as the worth of one's reputation — intentions, capabilities and values — across communities and marketplaces.

3.14 In short, the aim is to reformulate the equation: credit + advertising + private ownership = hyper-consumption, which reflects the spirit of the twentieth century, into this new one, which aims to summarise the current century: reputation + community + shared access = collaborative or participatory consumption.



3.15 Collaborative consumption shares many of the EU's policy objectives, especially where the single market is concerned, such as increasing resource efficiency and boosting social innovation to create jobs and economic prosperity. Many collaborative consumption start-ups operate in the EU, which means that Europe could become an 'incubator' for new business models, thereby creating more sustainable economic development.

3.16 Because collaborative consumption represents a substantial economic, social and cultural shift, the Commission should remove any obstacles to these activities at the European level, establishing a regulatory framework that offers the sector certainty for the long term.

#### 4. Best practices in collaborative or participatory consumption

4.1 There is already a wide range of proposals and experiences of global collaborative or participatory consumption demonstrating that another way of consuming is not only possible but can also make a substantial contribution to improving the world we live in and, even more importantly, preserving it for future generations.

4.2 As a result of the economic crisis, platforms have emerged, for example, for the buying and selling of second-hand wedding dresses and accessories, for private accommodation, the rental of cars or eveningwear, including designer clothing or luxury accessories. There are also communities where users post a task, such as putting together furniture or collecting a package, and indicate the price they are offering to anyone willing to carry it out for them.

4.3 A telling example of the value of collaborative or participatory consumption is the large number of tools and utensils that are rarely used despite their cost, or — which amounts to the same thing — the under-use of goods or the failure to make best use of them or of their possibilities. Typical examples would be buying a drill to use it for only twenty minutes in its lifetime, or buying a car that will spend far more time parked than being driven.

4.4 Fifty-five per cent of Europeans want sustainable consumption, even if it means paying more. In the coming years, consumers' desires for alternative modes of consumption are expected to focus on <sup>(10)</sup>:

- Bartering (19%).
- Renting (22% where tools are concerned).
- Group purchasing (19%).

<sup>(10)</sup> Study entitled 'Los Consumidores Europeos en modo alternativo' ['European consumers in alternative mode']. Cetelem Monitoring Centre, 2013



- Do-it-yourself (12% when it comes to sewing).
- Buying locally (0 kms) (75% of people want to avoid excessive deliveries).
- Second-hand purchasing (19%).

4.5 And although collaborative or participatory consumption covers a broad and open-ended spectrum of initiatives, one thing they all have in common, as mentioned above, is that they help establish links between people who have under-used resources and people who need those resources. This feature is perfectly illustrated by the fact that we tend to talk about making greener products, but that it is even more eco-friendly to make better use of what is already available.

4.6 Collaborative consumption has a number of direct effects (such as lower resource consumption and CO<sub>2</sub> emissions, higher demand for good quality products if the products are to be lent, hired or repaired; it promotes eco-design benefiting a number of different users, durability and repeated customisation of compatible products; it improves social interaction, community development and trust among individuals; it encourages access to high-quality products for lower-income consumers, etc.) and can also have other indirect effects.

4.7 In terms of EU legislation, collaborative or participatory consumption most closely resembles service provision within the meaning of Article 57 TFEU, but it certainly raises a number of questions. A distinction should be made within collaborative consumption, however, between not-for-profit and for-profit activities, as only the latter warrant the attention of the European legislator.

4.8 In an attempt to bring some order to the growing diversity of initiatives falling under the concept of collaborative or participatory consumption, the sharing economy can be considered to consist of four areas: consumer-to-consumer (C2C), consumer-to-consumer but via business (C2B), business-to-consumer (B2C) and business-to-business (B2B).

4.9 A three-pronged classification scheme is also proposed<sup>(11)</sup>: product-based systems, redistribution markets and collaborative lifestyles.

4.10 As can be seen, collaborative or participatory consumption practice can apply to any aspect of daily life, such as<sup>(12)</sup>:

- mobility (car-sharing, the rental and shared use of vehicles, including taxis, bicycles and parking places, and carpooling, which means filling empty car seats with other passengers going in the same direction),
- energy efficiency (shared use of household utensils),
- accommodation and areas for growing food (rental of rooms, shared housing, and urban and rural allotments),
- business (co-working or shared office space),
- communications (mobile platforms where users can buy and sell goods and services to people living in the same community),
- work (micro-tasks, hiring people for specific jobs, or 'handymen', where the best bidder is given tasks ranging from hanging pictures to assembling items of furniture),
- culture (bookcrossing and book bartering, and promoting cultural exchanges among young people from different countries),
- education (digital communities for learning languages),

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<sup>(11)</sup> Rachel Botsman.

<sup>(12)</sup> Some directories of collaborative or participatory consumption projects:  
<http://www.collaborativeconsumption.com/directory/>.  
<http://www.consumocolaborativo.com/directorio-de-proyectos/>.  
<http://consocollaborative.com/1704-100-sites-de-consommation-collaborative.html>.  
<http://collaboriamo.org/>.  
<http://kokonsum.org/plattformen>.  
<http://www.gsara.tv/~ouishare/>.



- time and skills (time banks),
- leisure (sharing digitised content),
- finance (loans between individuals, direct loans from individuals to small and medium-sized enterprises, crowdfunding or collective financing, crowdfunding for crowdbenefits),
- tourism (dining experiences in private homes), and peer-to-peer food swapping,
- art and also markets for bartering and donating clothing and items for children, repair and recycling of objects; many other initiatives could be mentioned, but a comprehensive study of these is not the purpose of this opinion,
- promoting the use of renewable energies, where possible sharing energy surpluses through smart networks.

4.11 Broadly speaking, it is simply a matter of identifying the goods, knowledge or services that have idle capacity and that can be shared in a setting conducive to the development of collaborative or participatory consumption. Such a setting combines a permanently weak economic situation, a growing demand for ethical and sustainable development and a daily life in which people are increasingly more connected. All of these conditions are in place today.

## 5. Proposed initiatives and action strategy

5.1 The EESC therefore calls on the Commission to take the appropriate consumer protection measures to ensure that, on the basis of the appropriate studies, the initiatives proposed here can be implemented.

5.2 Following is a brief summary of the lines of action that we believe should form part of a strategy for the sound development of collaborative or participatory consumption. These measures should support, complement and monitor the consumer protection policy implemented by the Member States:

- a) A legal and tax framework for the activities covered by collaborative or participatory consumption by setting down and regulating, where appropriate, aspects such as liability, insurance, rights of use, rights protecting against planned obsolescence<sup>(13)</sup>, ownership taxes, quality standards, the establishment of rights and obligations and, where appropriate, the removal of any restrictions and disguised barriers to intra-Community trade and any distortion of legislation.
- b) Dissemination, advocacy and public awareness-raising of collaborative or participatory consumption initiatives and of the individual and collective benefits they offer. Publicising the mandatory aspects of the existing legal framework for shared products, such as recycling, re-use, upgrading and sustainability).
- c) Information and guidance to consumers and users concerning responsible participation in the initiatives, promoting pilot projects and initiatives for collaborative consumption.
- d) Promotion of collaborative or participatory consumption through Shareable Cities schemes, shareable transport or other areas such as food, housing and even shareable work.
- e) Development of stable structures by creating platforms for the development of collaborative or participatory consumption, especially with regard to technology and networks.
- f) Boosting collaborative or participatory consumption and extending it by activating and giving impetus to the networks that are set up.

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<sup>(13)</sup> Programming the end of life of a product or service, in such a way that its design shortens its actual functionality or usefulness.

- g) Participation of the EU institutions in collaborative or shared consumption initiatives, both as a user and by making their own resources available.
- h) Civil society can play an active role in providing access to publicly-owned goods, in order to ensure the greatest possible take-up by society, by putting in place shareable collective infrastructure.
- i) It is proposed, moreover, that the action strategy be implemented specifically in the following fields:
  - **Education:** in schools, any measure should be proactive, in other words, work done with children from an early age should aim to instil and consolidate appropriate attitudes, habits and values in order to create collaborative consumption initiatives.
  - **Associative consumption:** networked consumer and user organisations can play a dual role in the strategy, both proactively by setting up initiatives and reactively by participating in them.
  - **Cooperatives:** cooperatives can become the main ally of collaborative or participatory consumption, because they combine and share principles and values. The cooperative movement can therefore strengthen initiatives, both proactively and reactively, as well as accommodating collaborative or participatory consumption networks with similar aims<sup>(14)</sup>. Consumer cooperatives and what are known as Zero Kilometre cooperatives<sup>(15)</sup> are a prime example of something that is already a reality.
  - **The general public:** through being recruited and taking part in collaborative or participative consumption initiatives targeting them, the adult population and the general public may develop reactive behaviour that also serves to achieve personal fulfilment through integration and that boosts social cohesion by collectively sharing common assets.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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<sup>(14)</sup> Salcedo Aznal, Alejandro — 'Cooperativismo 3.0' — 100 años de cooperativismo de consumidores y usuarios: historia y futuro [Cooperatives 3.0: 100 years of cooperatives for consumers and users, their history and future] (pp. 65 to 68). UNCCUE, 2013.

<sup>(15)</sup> Cooperatives providing products or activities related to the local economy that lessen the impact caused by long-distance transport and delivery.

**Opinion of the European Economic and Social Committee on 'A strategy against the shadow economy and undeclared work' (own-initiative opinion)**

(2014/C 177/02)

Rapporteur: **STEFANO PALMIERI**

On 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

*A strategy against the shadow economy and undeclared work.*

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2013.

At its 495th plenary session, held on 21 and 22 January (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 129 votes to none with 4 abstentions.

## **1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) considers it necessary to reiterate the importance of combating the shadow economy and undeclared work, to accompany and complement the work being done by the European Commission, specialised institutions such as Eurofound and other international organisations, not least the World Bank.

1.2 In the face of the serious on-going economic crisis in Europe, the EESC would highlight the negative impact of such phenomena in terms of company growth trends and on opportunities for innovation and developing human resources. Bringing companies and workers out of the shadow economy could therefore be a factor in economic recovery and could lay the foundations for more lasting development.

1.3 Although these policies are the responsibility of the Member States, it is widely recognised that to be effective in this area it is necessary to arrange for the systematic exchange of information, data and studies at European Union (EU) level, so as to secure the involvement and cooperation of the competent authorities and the social partners concerned.

1.4 By its very nature, the EESC is therefore the ideal forum within which to nurture and encourage the sharing of tools, policies and best practice, in order to take action with regard to economic factors and also the cultural and social context, against the backdrop of the EU-defined strategy for combating irregular employment and tax evasion, which is based on an inclusive formal labour market.

1.5 First and foremost, the EESC believes it is critically important to conduct a quantitative and qualitative assessment of the situation, which differs enormously from one Member State to the next, and of its negative economic and social effects, which also vary in the Member States, as a result of differing structural and underlying conditions. Without coherent data and information for the various Member States the strategy loses impact, as there is a need for measures to gauge the extent of the problem and for the impact of policies in place to be assessed.

1.6 The EESC therefore recommends addressing the problem of the methodology for estimating the scale and development of the shadow economy and undeclared work, which is as yet incomplete and fragmented, by applying a method based on workforce surveys carried out in the same way in all the Member States. This method has been developed by the Italian National Institute of Statistics, and has therefore been tested in a country that is particularly vulnerable to these phenomena, and that also has great regional differences.

1.7 The main differences relate to the extent of the shadow economy, which in some Member States and regions is as high as 30% of total output, and is not so much a residual problem as an integral part of their productive systems. For this reason, the EESC would underscore the need to launch a policy mix, to be differentiated for various regional, productive sector and employment types, so as to address the specific factors that fuel the shadow economy and undeclared work effectively, be they economic, cultural or social.

1.8 Both sides of industry can help to bring the shadow economy into the open, particularly in areas where it is not just a ruse to save on production costs, but appears to be an integral part of the productive fabric. Policies to tackle the problem require the activation of networks between European, national and local players who are aware of the problem and able to take measures to ensure that operating in the shadow economy ceases to be more convenient. This can be done by penalising those responsible with effective deterrents and by coaxing activities into the open by means of preventive and remedial measures, which would probably be more useful during the current crisis.

1.9 At local level, the EESC is promoting the establishment of observatories to monitor the shadow economy, involving representatives of employers, unions and the relevant public authorities, with the aim of examining the problem and its development over time, identifying the prevalent features, choosing the most effective measures and monitoring them in practice.

1.10 The EESC calls for the fight against the shadow economy to look beyond EU borders and for corporate social responsibility to be applied where minimum decent working standards are lacking in third countries subcontracting for EU companies. Not only does this practice distort competition between companies, it is also open to the use of child labour and, when basic safety rules are ignored, puts these workers in mortal danger, as was the case recently with the collapse of a factory in Bangladesh.

## 2. The European Union's commitment to combating the shadow economy and undeclared work

2.1 Against the backdrop of the EU's Europe 2020 strategy, designed to secure smart, sustainable and inclusive growth, employment policy guidelines have been built into the economic policy guidelines for Member States, including measures to combat the shadow economy and the associated undeclared, illegal and informal work; areas that remain their responsibility<sup>(1)</sup>. The broad concept of the shadow economy encompasses a variety of activities, ranging from legal activities conducted in an illegal manner to illegal activities. Undeclared work is defined as 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States'. This definition encompasses disparate activities spanning informal services geared towards families and the undeclared work of people residing in the country illegally; it excludes criminal activities however<sup>(2)</sup>.

2.1.1 The shadow economy has an impact on the proper functioning of productive activities and on the quality of the workforce, obstructing growth-oriented economic, social and financial policies and undermining efforts to achieve the ambitious economic and employment-related objectives set out in the Europe 2020 strategy. The negative effects are worsening in the face of the social and employment impact of the financial crisis, which is reducing job opportunities and jeopardising companies' and workers' prospects for profit and income.

2.1.2 The attention paid to these phenomena has grown in recent years<sup>(3)</sup> in the context of the European Employment Strategy (EES) and they have been addressed directly and as part of a more general debate on the need for labour market reform, as well as in relation to parallel related themes such as illegal immigration in the EU and decent work in third countries.

<sup>(1)</sup> Towards a job-rich recovery, COM(2012) 173 final, paragraph 1.1; Council Decision 2010/707/EU on guidelines for the employment policies of the Member States, Guideline 7.

<sup>(2)</sup> COM(2007) 628. An equivalent definition is used by the OECD. The World Bank meanwhile proposes that the term 'informal' cover employees without contracts and non-professional self-employed workers with five or fewer employees.

<sup>(3)</sup> — 2013 ILO Working Document 'Labour Inspection and Undeclared Work in the EU';  
— Eurofound 2013 database and report, Tackling undeclared work in 27 European Union Member States and Norway. Approaches and measures since 2008;  
— 2012 Employment Package, Commission Communication: Towards a job-rich recovery;  
— Commission Communications from 2012 and 2013 — Annual Growth Survey;  
— 2012 and 2013 country-specific recommendations;  
— 2012 PROGRESS Mutual Learning Programme, Peer Review on Combating undeclared work as a growing challenge in the context of high unemployment;  
— Commission Communication, 2010 — An Agenda for new skills and jobs: A European contribution towards full employment, COM(2010) 682 final;  
— Council Decision 2010/707/EU of 21 October 2010 on guidelines for the employment policies of the Member States;  
— Commission Communication of 2007 — Stepping up the fight against undeclared work, COM(2007) 628 final;  
— Special Eurobarometer of 2007 on Undeclared Work in the European Union;  
— Commission Communication — Outcome of the Public Consultation on the Commission's Green Paper Modernising labour law to meet the challenges of the 21st century, COM(2007) 627;  
— Green Paper — Modernising labour law to meet the challenges of the 21st century, COM(2006) 708;  
— 2010 Regioplan study: Feasibility of establishing a European platform for cooperation between labour inspectorates, and other relevant monitoring and enforcement bodies with the aim of preventing and fighting undeclared work.

2.1.3 The shadow economy and undeclared work are specifically addressed in the April 2012 Employment Package, the 2012 and 2013 Annual Growth Surveys and the recommendations to a number of Member States regarding the need to tackle irregular employment and tax evasion. Alongside legislative initiatives to be implemented by 2014, the Commission Work Programme <sup>(4)</sup> includes the European platform to fight undeclared work, designed to improve cooperation between the relevant Member State authorities, disseminate best practice and pinpoint a number of common principles.

2.2 One crucial element is the involvement of employers' organisations and trade unions in the decision-making process: 'Social partners play an important role at the national level in (...) defining labour market rules' <sup>(5)</sup>. For this reason, the European Economic and Social Committee too has been discussing and promoting the development of European policy on combating the shadow economy and undeclared work, adopting two opinions on the subject in 1999 and 2005 <sup>(6)</sup>.

2.2.1 In its first opinion, the EESC welcomed the strategy, based on inclusion in the formal labour market and a policy mix that could be adapted to the Member States' various legislative and productive contexts. It also highlighted a number of ambiguities and under-estimates in relation to the definition of undeclared work, the distinction between workers who are obliged to remain in the shadow economy and those who make a deliberate choice to do so, the weight of the administrative and tax burden on small and medium-sized and craft enterprises, the management of illegal immigrants, the regulation of new forms of work, the variety of types of undeclared work, and the potential inefficacy of some of the planned measures.

2.2.2 The second opinion was an own-initiative opinion adopted by the EESC in 2005 <sup>(7)</sup>, reiterating the criticisms already highlighted in the previous opinion and adding further elements. These included the need to enhance incentives to declare employment, to cut the red tape surrounding business start-ups, to pay special attention to workers on low salaries, to promote information and education campaigns for companies and workers, to introduce an effective system for controls and penalties as a disincentive, to look at working conditions in third countries, and to examine the link with unemployment.

### 3. General comments: the need to act

3.1 The shadow economy is not just a reaction to the perception that costs (especially for labour) are excessive, and so is not geared solely towards reducing production costs illicitly by means of tax and social insurance fraud. It is also the result of a desire to side-step working regulations and standards (minimum wage, maximum working hours, safety and certification). This is not about criminal activities or legal activities conducted by unauthorised operators; it does, however, relate to occasional informal workers working with family or neighbours, although there is greater social acceptance of this category.

3.1.1 The complexity of the phenomenon is such that the workforce concerned is very diverse <sup>(8)</sup>: self-employed workers who choose not to apply the rules, employees not covered by social security or without a contract or paid partly in cash, family helpers, workers who do not declare their second or third job, illegal immigrants and workers in third countries who do not enjoy minimum standards for decent work, subcontracting for EU companies.

3.2 The need to address the shadow economy and undeclared work properly arises from their numerous effects on both companies and workers, not to mention on the public purse:

- competition is unfair and distorted between those that abide by the rules and those that do not, keeping companies in business that would probably be absent from the market; it also creates a dynamic of inefficiency, with companies stunting their own growth so as to remain in the shadow economy and not having adequate access to credit;

<sup>(4)</sup> COM(2012) 629 final.

<sup>(5)</sup> COM(2012) 173 final, paragraph 3(2).

<sup>(6)</sup> OJ C 101, 12.4.1999, p. 30-37, following on from COM(98) 219; OJ C 255, 14.10.2005, p. 61-66. The subject has also been addressed however in other opinions about the labour market more generally or parallel phenomena related to the shadow economy: these include OJ C 175, 27.7.2007, p. 65-73 and the OJ C 204, 9.8.2008, p. 70-76.

<sup>(7)</sup> On the basis of the Council Resolution No 13538/1/03 on undeclared work and the Council Decision of 22 July 2003 on employment policy guidelines.

<sup>(8)</sup> ILO, Labour Inspection and Undeclared Work in the EU, Working Document Number 29, Geneva, 2013, Chapter 1.

- the workers concerned suffer poor conditions in terms of safety, income and social security, with consequences not only from an ethical standpoint regarding their dignity, but also in terms of production, as they are denied the opportunity for life-long learning, retraining and for keeping skills, production processes and products up to date;
- resources are lost to the public purse, as tax and social security income falls (the tax gap), meaning that the cost of public services and the welfare state is unevenly spread (free-riding).

3.3 The process of economic globalisation and socio-demographic change also provides potentially fertile ground for the shadow economy and undeclared work, and for this reason, policies to counter them need to evolve constantly, adapting to changes in conditions and addressing new phenomena. Examples include the increased demand for domestic help and care services, the reduction in standard forms of work, the growing flexibility of contractual relationships, the increase in self-employed work and outsourcing, and the growth in multinational companies. All of this calls for greater attention to be paid to the framing of legislation, to monitoring and control instruments, and to international coordination.

3.4 From a statistical viewpoint, shadow economic activities are an integral part of GDP, and appropriate methodologies are needed to measure them. Reliable and comparable information in the EU regarding their scale and structure is difficult to obtain, however, for at least three reasons: i) their nature is such that by definition they cannot be observed directly; ii) the Member States take many different approaches, resulting in varying national rules; iii) the calculation techniques used also vary. Obviously, different approaches generate different results that can vary significantly even within an individual country (Table 1). Generally, the figures published by official national sources are lower than those contained in the studies of experts and international organisations.

3.4.1 There are three ways of measuring the scale of the hidden economy, and they can also be applied to various subjects of analysis (value added or employment):

- direct surveys at microeconomic level (e.g. Eurobarometer and the European Social Survey), which involve occasional or regular sample surveys in which interviewees are asked certain questions about their employment relationship <sup>(9)</sup>;
- indirect estimates at macroeconomic level, based on other quantities that are known and that correlate well with the shadow economy, such as the national accounts, labour market trends, consumption and currency demand;
- econometric models treating the shadow economy as a non-observable variable, on the basis of the main factors that encourage it and indicators for unlawful business activities.

3.5 One European-level study has recommended that a useful basis for generating homogeneous and comparable estimates for the Member States might be the indirect methodology developed by the Italian national institute of statistics, based on easily accessible and reliable data from labour input <sup>(10)</sup>. In the medium-term, this could supply the EU with a common, shared basis for analysis, comparison and evaluation, independent of the reports of external research bodies or organisations.

3.6 Currently, comparable data for all the Member States comes either from econometric models for the shadow economy or from direct sample surveys on the proportion of the workforce (employed and self-employed) that is employed informally; the results obtained are partly conflicting as they analyse varying aspects (see Table 2). Furthermore, only a few Member States conduct regular national surveys of this phenomenon.

<sup>(9)</sup> Although this runs the risk that the shadow economy will be under-represented owing to untruthful answers, the advantage is the high level of socio-economic detail.

<sup>(10)</sup> Ciccarone, G. et al., Study on indirect measurement methods for undeclared work in the EU, GHK & Fondazione G. Brodolini, Final Report to the European Commission, DG Employment, Social Affairs and Equal Opportunities, December 2009.



3.6.1 The econometric method shows the highest values in certain central and eastern European Member States (reaching over 30% in Bulgaria), levels are high for the south, middling in the rest of central and eastern Europe and the Nordic countries, and low for western Europe and the UK and Ireland<sup>(11)</sup>.

3.6.2 The direct method however records provides a more nuanced picture, with the highest values in the south (especially in Cyprus and Greece), but also in Ireland and Poland, and minimal values in certain central and eastern, Nordic and western Member States<sup>(12)</sup>.

#### 4. Specific comments: the impact on the crisis and policy pointers

4.1 The impact of the crisis and the austerity measures is not immediately clear. On the supply side, the recession ought to lead companies to reduce production costs, whether lawfully or not, to compensate for reduced profits and income, while there are more unemployed people available to accept undeclared work. On the demand side, meanwhile, employment opportunities for people with low qualifications dwindle as we consume and invest less in sectors such as construction, commerce, hotels and restaurants and domestic services.

4.1.1 The empirical evidence is inconclusive however<sup>(13)</sup>. Recent trends show a uniform decline according to the econometric models, apart from a slight increase in 2009 when the economic crisis was at its height, but with a rapid recovery subsequently between 2010 and 2012 (Table 3). The direct surveys however show a more varied picture, with certain Member States showing a reduction in informal employment for employees and others in contrast showing an increase in tax evasion among the self-employed.

4.2 It is not just the scale but also the structure of the shadow economy and of undeclared work that varies from one Member State to another; this is owing to differences in the productive structure and also in welfare state systems<sup>(14)</sup>. The categories of worker most concerned by these phenomena, already worse off than average, are also affected by the recession and are seeing their income potential reduced<sup>(15)</sup>.

4.3 The dynamics of the shadow economy and undeclared work, therefore, especially following the crisis, impact on the workforce in differing ways, in the various Member States and also within individual economies. This diversity of impact must be taken properly into consideration in the shaping of policies to combat the shadow economy and when launching counter-cyclical social policies.

4.4 Given the complexity and multidimensional nature of the shadow economy and of undeclared work, the consensus is that a mix of instruments is needed to tackle the problem, taking in deterrents, including controls and penalties, and incentives to abide by the rules. The EESC welcomes the growing importance over the last few years of preventive and remedial measures to pre-empt the factors underpinning or fostering the shadow economy, and considers that these are probably more useful in terms of finding a way out of the economic crisis<sup>(16)</sup> (see Table 4).

<sup>(11)</sup> Schneider, F., *The Shadow Economy and Work in the Shadow: What Do We (Not) Know?*, IZA Discussion Paper, No 6423, March 2012; Schneider, F., *Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2012: Some New Facts*, Working Paper, 2012.

<sup>(12)</sup> Hazans, M., *Informal Workers across Europe. Evidence from 30 European Countries*, Policy Research Working Paper, No 5912, World Bank, December 2011; In *From the Shadow — Integrating Europe's Informal Labor*, Packard, T., Koettl, J., Montenegro, C.E., World Bank, 2012, Chapter 1.

<sup>(13)</sup> Schneider, F., cit.; Hazans, M., cit., Packard, T., Koettl, J., Montenegro, C.E., cit.

<sup>(14)</sup> In the Nordic countries where spending on labour market, social protection and redistribution policies is higher and where, as a result, there is greater equality in income, records show a lower incidence of undeclared work, which relates predominantly to people having second jobs to supplement their income. In southern Europe, on the other hand, the shadow economy plays a substitutive role owing to the limitations of active labour and welfare policies, and it is therefore particularly prevalent among the unemployed and people who are on the margins of the formal labour market. See Eurofound, *Tackling undeclared work in 27 European Union Member States and Norway. Approaches and measures since 2008*, June 2013, Chapters 1 and 4.

<sup>(15)</sup> Hazans M., pp. 22-39.

<sup>(16)</sup> Eurofound, Chapters 2 and 3.



4.5 Generally, the measures proposed vary and apply to different aspects of the problem:

- making it cheaper and easier for companies to abide by the rules, reforming and simplifying administrative and tax procedures;
- increasing the risk of being found out, tightening controls (not least by means of tripartite inspections involving representatives of the relevant public authorities <sup>(17)</sup>, employers and unions) and making existing penalties more efficient and effective;
- encouraging the growth of small and medium-sized businesses and applying industrial policies to encourage productive sectors with a high intensity of qualified labour;
- making undeclared work less attractive for workers, for instance by providing income support and making the connection between contributions and social benefits clearer;
- regulating new forms of work, so that they are not misused but provide a way for companies and workers to reconcile their needs;
- monitoring compliance with social security requirements by means of appropriateness indicators for labour costs <sup>(18)</sup> (which vary by sector, category of company and region), agreed on by both sides of industry;
- reducing the social acceptability of the shadow economy and defending the tax ethic, raising public awareness, seeking greater fairness in the tax burden and increasing confidence in government and politics;
- drawing up regular monitoring reports, assessing current trends and the effectiveness of the measures taken;
- bolstering cooperation among Member States regarding multinationals, not least by means of dedicated agencies or institutional structures <sup>(19)</sup>.

4.6 All of these measures have a shared objective however: for companies, to make the cost in terms of fines and loss of reputation greater than any potential benefits to be derived from fraud or unlawful practices, and thus less worth the risk; and for workers, to ensure that declared employment pays better than undeclared work in terms of monthly income and future prospects. This will necessarily involve forms of support to enable undeclared work to be converted into lawful employment.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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<sup>(17)</sup> ILO, cit., Chapter 3.

<sup>(18)</sup> These provide a means of uncovering possible irregular employment, as audits will show labour costs (salary plus social security contributions) lower than minimum estimates. They are referred to as good practice in COM(2007) 628 final.

<sup>(19)</sup> Dekker, H. et al., Joining up the fight against undeclared work in Europe, Regioplan, Final Report to the European Commission, DG Employment, Social Affairs and Equal Opportunities, December 2010, Chapter 5.

**Opinion of the European Economic and Social Committee on ‘Accessibility as a human right for persons with disabilities’ (own-initiative opinion)**

(2014/C 177/03)

Rapporteur: **Mr VARDAKASTANIS**

On 14 February 2013 the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

*Accessibility as a human right for persons with disabilities.*

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 19 November 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 152 votes with 3 abstentions.

**1. Conclusions and recommendations**

1.1 The EESC calls on the EU institutions to acknowledge that Article 9 of the United Nations Convention on the rights of persons with disabilities (UN CRPD) constitutes a human right in itself and therefore its full implementation must lead to the creation of the necessary conditions by means of legal and policy measures to enable persons with disabilities to access all kind of environments and aspects of life. It is crucial to their full enjoyment of civil and political rights, as well as their social, economic and cultural rights. Accessibility benefits the whole of society.

1.2 The EESC calls on all of the EU institutions, political bodies, and agencies, including the EESC, to prepare, in consultation with the European disability movement, a concrete plan for ensuring the accessibility, *inter alia*, of their premises, websites and documents.

1.3 The EESC recognises accessibility as a basic prerequisite for sustainability and its social dimension, in combating poverty and marginalisation and promoting social cohesion.

1.4 The EESC acknowledges that positive steps have been taken in areas such as transport and telecommunications (e.g. the Digital Agenda), but more actions are needed, including in the internal market.

1.5 The EESC acknowledges that lack of accessibility constitutes discrimination in itself, and therefore underlines the need for the EU to develop non-discrimination legislation and calls on the Council to unblock the Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM(2008) 426 final (Article 19 TFEU).

1.6 The EESC calls on the European Commission (EC) to fulfil its long-standing commitment and present a legally-binding European Accessibility Act.

1.7 The EESC calls on the European Parliament and the Council of the EU to conclude the current Proposal for a Directive on the accessibility of public sector bodies’ websites in accordance with the EESC opinion on Accessibility of public sector body websites<sup>(1)</sup> and the European Disability Forum.

1.8 The EESC calls on the EU institutions to agree on the inclusion of compulsory ex-ante conditionalities on accessibility and disability in the current Structural Funds common provisions regulation, and in external aid instruments and other funding instruments.

1.9 The EESC believes that the crisis and resulting austerity measures should not be used by the EU and the Member States as an excuse to undermine respect for accessibility as a human right.

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<sup>(1)</sup> OJ C 271, 19.9.2013, p. 116-121.

1.10 The EESC notes that, when enforcing accessibility as a human right, the following fundamental principles should be considered: freedom to make choices and of movement, independent living, reasonable accommodation, participation, universal design and anticipatory duty.

1.11 The EESC calls on the EU and its Member States to put in place monitoring and enforcement mechanisms with the involvement of organisations representing persons with disabilities.

1.12 The EESC stresses that the following EU policy areas should have an accessibility dimension: legal capacity, political participation, employment, State aid, transport, education, access to goods and services, research, foreign policy and housing.

1.13 The EESC believes that the EU institutions, when implementing the UN CRPD provisions, should include accessibility in the following instruments: standardisation, harmonisation, technical requirements, incentives for companies, trade union policies and collective agreements.

1.14 The EESC notes that awareness-raising strategies are a crucial means for achieving respect for accessibility as a human right on the part of society, including the citizens themselves and main actors such as schools and the mass media, in accordance with Article 8 (UN CRPD).

1.15 The EESC considers that accessibility should be included in the curricula of scientific disciplines (e.g. architecture, engineering, computer science etc.).

1.16 The EESC believes that there are insufficient statistical instruments to support the enforcement of accessibility as a human right and therefore calls on Eurostat to ensure that they are developed.

1.17 The EESC reiterates the commitment it has expressed in previous opinions to create a Steering Committee to monitor the implementation of the UN CRPD.

## 2. Introduction

2.1 The human rights approach to disability means that the EU as a party to the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and all citizens have the responsibility to build a society in which all human beings, including persons with disabilities, can enjoy their civil, political, economic, social and cultural rights.

2.2 The UN CRPD definition of a person with a disability underpins and reinforces the human rights approach to disability: *Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*

2.3 The EU accompanied its conclusion of the UN CRPD with a list of competences of which accessibility is an integral part. The UN CRPD is the only human rights treaty concluded by the EU so far.

2.4 The World Disability Report (2011) of the World Health Organization and the World Bank stresses that the built environment, transport, information and communications are often inaccessible to persons with disabilities <sup>(2)</sup>.

2.5 Access to the physical environment and public transport is a pre-condition for freedom of movement for persons with disabilities, guaranteed in Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights (ICCPR). Similarly, access to information and communication was seen as a pre-condition for freedom of opinion and expression, guaranteed in Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the ICCPR <sup>(3)</sup>.

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<sup>(2)</sup> World Disability Report, Summary, p. 10.

<sup>(3)</sup> International Covenant on Civil and Political Rights prescribes in article 25 lit. c the right of every citizen to have access, on general terms of equality, to public service in his/her country. Provisions of this article could serve as basis to incorporate the right of access in the core human rights treaties. Section 2 and 3. International Convention on Elimination of All Forms of Racial Discrimination guarantees everyone the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks (ICERD, Article 5, paragraph (f)). In this way a precedent for viewing the right to access as a right per se has been established in the international human rights legal framework. (Draft General Comment on Article 9 — UN CRPD committee).

2.6 The UN CRPD focal point (located in the EC) has a fundamental role to play in the implementation of the UN CRPD and this has to be undertaken in a very proactive way.

2.7 The Council of the EU endorsed on 29 October 2012 the establishment of a framework to protect, promote and monitor the implementation of the UN CRPD made up of the European Ombudsman, the European Parliament Petition Committee, the EU Agency on Fundamental Rights, the European Disability Forum and the EC.

2.8 The EESC welcomes the full involvement of the European Disability Forum in the framework and stresses the need for civil society to be very closely involved in its proceedings.

2.9 The UN CRPD recognises accessibility as a right in Articles 9, 3 and 21.

2.10 The UN CRPD articles on accessibility establish an important legal/policy agenda of its own which cannot be seen in isolation, and therefore accessibility must be considered as an enabler and facilitator of enjoyment of all the other civil, economic, social and cultural rights.

2.11 Over recent years accessibility has received greater attention from the EU legislator and has been included, *inter alia*, in policy areas such as public procurement, structural funds and other funding instruments, passenger rights, the technical standards sector (TSI-PRM) and employment. This is especially important given the ageing of the European population.

2.12 The European Disability Strategy (EDS), the main specific policy instrument on disability, has introduced concrete EU targets in this area. Through the EDS, the EC has committed itself to presenting legally-binding measures for achieving accessibility, including web accessibility and the European Accessibility Act <sup>(4)</sup>.

2.13 The Digital Agenda for Europe serves as a good model for introducing general policy strategies while also including specific actions to ensure access for persons with disabilities. Progress on accessibility will spill into society and the economy in general, creating new jobs and bringing added value. The full implementation of this Agenda should result in a barrier-free digital Europe for persons with disabilities.

2.14 There is a need to use the potential of accessibility for the internal market since it will enhance transnational mobility in Europe while facilitating the mobility of workers and persons with disabilities. Access to life-long learning schemes should be ensured. European employment strategies should also include the need for job retention and retraining for those becoming disabled during their working lives.

2.15 The Europe 2020 strategy could have taken a more comprehensive approach to disability, including accessibility and the involvement of persons with disabilities and their representative organisations. The lack of comprehensive indicators for disability in this strategy has led to a lack of attention, information and allocation of resources to disability. Job creation is the fundamental strategy for ensuring social inclusion.

2.16 The EESC stresses that much more still needs to be done and therefore welcomes the EC Proposal for a Directive on the accessibility of public sector bodies' websites.

2.17 The EESC calls on the EC to deliver on its commitment to propose a legally-binding European Accessibility Act with no further delay or postponement.

2.18 The economic crisis is having a dramatic impact on the enjoyment of the human rights of persons with disabilities, including accessibility. Accessibility levels are deteriorating and, as a result, more inaccessible societies are developing. It should be noted that all families are affected by the economic crisis, but there are disproportionate effects in families with children with disabilities <sup>(5)</sup>.

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<sup>(4)</sup> As presented in the EC Workprogramme 2012 in item 99.

<sup>(5)</sup> The Committee on the Rights of the Child adopted a General Comment on No 9 (2006) on the rights of children with disabilities. The importance of accessibility was reiterated by the Committee on the Rights of the Child through its General Comment No 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (Article 31).

2.19 The EU needs to adopt a specific programme to ensure that children with disabilities have access to all environments and aspects of life.

2.20 Europe needs inclusive growth and accessibility as a basic prerequisite for achieving sustainability and especially for the implementation of its social dimension, in combating poverty and marginalisation and promoting social cohesion through the inclusion of persons with disabilities.

### 3. Accessibility as a human right

3.1 The EESC believes that 'accessibility as a human right' needs to be transformed into a political and operational concept. It is a concept valid for the whole of society and not solely for persons with disabilities.

3.2 The EESC highlights that the right to accessibility as a human right, and in relation to a policy agenda, should be understood in two ways:

- as a human right in itself referring to the possibility of participating, acting, communicating and being informed autonomously and safely; and
- as a human right inherent in the implementation of other human rights, making it a fundamental enabler and facilitator.

3.3 The EESC acknowledges the UN CRPD guidelines for developing the concept of accessibility and believes that policy making in this area should include:

- enabling persons with disabilities to live independently and participate fully in all aspects of life and;
- the adoption of measures that include the prevention, identification and elimination of obstacles and barriers to accessibility.

3.4 The EESC endorses the need to ensure independent living (related to community living and life in the community), as mentioned in Article 19 of the UN CRPD, by means of three main actions:

- ensuring that persons with disabilities can choose their own preferred place of living;
- providing the support needed in order to enjoy the same rights as other members of society; and
- ensuring that access to general services is available on an equal basis to persons with disabilities.

3.5 The EESC notes that persons with disabilities must be able to exercise the freedom to make choices independently and autonomously on an equal basis with others.

3.6 The EESC takes note of the 'Global Report on living and being included in the community <sup>(6)</sup>' produced by Inclusion International, which points out that persons with intellectual disabilities are denied basic accessibility rights, such as owning the keys of their homes, the right to access commercial services, the right to decide where to take a walk or the right to go to the playground with fellow students.

3.7 The EESC acknowledges that institutionalisation is an extreme violation of human rights and is the unfortunate consequence of the development of social services in Europe, compared to other areas of the world, and affects all countries of the European Union regardless of their standards of living. De-institutionalisation strategies need to be followed up by the development of alternative community-based services, since without services there can be no improvement; persons with disabilities become homeless people.

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<sup>(6)</sup> <http://inclusion-international.org/living-in-community/>.

3.8 The EESC considers that a 'barrier' should be understood to mean not just a physical barrier, but also attitudinal and legislative barriers, as well as policy, behaviours and customs, lack of awareness and cultural discrimination. The EESC would point out that the removal of these barriers benefits the whole of society.

3.9 The EESC notes that more attention should be paid to the recognition of sign language and other forms of communication for deaf persons, as well as speech-to-text formats for people with hearing impairments. There should also be facilities to ensure the provision of braille documents and screen readers for blind persons and easy-to-read information for persons with intellectual and behavioural disabilities.

3.10 The EESC would point out that signage, accessible information and communication, support services, orientation and movement within and through buildings is crucial for many persons with disabilities, especially those experiencing cognitive fatigue.

3.11 The EESC notes two fundamental instruments to be considered in the analysis of accessibility as a human right:

- Reasonable accommodation means 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Article 2 of CRPD)'. In no case should reasonable accommodation replace the obligation to ensure the accessibility of infrastructures, built environment and services and goods according to the principles of universal design. Reasonable accommodation seeks to ensure individual justice in the sense that non-discrimination and equality are provided, taking the dignity, autonomy and choices of the person into account. The EESC believes that a general enhancement of accessibility standards leads to more reasonable accommodation;
- The EESC believes that the principle of 'disproportionate or undue burden' should be implemented in accordance with current regulations and therefore calls on the public authorities to control and support the implementation of reasonable accommodation through alternative means (funds, procurement etc.). This should include an impact assessment in which the right of the citizen should prevail over the needs of the provider. It is important to ensure that there are very few exceptions in the application of the principle of reasonable accommodation.

3.12 The EESC considers that universal design should be a guiding principle for ensuring full access to society and that it needs to be made an operational policy requirement in the policy making process, for example by including it in the articles of a regulation<sup>(7)</sup>. There is a need to accompany the general design with the development of complementary assistive devices and technologies.

3.13 Compliance with the anticipatory duty of accessibility can bring enormous benefits to persons with disabilities by anticipating their needs before they actually arise. From a product or service perspective, this will require that such potential needs be taken into consideration during the design phase.

3.14 There should be a distinction between, on the one hand, the obligation to ensure access to all newly-designed, built and produced objects, infrastructure, goods, products and services and, on the other, the obligation to remove the barriers and ensure access to the existing physical environment, transportation, information and communication, and services open to the general public. States Parties are under the obligation to ensure both, but as the former is to be implemented gradually, States parties should set definite, fixed timeframes, and allocate adequate resources for the removal of existing barriers<sup>(8)</sup>.

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<sup>(7)</sup> Making a building accessible *ab initio* may increase the total cost of construction by up to 0,5% (or not at all, in many cases), while the cost of subsequent adaptations may be higher than the percentage if taken *ab initio*. Accessibility of information and communication, including ICT, should also be achieved *ab initio* because subsequent adaptations of Internet and ICT may increase costs, so it is more economic to incorporate mandatory accessibility features of ICT from the earliest stages of design and construction. (Draft General Comment on Article 9 — UN CRPD committee). The average lifetime of a building or other physical infrastructure is more than 50 years, while for a digital infrastructure is no more than 3-4 years. It is also worth mentioning that construction costs are much lower.

<sup>(8)</sup> Draft General Comment on Article 9 — UN CRPD committee.



3.15 The EESC notes that personal assistance (including 'live assistance' as mentioned in the UN CRPD) is a fundamental targeted action to ensure that persons with disabilities have access to a number of rights.

3.16 The EESC acknowledges that non-discrimination is a fundamental instrument for ensuring respect for human rights, but it is not sufficient unless accompanied by other instruments, such as positive action and standardisation, as well as training and the promoting the rights of persons with disabilities amongst employers, civil engineers, architects, lawyers, economists etc. This training should be included in their educational curricula. The EESC believes that progress should be made with the currently abandoned Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM(2008) 426 final (based on Article 19 of the TFEU).

3.17 There will be no fundamental implementation of accessibility obligations as a human right unless there is substantive and meaningful participation by organisations of persons with disabilities (DPOs) in implementation of Article 4(3) and 33 when addressing accessibility. Participation can be ensured if organisations of persons with disabilities receive necessary financial resources to develop their advocacy activity. The EESC calls for the Fundamental Rights programme, which will replace the PROGRESS programme, to guarantee the same level of financial support to umbrella and specific organisations of persons with disabilities.

3.18 The EESC highlights that the degree to which persons with disabilities enjoy human rights differs between rural and urban areas and that this imbalance should be tackled by means of effective policies at national and regional level.

3.19 Companies and employers in the EU should include accessibility in their diversity policies and should promote the creation of diversity plans.

3.20 The EESC recognises the impact of accessibility on social cohesion and EU sustainability strategies should therefore include accessibility as a means to implement their objectives.

3.21 The EESC notes that women with disabilities face restrictions in accessing their rights, including in the areas of health, social inclusion, education and employment. These restrictions result in worse living conditions, health problems, unemployment and poverty. The same applies to other vulnerable persons with disabilities such as children, elderly people and people in need of high levels of support, who face serious restrictions in accessing their rights.

3.22 The EESC would point out that today's young people are the future and that accessible conditions need to be created to enable those with disabilities to fully enjoy their rights. The EESC calls for the EU to ensure that its youth policies include a specific dimension to support young people with disabilities.

#### **4. Impact on EU legislation and policy making**

4.1 The EESC notes that following the EU's conclusion of the UN CRPD, any proportionate policy/legal initiative in the EU should be analysed from the perspective of ensuring independent living for people with disabilities, full participation and removal of barriers and obstacles. This concept should have an impact on existing EU regulations, some of them specified in the declaration of competences.

4.2 The EESC considers that the internal market should be developed in such a way as to ensure that it includes disability, standardisation and harmonisation of accessibility, as a means to modernise it and make it more competitive and inclusive in a global economy. There exists an economy of disability.

4.3 The EESC calls for the creation of an EU agenda based on two factors:

- the human right of accessibility; and
- the inclusion of accessibility in other mainstream policy-making.

4.4 The EESC believes accessibility to be a fundamental right, requiring a specific political agenda, and urges the EC to present a proposal for an accessibility rights agenda in relation to its policy making.



4.5 The EESC calls for the following areas to be analysed from the perspective of accessibility as a human right:

- access to certain services and social policies requires the full enjoyment of legal capacity. The EU should ensure harmonisation of the principles of legal capacity for persons with disabilities in the EU;
- political participation and the voting rights of persons with disabilities in all elections (local and national), particularly European elections, should be legally guaranteed by ensuring that polling stations, ballots, information from political parties etc. are accessible;
- civil rights (property, right to life, autonomy, safety etc.). Access to these basic civil rights need to be ensured through European action, including personal assistance to allow persons with disabilities freedom of choice in enjoying accessibility.

4.6 The EESC calls for concrete actions to be developed in the following areas, from the perspective of accessibility as a human right: prevention of the effects of the economic crisis on accessibility standards and independent living for persons with disabilities; provision of access to education<sup>(9)</sup>; a programme for access to social and cultural<sup>(10)</sup> rights (social relations, recreation, tourism); international cooperation, financial-trade agreements and the EU's position in areas such as natural disasters and development cooperation, MDGs, asylum-seekers and the UN and the IMF; in the field of research, Horizon 2020 should be utilised; access to housing, including State housing; sports, as a mean of social inclusion, should be enjoyed, including access to buildings, premises, programmes etc.

4.7 Inclusion can be achieved inter alia through collective action by all stakeholders in a number of areas of fundamental rights:

- EU political parties must include in the internal procedures means to enable participation by persons with disabilities. Social partners should ensure that collective agreements include persons with disabilities and means for accessing employment and reasonable accommodation. The EESC welcomes the EU Framework Agreement on Inclusive Labour Markets and calls for full implementation of this agreement at national level.
- Civil society organisations (CSOs) should promote actions that include access for persons with disabilities in their general social demands.
- All stakeholders mentioned in this paragraph should ensure that their premises, websites, internal procedures and recruitment policies are accessible.

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<sup>(9)</sup> Without accessible transport to schools, without accessible school buildings, accessible information and communications, persons with disabilities would be denied the opportunity to exercise their right to education (article 24 of CRPD). Thus schools have to be accessible, as explicitly provided for in Article 9(1)(a) of CRPD. But the entire process of inclusive education must be accessible, not just buildings but also all information and communications, support services and reasonable accommodation in schools (Draft General Comment on Article 9 — UN CRPD committee).

<sup>(10)</sup> Article 30 of the CRPD lays down that States Parties recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

- (a) Enjoy access to cultural materials in accessible formats;
- (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;
- (c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

Provision of access to cultural and historical monuments considered patrimonial may indeed be a challenge in some circumstances; however State Parties are under obligation to strive to provide access to those sites as far as possible. Many monuments and sites of national cultural importance have been made accessible in a way that preserved their cultural and historical identity and uniqueness. (Draft General Comment on Article 9 — UN CRPD committee).

The international WIPO Copyright Treaty to facilitate access to published works that was adopted in June 2013 should ensure access to cultural material without unreasonable or discriminatory barriers for persons with disabilities, especially those facing challenges accessing traditional print materials.

4.8 The EESC calls for developing and strengthening the inclusion of a strategy on standardisation and accessibility in the development of technology.

4.9 The EESC notes that accessibility will enable activity to develop in new sectors, requiring new skills, particularly in the ICT sector. Persons with disabilities should be able to overcome the digital divide with the support of targeted EU policies.

4.10 The EESC believes that capacity-building is needed for all stakeholders: public authorities, private companies, civil society and organisations of persons with disabilities. Special attention should be paid to SMEs.

4.11 The EESC calls on the EC to fulfil its long-standing commitment and present a legally-binding European Accessibility Act.

4.12 The EESC welcomes the presentation of the proposal on accessibility of public sector bodies' websites and reiterates its recommendations set out in its opinion on Accessibility of public sector body websites <sup>(11)</sup>:

- the Web (i.e. services and content) has become second nature in seeking employment, obtaining information, accessing education, shopping and socialising;
- the web content of services should be made accessible for all operators (companies or public sector).

4.13 The EESC welcomes the inclusion of accessibility criteria and disability conditionality in the Structural Funds regulations and in other areas such as transport and passenger rights.

4.14 The EESC considers that the EU Presidents' meeting on disability and the EC DGs' meeting on the implementation of the UN CRPD should be held periodically, as announced, with the participation of representatives of the European disability movement with a view to political monitoring and promoting the implementation of the UN CRPD, including its accessibility provisions.

4.15 The EESC notes that, while there is clearly insufficient funding for accessibility, the inclusion of accessibility as a criterion for current funding systems would bring some improvement in this area: Structural Funds, social investment package, future general block exemptions on State aid in employment, TEN-T guidelines.

4.16 The EESC also believes that access to mass media and the visibility of the needs of persons with disabilities in this type of media need to be enhanced.

## 5. Monitoring

5.1 The EESC calls for a strategy of citizen empowerment to be developed, as the fundamental way to ensure full implementation of accessibility. Awareness-raising campaigns are needed and persons with disabilities, and all other citizens, need to be educated in their accessibility rights.

5.2 The EESC regrets the lack of indicators and calls on Eurostat to provide for a strategy to develop specific indicators based on those of the Office of the High Commissioner on Human Rights (OHCHR) and on the Draft General Comment of the UN CRPD Committee on Article 9.

5.3 The EESC calls for the inclusion in standards of clear accessibility criteria and mechanisms for monitoring (built environment, infrastructure, modern ICT, inter alia operating systems for tablets and smartphones and the EC Mandate 376 on accessibility requirements of ICT products and services). Persons with disabilities should participate fully at all stages in the development of standards.

5.4 The EESC believes that strong systems of enforcement need to be created, since they are currently failing in Europe.

5.5 The EESC highlights the need to use the monitoring mechanisms included in the future Structural Funds common provisions regulation to ensure that the ex-ante conditionalities of disability are observed and that social partners and organisations of persons with disabilities fully participate in that monitoring.

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<sup>(11)</sup> OJ C 271, 19.9.2013, p. 116-121.

5.6 The EESC considers that European and national education strategies should include accessibility for persons with disabilities in the curricula of studies in schools and universities.

5.7 The EESC reiterates its commitment expressed in previous opinions to creating a Steering Committee to monitor the implementation of the UN CRPD by the EESC in the development of its activities as a political body.

5.8 A European system of accessibility certification mechanisms must be promoted. Organisations of persons with disabilities' should be involved.

5.9 The dimension of accessibility should be included in the EU's legal and policy impact assessments. Tools to promote that inclusion in a unified way in all Member States should be established.

5.10 The EESC calls for the implementation of the European Disability Strategy by the EU institutions (including the EESC) to be monitored and would point out that the accessibility of premises, recruitment policies and information (either physical or electronic) needs to be ensured. The review of the strategy in 2015 should pay particular attention to this policy area.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the affordability of SGEIs: definition, measurement, challenges, European initiatives (own-initiative opinion)**

(2014/C 177/04)

Rapporteur: **Mr HENCKS**

On 14 February 2013 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

*Affordability of SGEIs: Definition, measurement, challenges, European initiatives*

(own-initiative opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 November 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 135 votes to 19, with 12 abstentions:

## **1. Conclusions and recommendations**

1.1 Many citizens in the European Union (EU) face, to different degrees depending on the Member State, severe economic difficulties in accessing essential services, among others in the fields of housing, energy, electronic communications, transport, water, health care and social services.

1.2 A *high level of affordability* in respect of services of general economic interest (SGEIs) is nevertheless one of the shared values, i.e. values embraced by all EU Member States, set out in Protocol No 26 on Services of General Interest (appended to the Treaties) which must be fully taken into account by the EU and the Member States, within their respective competences, when implementing all their relevant policies.

1.3 There is however no uniform, EU-level definition of or approach to the affordability or financial accessibility of SGEIs, just as there is no instrument with which to measure it: this should be seen in the light of the fact that the Member States enjoy wide discretion within their remit to set up SGEIs.

1.4 The EESC therefore proposes that the EU firstly clarify the concept of affordability of SGEIs for all and adapt it in line with the requirements of the Treaty of Lisbon (Protocol No 26), together with the United Nations Convention on the Rights of Persons with Disabilities, and secondly introduce legislative measures in secondary law, obliging the Member States to:

- define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;
- establish a basket of basic services, the household effort rate of which is set as an acceptable proportion of disposable income. An expenditure ceiling for these services should provide an objective basis for quantifying the concept of affordability and determining the overall percentage of household expenditure above which constitutes excessive cost entitling people, where appropriate, to public assistance;
- define the concept of 'vulnerable persons' and 'disadvantaged groups' more precisely. In this regard, the European Commission should review the way it makes decisions when checking obvious errors in determining State aid.

1.5 In full respect of the responsibility and competence of the Member States, the inclusion of major SGI data in the European Semester is a condition for strengthening the social dimension of the EU and its market, especially in times of crisis.

## **2. Introduction**

2.1 Services of General Interest (SGIs), whether economic (SGEIs) or non-economic, are based on the necessity of ensuring that all inhabitants of the countries concerned can access those services and fundamental rights. They are closely linked to the objective of economic, social and territorial cohesion pursued by the EU.

2.1.1 The Member States have wide discretion to define, organise and finance SGIs that meet users' needs, on the basis of and with reference to social and civic action. As for SGEIs, they follow a commercial approach and subject to EU competition and single market rules, unless such rules prevent them from carrying out their particular missions. Non-economic services of general interest are by definition not bound by a market-based approach and are the exclusive competence of the Member States, on the basis of Article 2 of Protocol No 26.

2.1.2 'The Union recognises and respects access to services of general economic interest (...) in accordance with the Treaties', as specified in the Charter of Fundamental Rights attached to the Treaty of Lisbon, which expressly refers to national laws and practices as the basis. The United Nations Convention on the Rights of Persons with Disabilities, ratified by the EU as a whole, establishes minimum standards to protect and safeguard a full range of civil, political, social and economic rights enjoyed by people with disabilities, and these include access to SGEIs.

2.1.3 Many Member States associate this right of access with the requirement to provide a service under conditions economically acceptable to all and, for this purpose, apply individual and collective social assistance programmes, to different degrees.

In practice however, many citizens in the EU experience severe difficulty in accessing essential services, especially in the fields of housing, energy, electronic communications, transport, water, health care and social services.

2.2 Lack of access to SGIs may depend on a range of factors: it may depend on highly varied national historical backgrounds, with social models and services differing from one Member State to another. It may also be economic (the price of the service is unaffordable), geographical (the service is not provided in a given area), social (unequal treatment), physical (due to disability) or the fact of being inappropriate to needs and/or technical progress (mismatch/inadequate level of quality and/or safety).

2.3 Regarding SGEIs, a high level of quality and safety and affordability, equal treatment and the promotion of universal access and of user rights are six of the fourteen shared values enshrined in Protocol No 26 on Services of General Interest annexed to the Treaty of Lisbon, the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which must be fully taken into account by the EU and the Member States, each within their respective competences and within the scope of the Treaties, when implementing all their policies concerning services of general economic interest within the meaning of Article 14 TFEU.

2.3.1 These fourteen values, classified into three groups, are so interdependent — both within and between these groups — that they cannot be ranked in importance.

2.3.2 For example, even if an SGEI is fully affordable it will not meet the requirements of Protocol No 26 if a high level of quality and safety is not assured or if it is not universally accessible to national citizens, or indeed if no distinction is made between different geographical, social or cultural situations within the country of if a national authority prohibits an SGEI in a case where, under national law or custom, a regional or local authority is entitled to establish such an SGEI, thus contravening their essential role and wide discretion.

2.4 The provisions of the above protocol are explicitly described as being 'interpretative' of the fourteen shared values of the EU concerning SGEIs. The somewhat relative wording of some of these values, in particular that of a high level of quality, safety and affordability, and the promotion of universal access and of user rights, could raise numerous questions regarding the legal or binding status and the effects of these provisions. Whatever the interpretation, though, the answer to those questions, just like Protocol No 26(1), is clear and simple and corresponds to the interpreted article: in each case the relevant national, regional or local authority enjoys, as part of its competence to create SGEIs, wide discretion in defining the various arrangements for each SGEI.

### 3. The concept of affordability in European legislation

3.1 There is no single, EU-level definition of or uniform approach to the affordability or economic accessibility of SGELs, just as there is no instrument with which to measure it. Affordability often depends on the subjective perception of the user of what it costs and what it provides in terms of the individual's well-being.

3.2 In general terms, an affordable service is one which citizens 'can readily afford' (Green Paper on the Development of the Single Market for Postal Services <sup>(1)</sup>).

3.3 A service is entirely affordable if it is provided free of charge to citizens, as in the example of certain cities or regions that provide free urban public transport.

3.4 In order to illustrate the complexity, difficulties and divergences in the way affordability is implemented, the EESC will provide a number of examples of relevant interpretations applied in the housing, telecommunications, electricity and gas sectors. The EESC also emphasises that access to healthcare is being undermined in many Member States in cases where people's incomes are such that they choose not to seek care because they lack sufficient resources. The 2009 report on 'Solidarity in health: reducing health inequalities in the EU' points to a very close link between material want and the resulting health problems.

3.5 The requirement of an affordable price was introduced when legislation was passed on the liberalisation of the network industries, as a vital component of the universal service for telecommunications, electricity and postal services, and as being closely linked to the objective of social and territorial cohesion pursued by the EU.

3.6 The Community approach is based on two views of an affordable price: one with a universal dimension, the other restricted to groups that have low incomes, are disadvantaged or vulnerable, such as people with disabilities or specific social needs. The second is meaningless unless it seeks, in keeping with Protocol No 26, 'the promotion of universal access'.

3.7 It must however be noted that although affordability has become a shared value of the EU that must be upheld by the Member States, some prices such as those for energy, roaming services for telecommunications, transport or housing prices and rents remain excessive compared to the disposable income of a growing sector of the population. Moreover, the definitions of affordability given in various EU rules — set out in non-exhaustive fashion by the EESC below — vary widely and, most importantly, are still far from precise.

#### 3.8 *Housing*

3.8.1 The household budget survey (EU-SILC), carried out in all the Member States, sets the maximum financial effort for housing at 40% of disposable household income. Above this threshold, housing costs are to be considered unaffordable.

3.8.2 Member States intervene in very differing ways and to highly differing degrees in the workings of their housing markets in order to ensure that every citizen is able to access decent and affordable housing, where appropriate by means of housing assistance. The vast majority of Member States have established social assistance or tax support to help out with what is the main item of essential household expenditure and subsidise parallel supply of what is known as 'social housing' to complement the spontaneous supply on the private market.

3.8.3 Social housing is one way in which the public authorities can respond to the housing needs that are not met by the market, with the aim of meeting all housing needs and securing universal access to decent housing at an affordable price or rent. Twenty-five million European households live in social housing.

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<sup>(1)</sup> COM(1991) 476 final.

3.8.4 Despite these provisions, access to decent housing is no longer affordable for many citizens in the EU. In 2011, 15% of Europe's population lived in overcrowded or unfit accommodation, and housing costs absorbed an excessive proportion of the disposable income of 17% of households <sup>(2)</sup>.

3.8.5 The Commission's Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest strictly limits the provision of subsidised social housing to clearly identified disadvantaged citizens or less-advantaged social groups, who owing to solvency constraints are unable to obtain housing at market conditions, raising questions about the values enshrined in Protocol No 26.

### 3.9 *Telecommunications*

3.9.1 If the internal market and free competition have helped to drive down telecom per-unit tariffs, this reduction is also due — at least in part — to technological developments and the capping of mobile phone roaming charges by the EU institutions.

3.9.2 Telecoms legislation <sup>(3)</sup> deems affordability to be related to the 'affordable price' of telephone use 'in the light of specific national conditions' and to users' ability to control their expenditure. In the European Commission's Methodological Note for the horizontal evaluation of SGEIs <sup>(4)</sup> the planned indicator is based on 'price of services relative to the income of low/average-income consumers (reported for consumers with different income levels)'.

### 3.10 *Electricity and gas*

3.10.1 In the electricity and gas sectors, the Commission believes that subsidies or regulation aimed at lowering overall energy prices tend to reduce the incentive for energy-efficient behaviour, do not specifically target those most in need, and can distort competition <sup>(5)</sup>.

3.10.2 The Member States are therefore asked to take measures to ensure adequate protection for vulnerable consumers <sup>(6)</sup>. Direct consumer subsidies by public authorities are only allowed if the concept of energy poverty is clearly defined, and if vulnerable people are clearly identified at national level. Energy supply must be maintained for a certain period, even in the event of non-payment, for consumers experiencing financial difficulties.

3.10.3 It should be noted that the concept of energy poverty relates only to the electricity and gas sectors and does not cover other fuels used in particular for district heating.

3.10.4 EU energy policy seeks to reduce energy consumption with the support of energy efficiency measures or thermal insulation of homes in order to increase the economic accessibility of energy services. Improving energy performance however requires substantial investment, on which an economic return through reducing energy expenditure will only be achieved over the long term. The EESC has drawn up practical proposals on this question in its own-initiative opinion For coordinated European measures to prevent and combat energy poverty (CESE 2417/2013).

## 4. **Measuring affordability**

4.1 In 2004, as part of its evaluation of the performance of SGEIs provided by network industries, the Commission measured the affordability of the tariffs applied by these networks using an indicator based on the share of annual income a user must spend each year for a particular bundle of services.

4.2 The Eurobarometer survey of European citizens' satisfaction with network industries gives only a subjective assessment of the affordability of these services and provides at best an indication of general trends.

4.3 There are no official EU criteria for calculating the economic accessibility of SGEIs. EU texts focus more on principles and harmonised rules for setting 'cost-oriented' or 'more cost-oriented' prices, or on the 'recovery of costs' (as required under the Water Framework Directive), while ensuring the supply of services to the population as a whole.

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<sup>(2)</sup> Eurofound: Third European Quality of Life Survey — Quality of life in Europe: impacts of the crisis, 2012, and Household debt advisory services in the European Union.

<sup>(3)</sup> Directive 2002/22/EC.

<sup>(4)</sup> COM(2002) 331 final.

<sup>(5)</sup> COM(2012) 663 final *Making the internal energy market work*.

<sup>(6)</sup> Directive 2009/72/EC (electricity) and Directive 2009/73/EC (gas).



4.4 Cost-oriented tariffs, however, even without a profit margin for the provider, are not the same thing as economic accessibility and nor do they guarantee access for all to services at affordable prices.

4.5 According to the 2003 Green Paper on Services of General Interest, the Member States must define certain of the criteria to be applied in determining the affordability of a service. They must ensure that the criteria established uphold a series of consumer and user rights, such as accessibility to SGEIs for people with disabilities, while putting in place a price control mechanism and/or by distributing subsidies to the persons concerned. Such criteria could be linked for example to the price of a basket of basic services, to be defined by the Member States, the maximum price of which (the effort rate) is set as an acceptable proportion of the disposable income of the most vulnerable people.

## 5. Role of the European Union

5.1 According to the Green Paper on SGEIs, 'where there is effective competition, market mechanisms may ensure the provision of affordable services of an adequate quality, thus greatly reducing the need for regulatory intervention'.

5.2 However, in its Communication on A Quality Framework for Services of General Interest in Europe (COM(2011) 900 final) — in response to the new Treaty context — the European Commission points out that 'this' (i.e. the single quality framework) 'will ensure that in the coming years the regulatory environment at EU level continues to reinforce the social dimension of the single market, to take better account of the specific nature of these services, and to meet the challenge of delivering them in a way which incorporates the values of quality, safety and affordability, equal treatment, universal access and users' rights recognised in the Protocol' (No 26).

5.3 The public service obligations stipulated by European legislation also include accessibility and affordability for all consumers, with specific provisions for vulnerable or disabled consumers.

5.4 In the light of the above, the Commission will have first to secure closer coordination between its own departments and create a fully-fledged statistical tool by cross-referencing and compiling data (while scrupulously observing data confidentiality). It will then have to clarify the concept of the affordability of SGEIs for all and adapt this legislation to the requirements of the Treaty of Lisbon (Protocol No 26) and the United Nations Convention on the Rights of Persons with Disabilities, while at the same time proposing legislative measures introducing into secondary law an obligation for the Member States to:

- define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;
- establish a basket of basic services, for which the maximum acceptable household effort is set as a proportion of standard disposable income. In determining the affordable price of a basket of services, different services should not be linked to disposable income on a sector-by-sector basis. All services judged essential (to be decided by the Member States in keeping with the principle of subsidiarity) should be considered together in order to set an overall percentage of household spending above which expenditure is excessive (as is done for housing). In that event, financing methods should be introduced in accordance with Article 14 TEU guaranteeing access for all to SGEIs;
- define the concept of 'vulnerable persons' and 'disadvantaged groups' more precisely. In this regard, the European Commission should review the way it makes decisions when checking obvious errors in determining State aid. Member States should be given the discretion to set conditions for access to affordable prices in a way that takes account of people's needs and national or local preferences, as well as the real needs of disadvantaged citizens or socially less advantaged groups, in accordance with the provisions of Protocol No 26 on services of general interest.

5.5 In full respect of the responsibility and competence of the Member States, the inclusion of major SGI data in the European Semester is a condition for strengthening the social dimension of the EU and its market especially in times of crisis.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

## APPENDIX

**to the Opinion of the European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected during the debate:

**Point 1.4**

The amendment to point 1.4 is linked to the amendment to point 5.4 and they were voted on together.

Amend as follows:

1.4 The EESC ~~therefore proposes that the European Union firstly clarify the concept of affordability of SGEIs for all and adapt it in line with the requirements of the Treaty of Lisbon (Protocol No 26), together with the United Nations Convention on the Rights of Persons with Disabilities, and secondly introduce legislative measures in secondary law, obliging the Member States to:~~

- ~~define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;~~
- ~~establish a basket of basic services, the household effort rate of which is set as an acceptable proportion of disposable income. An expenditure ceiling for these services should provide an objective basis for quantifying the concept of affordability and determining the overall percentage of household expenditure above which constitutes excessive cost entitling people, where appropriate, to public assistance;~~
- ~~define the concept of 'vulnerable persons' and 'disadvantaged groups' more precisely, so that, in this regard, the European Commission should can, where necessary, review the way it makes decisions when checking obvious errors in determining State aid.~~

**Reason**

Point 1.4, first paragraph:

It is not up to the Parliament, Council or Commission to establish definitions for values arising from Article 14 and interpreted by Protocol 26 (see also amendment to point 3.9.2, and associated reason). The reference to the UN convention in question (on the rights of persons with disabilities) is reinserted in the amendment to point 5.4, third bullet point.

Point 1.4 — second bullet point:

Delete the second bullet point, because it is not up to the Commission or the Member States to establish a specific package of SGEIs. For the sake of clarity, it is worth reiterating the argument in full here: in European primary legislation, 'public services' does not mean the same thing as 'SGEIs'. In the Treaty of Rome, SGEIs are referred to in Article 90(2) (now Article 106(2) of the Lisbon Treaty); Article 77 (now Article 93), on transport, refers to 'the concept of a public service'. This concept is a political term for a particular form of transport policy, and thus has nothing to do with a specific, concrete service, which is an essential precondition for being designated as an SGEI; this can only be done by a Member State or one of its subordinate authorities, and only for that country, region or local authority. Moreover, the changes that the Lisbon Treaty made to EU legislation on SGEIs weakened rather than strengthened the EU's influence in comparison with national competences<sup>(1)</sup>. Indeed, the Council's and Parliament's new regulatory powers under Article 14 relate only to 'principles and conditions, particularly economic and financial conditions' to enable SGEIs to operate — a competence that was already held largely by the European Commission as the guardian of the Treaties. The Council and Parliament thus quite explicitly have no authority over the 14 'shared values', of which affordability is one. They are, and remain, an exclusively national competence. It is therefore clear that providing all of Europe's inhabitants with an acceptable quality of life is not a question of national SGEIs, but of using sectoral legislation to bring all Member States up to the desired minimum level. This is the direction that the EESC's opinions should take, so that the objective can definitely be achieved with the agreement of and, more importantly, action from the European Commission (which has already rejected three own-initiative opinions advocating the SGI path).

<sup>(1)</sup> As the texts came from the Dutch Government, reference should be made, with regard to their development and intent, primarily to the proceedings of the Dutch Parliament: Kamerstukken I, series 31384 (R1850) C, and Kamerstukken II, series 31384 (R1850) No 4, parliamentary term 2007-2008.

Point 1.4 — third bullet point:

There is no logical connection between the first and second sentences of the third bullet point. The proposed amendments provide that connection. The reference to the UN convention in question (on the rights of persons with disabilities) is reinserted in the amendment to point 5.4, third bullet point.

#### Point 5.4

Amend as follows:

5.4 In the light of the above, the Commission will, ~~have first to secure through~~ closer coordination between its own departments, ~~and create a fully-fledged statistical tool by cross-referencing and compiling data (while scrupulously observing data confidentiality). It will then have to clarify the concept of the affordability of SGEIs for all and adapt this legislation to the requirements of the Treaty of Lisbon (Protocol No 26) and the United Nations Convention on the Rights of Persons with Disabilities, while a~~ At the same time it could proposing legislative measures introducing into secondary law an obligation for the Member States to:

- define indicators to determine the affordability of a service, together with an independent SGEI performance evaluation mechanism, covering compliance with economic accessibility;
- ~~establish a basket of basic services, for which the maximum acceptable household effort is set as a proportion of standard disposable income. In determining the affordable price of a basket of services, different services should not be linked to disposable income on a sector by sector basis. All services judged essential (to be decided by the Member States in keeping with the principle of subsidiarity) should be considered together in order to set an overall percentage of household spending above which expenditure is excessive (as is done for housing). In that event, financing methods should be introduced in accordance with Article 14 TEU guaranteeing access for all to SGEIs;~~
- ~~define the concept of 'vulnerable persons' and 'disadvantaged groups' more precisely, so that in this regard, the European Commission should, if necessary, review the way it makes decisions when checking obvious errors in determining State aid. Member States should be given the discretion to set conditions for access to affordable prices in a way that takes account of people's needs and national or local preferences, as well as the real needs of disadvantaged citizens or socially less advantaged groups, also in accordance with the provisions of Protocol No 26 on services of general interest the United Nations Convention on the Rights of Persons with Disabilities.~~

#### Reason

Point 5.4, first paragraph:

- The first sentence has the same objective but expresses it in a more elegant way. It is not for the EESC to express a view on the internal organisation of the European Commission.
- It is not for the Commission to define values from Article 14, as interpreted by Protocol 26 (see also amendment to point 3.9.2 and reason).
- The reference to the United Nations Convention is moved to the bullet points.

## Point 5.4 — second bullet point:

This contradicts the third bullet point. It would be better to delete the second bullet point, as it is not for the Commission to oblige the Member States to establish a specific basket of SGEIs. For the sake of clarity the overall argument should be reiterated here: in European primary law ‘public services’ are not the same thing as SGEIs. SGEIs are already mentioned in Article 90(2) of the Treaty of Rome (now in the Treaty of Lisbon, Article 106(2)). Article 77 (now Article 93), on transport, deals with the concept of public services. This is a political name for a specific form of transport policy and therefore has nothing to do with the provision of a specific service, which is a precondition for being designated an SGEI, exclusively by a Member State or a delegated authority of the Member State, a designation which is valid only in the relevant country, region or local area. The changes to the rules on SGEIs introduced by the Treaty of Lisbon have weakened the European dimension of SGEIs rather than strengthened it, in favour of national competences <sup>(2)</sup>. The new regulatory powers of the Council and the Parliament, based on Article 14, only concern the ‘principles and conditions, particularly economic and financial conditions, which enable (SGEIs) to fulfil their missions’, a power which previously resided mainly with the European Commission, the guardian of the Treaties. The Council and the Parliament thus have no powers with regard to the 14 ‘shared values’, of which affordability is one. The rules thus are, and remain, an exclusively national competence. In order to ensure that all Europeans can enjoy an acceptable quality of life, the path to take is thus clearly not that of national SGEIs but rather the route of sectoral legislation, requiring all Member States to achieve the desired minimum level. EESC opinions should focus on this and this approach will undoubtedly meet with approval and, more importantly, action by the European Commission, which has already rejected the previous three opinions arguing that the SGI route should be taken.

## Point 5.4 — third bullet point:

- There is no logical link between the first and second sentences of the third bullet point. This is corrected by the proposed amendment.
- Protocol 26 contains no provisions on ‘disadvantaged citizens or socially less advantaged groups’. A call for compliance with a UN convention is never out of place, however.

**Outcome of the vote:**

For	110
Against	44
Abstentions	12

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<sup>(2)</sup> As the texts originated from the Dutch government, their history and significance can best be elucidated by reference to the proceedings of the Dutch parliament. Upper and Lower Chamber documents, series 31 384 (R 1850) C, No. 4, 2007-2008.

**Opinion of the European Economic and Social Committee on the 'EU Strategy for the Adriatic and Ionian Region (EUSAIR)' (exploratory opinion)**

(2014/C 177/05)

Rapporteur-General: **Mr DIMITRIADIS**

Co-Rapporteur-General: **Mr PALMIERI**

On 20 November 2013, Maroš Šefčovič, Vice-President of the European Commission, asked the European Economic and Social Committee, to draw up an exploratory opinion on the

*EU Strategy for the Adriatic and Ionian Region (EUSAIR).*

On 15 October 2013 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Dimitriadis, as rapporteur-general, and Mr Palmieri as co-rapporteur-general at its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January 2014), and adopted the following opinion by 150 votes to 0 with 3 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the special attention devoted to drawing up a European Union Strategy for the Adriatic and Ionian Region (EUSAIR), in order to support cohesion and competitiveness in the light of challenges that cannot be satisfactorily resolved by single regions or countries through the usual means.

1.2 The EESC notes that the discussion paper does not mention the strategic value of Mediterranean cooperation. The EESC would like to emphasise that while Adriatic and Ionian regional cooperation is fundamental to assisting the countries of the Western Balkans in the pre-accession process, and strengthening links with the Danube and Baltic macro-regions, it is also essential to consider the Adriatic and Ionian area as a functional area of the Mediterranean basin.

1.3 The EESC believes that EUSAIR must adopt a comprehensive programme of action-oriented list of projects and schemes. The strategy should make use of best practice already developed in other macro-regional strategies (Baltic Sea, Danube and the Atlantic), the Union for the Mediterranean<sup>(1)</sup>, the Europe 2020 strategy, existing EU programmes and funding measures<sup>(2)</sup> and EU initiatives such as INTERACT to provide technical assistance and training<sup>(3)</sup>. It should also be operationally linked with other EU policies, such as Cohesion, Common Agricultural and Fisheries Policies, the Connecting Europe Facility, trans-European transport and energy networks, Horizon 2020, the Digital Agenda, the COSME programme, Integrated Maritime Policy, and policy on the CEAS<sup>(4)</sup>. The result should be a practical list of measures, programmes and schemes to ensure greater cohesion for the people of the region.

1.4 The EESC notes the total absence of the private sector from the discussion paper and underlines the important role of this sector as an engine for growth and jobs. It emphasises the need for both the private sector and civil society stakeholders to be more actively involved in the EUSAIR strategy's preparation and implementation. It is strongly recommended that better use be made of the private sector's potential to attract investment (both local and international) and to create business opportunities.

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<sup>(1)</sup> EESC exploratory opinion on *Developing a macro-regional strategy in the Mediterranean — the benefits for island Member States*, OJ C 44, 15.2.2013, p. 1.

<sup>(2)</sup> See Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, OJ L 310, 9.11.2006, p. 1.

<sup>(3)</sup> — [http://www.interact-eu.net/about\\_us/about\\_interact/22/2911](http://www.interact-eu.net/about_us/about_interact/22/2911);  
— <http://www.interact-eu.net/ipvalencia/ipvalencia/117/619> (INTERACT point for the Mediterranean in Valencia).

<sup>(4)</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Policy plan on asylum — an integrated approach to protection across the EU*, COM(2008) 360 final.

1.5 The EESC believes that the strategy should include a stronger social dimension, in order to better support inclusive growth in the Adriatic and Ionian region. It is also vital to involve representatives of 'excluded' social groups in the social dialogue, such as migrant communities, people with disabilities and women's organisations, and to fully support EU policies aimed at preventing discrimination on grounds of racial or ethnic origin, disability, age, sexual orientation or gender.

1.6 The EESC regrets that the discussion paper does not adequately address the issues surrounding irregular and illegal migration flows. The EU must devote more effort to helping the Adriatic and Ionian region cope with the challenge of migration and to integrate immigrants into society.

1.7 The EESC believes that policing and security are very important to the progress and prosperity of the Adriatic and Ionian region and calls on the Council to increase FRONTEX's budget and power to act <sup>(5)</sup>.

1.8 Although in recent years several partnership initiatives and projects relating to macro regional issues have been carried out in the cooperation area concerned ('Adriatic Euroregion', 'Forum of the Adriatic and Ionian Chambers of Commerce', 'Forum of Adriatic and Ionian Cities', Uniadriion, etc.) the EESC would also point out that this strategy has taken a long time to materialise despite the fact that discussions on the 'Adriatic and Ionian Initiative' began as far back as October 1999 at the behest of the Italian government and were officially established in May 2000 with the 'Ancona Declaration'. After all this delay all of a sudden the time-frame for the final approval has been condensed making it extremely difficult for members of the EESC to work properly on the Committee's stance.

## 2. EU Strategy for the Adriatic and Ionian Region (EUSAIR): background and problems

2.1 The first cooperation effort in the Adriatic and Ionian region was the *Stability Pact for South Eastern Europe*, which was launched in 1999. This was a framework aimed at strengthening peace, democracy, human rights and the economy in the countries of South Eastern Europe from 1999 to 2008. Under this initiative, and at the Finnish EU Summit held in Tampere in October 1999, the Italian Government presented the *Adriatic and Ionian Initiative*, which was officially established in Ancona (Italy) on May 2000 through the signing of the *Ancona Declaration*. This declaration represented the 'cornerstone policy' for strengthening Adriatic and Ionian territorial cooperation, and promoting political and economic stability, thus creating a solid base for the process of European integration. Initially signed by the Ministers for Foreign Affairs of Albania, Bosnia and Herzegovina, Croatia, Greece, Italy and Slovenia, the Initiative was later extended to the federative union of Serbia and Montenegro.

2.1.1 With reference to the *Ancona declaration*, several institutional cooperation networks were activated to support cohesion and competitiveness in the Adriatic and Ionian region: the Adriatic and Ionian Euroregion, the Forum of Adriatic and Ionian Cities, the Forum of Adriatic and Ionian Chambers of Commerce, Uniadriion and the Adriatic and Ionian Initiative.

2.2 On 19 November 2012, at the ministerial meeting between the Commission and Foreign Ministers from the Adriatic and Ionian Region, the following decisions were adopted:

- Strong backing for the new strategy was given by all parties;
- The new strategy would use the best practice and experience of the Danube <sup>(6)</sup> and Baltic <sup>(7)</sup> macro-regional strategies;
- Measures should not overlap with the Maritime Strategy;
- The strategy would be provided with the necessary human resources, dedicating an appropriate number of staff to its drafting and implementation;
- Concrete measures and projects would be identified in the action plan;
- Additional areas and members could be considered at a later stage.

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<sup>(5)</sup> The EESC's own-initiative opinion on *Irregular immigration by sea in the Euromed region*, OJ C 67, 6.3.2014, p. 32.

<sup>(6)</sup> COM(2010) 715 final.

<sup>(7)</sup> COM(2009) 248 final.



2.3 Following the decision of the European Council on 14 December 2012 <sup>(8)</sup> to establish a new macro-regional strategy for the Adriatic and Ionian Seas before the end of 2014 and, in order to respect the mandate received, the Commission services would start drawing up a communication and an action plan, which should be approved by the end of the Italian Presidency.

2.4 On 22 October 2013, the Council, for the first time, adopted strategic criteria for the basic characteristics of the macro-regional strategies. These were:

- Strengthening cooperation among the Member States concerned, with interested non-concerned states and with interested non-EU countries in areas of common interest;
- Mobilising a variety of available financing sources and the relevant stakeholders towards improved policy development and implementation of different EU, national and regional policies;
- Improving existing cooperation mechanisms and networks;
- Contributing to developing and improving access to financing for the new high-quality projects.

2.5 The Adriatic and Ionian strategy enjoys strong political commitment and awareness in the countries involved and represents not only a challenge, but also a great opportunity for the EU itself. The strategy's mission is to 'connect and protect'. It will support cohesion beyond the borders of the EU, in an area that is extremely important for the stability of the continent.

2.6 The Adriatic and Ionian strategy politically and technically complements the Danube macro-region (which includes several States also involved in the Adriatic and Ionian strategy) and the Baltic macro-region.

2.7 The Adriatic and Ionian region is facing a number of major challenges, such as ecological and environmental issues, inefficient transport connections and inadequate cooperation for boosting cohesion, competitiveness and innovation. One key factor in dealing with this successfully is to enhance the modern business culture and development of SMEs in the region by promoting cooperation between them and the transfer of best practice.

2.8 A strategy based on a macro-regional approach can provide valuable impetus for supporting Balkan and Eastern European countries' integration into Europe, for supporting integrated development policies and better use of EU and national funds, and for strengthening exchanges and partnerships between civil societies in the countries involved.

2.8.1 Macro-regional cooperation facilitates progress towards alignment with EU standards — the 'acquis communautaire' — thus having a positive impact on the path towards Europe and on the stability of the Adriatic and Ionian countries, as well as at regional level. Furthermore, a macro-regional strategy is essential to promoting cohesion and socio-economic integration between territories.

2.8.2 Any effective macro-regional approach to strengthening synergies between different EU policies and coordinating the efforts of a wide range of stakeholders in the Adriatic and Ionian region should be based on the 'three YESes rule': more complementary funding, more institutional coordination and more new projects. In this a major role would be accorded to the private sector.

2.8.3 A well-structured macro-regional strategy can provide a common European framework to promote cultural enrichment and the empowerment of national civil societies at regional level. This is particularly important for regions such as Eastern Europe or the Balkans, where the consolidation of democratic practice goes hand in hand with the development of a thriving and dynamic public sphere.

2.8.4 A macro-regional strategy could make it possible to plan infrastructure development on a trans-national geographic scale, promoting the development of ICT networks, highways, railways and ports, thereby ensuring territorial cohesion and competitiveness without barriers or bottlenecks.

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<sup>(8)</sup> European council conclusions: EUCO 205/12/, 14.12.2012.



2.9 Despite the lengthy start-up of the project, it has recently been declared urgent and the final rounds are being compressed to the detriment of the final outcome.

### 3. The discussion paper: scope and objectives

3.1 In EUSAIR, the Ionian Sea represents a common and pivotal factor. The strategy should focus on areas of mutual regional interest with high relevance for the Adriatic and Ionian countries and clarify all the practical issues (basic pillars, governance, etc.). The priority areas and objectives of the action plan should be developed by governments and the social partners' representatives as shared aspirations and sustainable solutions to common challenges, paying specific attention to maritime and marine investment for growth and employment.

3.2 The overarching aim of EUSAIR is to promote the sustainable economic and social prosperity of the Adriatic and Ionian region through growth and job creation, by improving its attractiveness, competitiveness and connectivity, while also preserving the environment of inland areas and coastal and marine ecosystems.

3.3 This aim will be achieved through activities carried out in line with four thematic pillars<sup>(9)</sup>: driving innovative maritime and marine growth; connecting the region; preserving, protecting and improving the quality of the environment and increasing the region's attractiveness.

3.3.1 **First pillar: Driving innovative maritime and marine growth.** Fishing<sup>(10)</sup> is a very important economic activity for the Adriatic and Ionian coastal areas and their inhabitants. The basic goal of this pillar is to develop a strong, high-quality fisheries and aquaculture sector that will be environmentally and economically sustainable and will create new jobs.

3.3.2 **Second pillar: Connecting the region.** The region is in a very important geostrategic area on Europe's northern, southern, eastern and western axes. The Adriatic and Ionian seas constitute an important crossroads for goods, passengers and energy. Several European countries depend heavily on these areas for imports and exports. The Adriatic Motorways of the Sea will be a viable, reliable and competitive transport service for goods and passengers. Passenger ship crossings and oil and gas transport are increasing year on year. Unfortunately, in addition to commercial maritime traffic, the Adriatic and Ionian Seas are also used by criminal networks engaged in illegal trafficking.

3.3.3 **Third pillar: Preserving, protecting and improving the quality of the environment.** The Adriatic and Ionian coastal and marine environment hosts a huge diversity of habitats and species. The combined action of high anthropogenic pressure and topographic characteristics make these habitats highly susceptible to pollution. Cooperation between coastal stakeholders takes place within the regulatory frameworks of the *Marine Strategy Framework Directive*, the *Barcelona Convention* and its protocols, as well as the *Joint Commission for the Protection of the Adriatic Sea and its Coastal Areas*. River runoff and maritime transport both have a significant impact on the Adriatic Sea.

3.3.4 **Fourth pillar: Increasing regional attractiveness.** The tourism sector is economically significant as one of the main and fastest-growing activities in the region. In many cases, it is the economic backbone of coastal regions and, increasingly, of the hinterland as well. The cruise sector alone is showing strong potential for growth. Over the past 10 years, the demand for cruises has roughly doubled worldwide. This has been reflected in the Adriatic and Ionian area, which is already seeing rapid growth. Moreover, cultural and archaeological heritage in the region represents a strong asset which should be fully exploited. The new macro-regional strategy should help tourism stakeholders tackle internal and external challenges such as increasing competition from other destinations, as well as seasonal fluctuations and penetrate new markets which the tourism industry has ignored until now such as tourists with disabilities and elderly tourists. A macro-regional approach to coastal, maritime and other forms of tourism could provide an incentive to strengthen governance and to involve private players and international financial institutions.

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<sup>(9)</sup> Four pillars: an indicative structure for action agreed between the 8 Ministries of Foreign Affairs and Commissioner J. Hahn on November 2012.

<sup>(10)</sup> European Parliament: Report on a fisheries strategy in the Adriatic and Ionian Seas (2012/2261 (INI), A7-0234/2013).

#### 4. Specific comments on the discussion paper

4.1 The EESC notes that awareness of the different issues varies considerably between the people of the countries of the region. The extreme diversity of experience, with four member states and four non-member states, all with very different levels of awareness and development, requires a strategy for the region which is properly tailored to the territorial potential in each one.

4.1.1 Hence, there is a need for the Commission to help raise awareness and to secure the direct involvement of the private sector and wider society organisations. In any case this is a big challenge.

4.2 The EESC agrees in principal with the discussion paper, which analyses in detail the basic ingredients for supporting the smart, sustainable and inclusive growth of the Adriatic and Ionian region. The four pillars adequately describe the main problems, challenges and objectives.

4.3 The EESC would like to commend the efforts which have been made to draw up a strategy for the Adriatic and the Ionian Seas. The draft for discussion has identified weaknesses, set out synergies and a common vision and has put forward a set of proposals that form a sound basis for developing the strategy, including a set of realistic measures and the active participation of all the stakeholders.

4.3.1 The EESC believes in the crucial role that the macro-regional strategies could play for the countries of the region. A well thought-out strategy can provide an overall reference framework and could be considered a stability-boosting exercise, which is always a prerequisite for attracting private sector investment within and from outside the region.

4.3.2 The EESC endorses the priorities that have been identified as the region's strengths, such as its importance as a hub for the movement of goods, people and energy and its competitive advantages for blue activities and tourism. It appears that these sectors can become real drivers for investment, growth and employment.

4.3.3 The EESC also agrees with the findings of the draft strategy, confirming that synergies for cooperation in the region have to be strengthened. The EESC therefore believes that the action plan should emphasise the importance of establishing clustering and networking platforms to engage in common initiatives for tackling shared weaknesses and should draw up a common vision for developing sustainable, highly competitive economies in the region.

4.3.4 The EESC notes that the document fails to adequately address some important aspects concerning territorial, social and economic cohesion.

4.3.5 The EESC recommends that relevant issues such as research, innovation and SMEs' development and Capacity Building should not be proposed solely as cross-cutting aspects, but should be given a more prominent role to become real drivers for supporting regional cohesion and competitiveness.

4.3.6 The discussion paper makes no mention of the strategic value of Mediterranean cooperation. While Adriatic and Ionian regional cooperation is fundamental to assisting the countries of the Western Balkans in the pre-accession process, and to strengthening links with the Danube and Baltic macro-regions, it is also essential to consider the Adriatic and Ionian area as a functional area of the Mediterranean basin.

4.3.7 Problems related to irregular migration flows are not adequately dealt with. In particular, the involvement of the southern Italian regions (Apulia, Basilicata, Calabria and Sicily) in the Adriatic and Ionian strategy makes it necessary to focus more on humanitarian and safety issues related to migration from North African countries.

4.3.8 The EESC believes that in its present form, the strategy contains a relatively long list of problem areas, structural weaknesses and objectives. The extensive list does not serve any useful purpose and should be trimmed down to a more manageable list of realistic measures. It would therefore recommend restricting the content of the strategy to the most important areas of action, or prioritising the activities in the short, medium and long term starting with the most important issues.

4.3.9 The EESC believes that the Adriatic and Ionian strategy should fully include all stakeholders, such as governments, regional and local authorities, universities, research institutions, private-sector businesses and SMEs, social partners, NGOs and civil society, as proof that the strategy adheres to the principles of multilevel governance and active citizenship <sup>(11)</sup>.

4.3.10 The EESC takes note of the decisions taken by the Council to the effect that a macro-regional strategy should not require more money, more regulation or new management bodies (the three NOs), but believes that more funding is needed for technical assistance in order to secure successful implementation of the strategy in the future.

4.3.11 The EESC also believes that the considerable funding that has already been committed by the EU for regional programmes through the structural funds represents adequate means, which must be used effectively for the strategy's implementation, through more coordinated action, subject to a unified strategic approach.

## 5. More specific comments regarding the four pillars

5.1 **Driving innovative maritime and marine growth:** The EESC notes that the sea has rightly been identified as a fundamental element that can help provide the countries concerned with dynamic economic sectors and enable people to find gainful employment. It believes it essential to draw up new programming models able to ensure the integration and complementarity of the blue economy's value chains (Blue Food, Blue Tourism, Blue Industry, Blue Logistics and Blue Resources).

5.1.1 The strategy correctly identifies blue activities as sectors on which to focus, given that aquaculture has already attracted sizeable investment in the large countries in the region and which others can use as examples. New investment in facilities and supplementary activities would therefore be expected to generate quick returns, making it attractive for financing through the EIB and private foreign and local investment.

5.1.2 The EESC agrees on the need for a 'business resource-efficient culture' as a means of improving management practices in the major areas of activity. Countries in the region, especially the non-EU countries, face limitations and a restrictive business philosophy that could greatly benefit from close cooperation in adopting a new business culture. The EESC considers that private businesses should be engines for the success of this endeavour.

5.1.3 The EESC recommends that the proposed idea of making this region a centre for 'innovative' activities be a very long-term objective. At present, the region has only limited capacity. The strategy should therefore aim to build synergies and improve training and educational infrastructure so as to gradually develop blue activities and to reduce imbalances in the demand for and supply of qualified skilled labour. The EU, supported by the business community, the two sides of industry and civil society, can play an important role in transferring and supporting best practice and expertise in the region.

5.1.4 The EESC considers that fisheries play an important social and economic role in the Adriatic and Ionian Seas, but that basic infrastructure in some countries is inadequate. The action plan should therefore study the situation carefully and present a realistic plan. It also urges non-EU countries to demonstrate greater commitment to European legislation on fisheries.

5.2 **Connecting the region:** The EESC believes that, up to now, there has been a pronounced lack of efficient, cost-effective connectivity between the countries of the region, particularly as regards meeting energy requirements. In addition, transport and communication connections with the hinterland and the islands are inadequate. The EESC agrees that it is necessary to improve maritime and air connections within and outside the region and hence deems it essential that the Maritime Strategy for the Adriatic and the Ionian seas <sup>(12)</sup> adopted in November 2012 becomes one of the main components of EUSAIR, making it possible to develop an efficient transport connection system, particularly for landlocked and outlying areas.

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<sup>(11)</sup> COM(2011) 884 final.

<sup>(12)</sup> COM(2012) 713 final.

5.2.1 The EESC supports the proposed Motorway of the Sea for the Adriatic and Ionian Seas so as to better manage road traffic congestion, narrow the competitiveness gap for islands and hinterland areas and improve connections with the other Mediterranean transport corridors.

5.2.2 The EESC feels that the discussion paper does not give the necessary prominence to energy issues, since the EU is continuously searching for alternative sources of energy and for new routes with oil- and gas-exporting countries. Major new pipelines connecting Europe with energy producers are apparently planned to pass through the Adriatic and Ionian Region. One example of this is the agreement between Azerbaijan, Greece and Italy regarding TAP.

5.2.3 The EESC believes that, given the problems of drug trafficking and irregular migration that hallmark the area, the Adriatic and Ionian region needs an upgraded governance model, an effective policing system and closer cooperation between regional and EU authorities. The EESC therefore calls on the European Council to increase FRONTEX's budget and its power to act.

**5.3 Preserving, protecting and improving the quality of the environment:** in line with the EU's demanding environmental policies, the EUSAIR strategy has adopted ambitious targets. The EESC welcomes this approach, given the importance of biodiversity and the existence of habitats that are highly susceptible to pollution. It supports the proposals for closer cooperation between coastal states, within the regulatory frameworks of the Marine Strategy Framework Directive, the Barcelona Convention, and the Joint Commission for the Protection of the Adriatic Sea and its Coastal Areas. The EESC believes that some of the region's countries may not be ready for such an ambitious policy and would need further encouragement including possible financing for firms to adjust their production in line with ecological standards.

5.3.1 The EESC believes that the major area of action under this pillar is implementation of the provisions of the Water Framework Directive<sup>(13)</sup> aimed at reducing nitrate emissions, in order to improve the marine environment.

5.3.2 It also endorses the adoption of advanced management techniques for traffic, so as to reduce marine litter and ballast discharges and to promote projects for waste management in land-based coastal activities.

5.3.3 The EESC supports implementation of Marine Spatial Planning approaches, Marine Protected Areas, Natura 2000 and Integrated Coastal Zone Management.

5.3.4 The EESC would note that compliance is necessary not only for EU members but also — and especially — for non EU members in order to facilitate their entry into the Union.

5.3.5 The EESC also believes that enhancing cooperation at all levels for exchanging best practice among the authorities of Marine Protected Areas is an effective way of protecting the environment.

#### 5.4 Increasing regional attractiveness

5.4.1 The EESC strongly supports the role of tourism which is expected to register further growth in the future<sup>(14)</sup> to becoming coastal regions' primary economic activity. Tourism has attracted major European companies that are investing in quality tourism and making large increases in tourist traffic possible. It provides many economic benefits, driving growth and creating well-paid jobs, especially for young people. However, as tourism becomes intensive, mitigation measures must be provided to reduce any negative effects on the coastal and marine environments on which it depends so heavily.

5.4.2 The EESC suggests that tourism be subject to strict management practices, in an attempt to make it more environmentally friendly as well as more inclusive. The Committee would point out that the business community, the two sides of industry, and civil society can offer invaluable support in this regard.

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<sup>(13)</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000.

<sup>(14)</sup> UNWTO expects the number of tourist arrivals worldwide to increase by 3,3% on average per year until 2030. See further UNWTO highlights from the 2012 edition at [WWW.UNWTO.org](http://WWW.UNWTO.org). Europe accounts for over half of international arrivals and is the fastest growing region.

5.4.3 The EESC believes that the cruise sector should be given a bigger role, while being better managed and integrated into the tourist product and it would support a stronger focus on maritime tourism through new policy initiatives and Europe 2020 objectives as part of the Commission's attempts to develop an integrated strategy for coastal and maritime tourism.

5.4.4 The EESC wishes to recommend that cultural and archaeological aspects be strongly integrated into tourist activities. Tourism should be differentiated by involving other activities such as conferences, eco-tourism, agro-tourism, thematic products and routes, academic study, business and the creative industries. The EESC strongly believes that all the tourist activities have to be driven by the principles of Universal Design.

5.4.5 The EESC believes that the macro-regional strategy should help tourism stakeholders to tackle internal and external challenges such as increasing competition from other destinations and seasonal fluctuation issues, and to penetrate new markets which the tourism industry has ignored until now such as tourists with disabilities and elderly tourists, by adopting best practice in developing regional integrated territorial development action plans.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the 'Proposal for a Council Decision on guidelines for the employment policies of the Member States'**

COM(2013) 803 final — 2013/0392 (NLE)

(2014/C 177/06)

On 25 November 2013, the Council decided to consult the European Economic and Social Committee, under Article 148 (2) of the Treaty on the Functioning of the European Union, on the

*Proposal for a Council Decision on guidelines for the employment policies of the Member States*

COM(2013) 803 final — 2013/0392 (NLE).

The Committee decided, at its 495th plenary session of 21 and 22 January 2014 (meeting of 21 January), by 150 votes with 5 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 260/2012 as regards the migration to Union-wide credit transfers and direct debits**

COM(2013) 937 final 2013/0449 (COD)

(2014/C 177/07)

On 14 January 2014, the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) N° 260/2012 as regards the migration to Union-wide credit transfers and direct debits*

COM(2013) 937 final — 2013/0449 (COD).

Since the Committee endorses the content of the proposal and has already set out its views on the subject in its earlier opinion CESE 794/2011 — 2010/0373 (COD), adopted on 5 May 2011 (\*), it decided, at its 495th plenary session of 21 and 22 January 2014 (meeting of 21 January), by 159 votes to 1 with 4 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned document.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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(\*) EESC Opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing technical requirements for credit transfers and direct debits in euros and amending Regulation (EC) No 924/2009, OJ C 218, 23 July 2011, p. 74.

## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 495TH PLENARY SESSION OF THE EESC ON 21 AND 22 JANUARY 2014

**Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts’**

COM(2013) 641 final — 2013/314 (COD)

(2014/C 177/08)

Rapporteur: **Mr IOZIA**

On 18 and 10 October 2013 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council on indices used as benchmarks in financial instruments and financial contracts*

COM(2013) 641 final — 2013/314 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 140 votes with 3 abstentions.

**1. Conclusions and recommendations**

1.1 Financial benchmarks play a fundamental role in the financial sector, both in pricing products and in allocating risk and capital fairly. Benchmarks must be credible and reliable to allow the financial markets to operate efficiently.

1.2 The episodes of benchmark manipulation have sparked global doubt and concern regarding the integrity of benchmarks, undermining the integrity of the system and commercial certainty. The Committee is concerned about the serious consequences of such behaviour. Manipulation can result in major losses for investors, distort the real economy and, more generally, threaten confidence in the markets. The Committee therefore calls for the proposed new measures to be adopted as swiftly as possible.

1.3 In April 2013, the United Kingdom set up the Financial Conduct Authority (FCA), which monitors financial bodies. The FCA regulated LIBOR, establishing new requirements which reinforce governance and oversight and introducing measures sanctioning those responsible for LIBOR manipulation.

1.4 The European Commission, amending the proposals for the Market Abuse Regulation (MAR) and the Criminal Sanctions for Market Abuse Directive (CSMAD), confirmed that any manipulation of financial benchmarks was illegal and laid down administrative or criminal sanctions. However, while penalties are necessary, they are not enough to avert the danger of further manipulation.

1.5 The Committee accordingly welcomes the Commission's proposal for this regulation. It considers that this proposal has met the objective of improving the legislation which ensures the necessary integrity of the market and of benchmarks, guaranteeing that they are not distorted by any conflict of interest, that they reflect economic reality and that they are used correctly. The grounds of law and order in economic matters are obvious.

1.6 Measures for the protection of whistleblowers are particularly important. The Committee recommends that the rule include a reference to the proposal to amend Directive 2003/6/EC on market abuse, which explicitly requires the Member States to adopt rules providing for the protection of whistleblowers.

1.7 The Committee is pleased to note that the proposal is in line with the principles identified last summer by the International Organisation of Securities Commissions (IOSCO) following many consultations, and thus significantly reduces implementation costs.

1.8 The notorious scandals regarding LIBOR and EURIBOR manipulation, along with subsequent scandals about manipulation of benchmarks for exchange rates and the prices of crude oil, petroleum products and biofuels, demonstrate the need for regulation on a wide range of benchmarks, including those used for energy derivatives and commodities. The Committee agrees without reservation and strongly supports the proposal's broad scope, which respects the proportionality principle.

1.9 The regulation increases market transparency and adopts measures to reduce fragmentation. Uniform application of legislation avoids the danger (which is considerable in financial markets) of regulatory arbitrage and so end users will have the advantage of uniform cross-border benchmarks.

1.10 The Committee, which has always sought to enhance consumer protection, considers that the regulation is an appropriate addition to current legislation which would otherwise lack any instrument guaranteeing suitable and appropriate evaluation of benchmarks. Investors have the right to know that their securities (loans, derivatives, etc.) are protected from losses caused by market manipulation.

1.11 The Committee reiterates its disappointment at the excessive use of delegated acts which — in this proposal for a regulation as elsewhere — do not seem to be consistent with the Treaties. Many subjects which are included as delegated acts should be defined in the regulation. The Committee has adopted an opinion on this issue<sup>(1)</sup> and calls on the Commission to keep it informed of any future measures adopted in this field by means of delegated acts.

## 2. Gist of the proposal for a regulation

2.1 The European Commission has submitted a proposal for a regulation which imposes rules on benchmarks for financial instruments and contracts within the European Union.

2.2 The general objective of the proposal is to ensure the integrity of benchmarks, guaranteeing that they: a) are not distorted by conflicts of interest; b) reflect the economic reality that they are intended to represent and measure; c) are used appropriately.

2.3 The main points of the proposal are summarised below and aim to:

- **improve governance of and controls over the benchmark process.** Prior authorisation and ongoing supervision of the provision of benchmarks will be required, at national and European level.

The proposal also stipulates that benchmark administrators should avoid conflicts of interest where possible, or at least manage them adequately when they are inevitable;

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<sup>(1)</sup> OJ C 67 of 6.3.2014, p. 104.

- **improve the quality of the input data and methodologies used by benchmark administrators.** The proposal stipulates that when setting benchmarks, sufficient and accurate data must be used which represent the actual market or economic reality that the benchmark is intended to measure. The data must come from reliable sources and the benchmark set using a robust and reliable methodology. The data used to calculate benchmarks must be disclosed or made available to the public, along with information on what each benchmark measures, except when this could have very harmful consequences.

When setting benchmarks, data on transactions must be used where possible; when these are not available, verifiable estimates should be taken as a basis;

- **ensure that contributors to benchmarks provide appropriate input data and are subject to appropriate controls.** The benchmark administrator must draw up a legally binding code of conduct laying down the obligations and responsibilities of contributors when they provide input data for the benchmark. These obligations also concern the management of conflicts of interest;
- **ensure adequate protection for consumers and investors using benchmarks.** The proposal enhances the transparency of data used to calculate the benchmark and of the calculation method, what they measure and how they should be used. Moreover, banks must evaluate the suitability of the benchmark used before proposing a financial contract, warning the client if the benchmark is not appropriate (e.g. in the case of contracts for mortgage loans);
- **coordinate supervision and applicability of critical benchmarks.** The supervision of critical benchmarks will also be entrusted to specific colleges of supervisors, which will be guided by the supervisory authority of the benchmark administrator and other supervisory authorities of other relevant jurisdictions and which will include the European Securities Markets Authority (ESMA). Should the college be unable to agree, the ESMA will decide by means of binding mediation. Further special requirements have been drawn up for benchmarks deemed critical, including the power for the competent authorities to make contribution mandatory.

2.4 Central banks are not subject to the rules as they already have their own guarantees and rules.

2.5 The annexes to the proposal contain detailed provisions on benchmarks for goods and on setting interest rates.

2.6 In order to avoid regulatory duplication, benchmarks for which input data are provided by regulated venues are not subject to certain obligations, when they are covered by other European legislative provisions and by supervision requirements.

### 3. Comments

3.1 The Committee acknowledges, supports and endorses the work of the European Commission, which, with a heavy work programme and tight timeframe, is working to make the financial services market more stable and efficient. The Committee points out that this is a prerequisite for guaranteeing that the financial sector serves the interests of the real economy.

3.2 The Committee considers this regulation to be in line with the objective of promoting a financial environment which is stable, supervised, more accountable and thus more suited to the requirements of consumers and the economy in general.

3.3 The Committee is extremely concerned that the regulation will not be approved quickly, which will disappoint Europeans, who expect a decisive and vigorous response to manipulation of the market and of instruments showing trends in bonds, securities and benchmarks, which causes enormous damage in a very difficult context. The Committee therefore hopes that the regulation will be approved rapidly, without waiting for the next financial scandal to underscore the need for effective legislation. The Committee points out that the sheer complexity and scope of the proposed regulation could slow down the approval procedure.

3.4 Financial market benchmarks (e.g. LIBOR, EURIBOR for inter-bank interest rates or stock price indices) are an important part of the financial system.

3.5 The integrity of benchmarks is fundamental for pricing many financial instruments, such as interest rate swaps and forward rate agreements, trade and non-trade contracts, supply agreements, mortgages and loans. The value of financial instruments and payments tied to financial contracts depends on these benchmarks, which therefore exert a strong influence on investors and consumers alike.

3.6 According to the ECB, in March 2012, an average of nearly 60% of total loans to the non-financial sector in the euro area was based on variable interest rates, and loans to families based on variable interest rates reached 40% in the same period.

3.7 The recent scandals concerning LIBOR and EURIBOR manipulation (as well as others regarding the manipulation of benchmarks for exchange rates and energy prices) have sparked global doubts and concerns regarding the integrity of benchmarks. The Committee endorses the Commission's goal of regulating all potential manipulation of benchmarks.

3.8 If benchmarks are distorted (as a result of manipulation or unreliability) and so fail to reflect what they are intended to measure, investors and consumers are harmed and lose confidence in the markets.

3.9 Some benchmarks are national, but the sector as a whole is international. The EU financial services market therefore needs a common benchmark framework which is reliable and used correctly throughout the EU.

3.10 The Commission's proposed changes to the Market Abuse Directive<sup>(2)</sup> and the proposed criminal sanctions will allow each case of abuse to be sanctioned appropriately. The Committee reiterates its support for this solution that it has called for on several occasions, particularly in its opinion on sanctioning regimes in the financial services sector<sup>(3)</sup>.

3.11 As the Commission has pointed out, however, changing the sanctioning regime alone will not improve the way in which benchmarks are produced and used; sanctioning does not remove the risks of manipulation arising from the inadequate governance of the benchmark process where conflicts of interest and discretion exist. The Committee strongly endorses this position and supports the need for a system of rules guaranteeing transparency.

3.12 Furthermore, in order to safeguard investors and consumers, benchmarks need to be robust, reliable and fit for purpose.

3.13 The Committee, which has always sought to ensure strong protection for the interests of investors and consumers, is aware of this issue and fully supports this requirement. Investors could benefit because they will be sure that the benchmarks used for their financial instruments are robust and free from manipulation.

To this end, the EESC draws attention to its frequently reiterated request for a European agency protecting users of financial services, along similar lines to what has been achieved in the USA with the Dodd-Frank Act.

3.14 On this point, the Committee attaches great importance to the regulation's move to further protect investors through specific measures on transparency. The principle of transparency does not mean distributing proprietary information and sending it to competitors; transparency guarantees a business environment where clarity and certainty prevail and competition operates effectively.

3.15 The Committee considers that the proposal could be improved as regards appropriate protection of investors and consumers, guaranteeing enforceable, clear and accessible rights of appeal and rights to compensation. A distinction should be made between the following categories:

— the consumer's right to appeal regarding the contracted product or service, with flexible, rapid procedures;

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<sup>(2)</sup> COM(2011) 651 final and COM(2011) 654 final.

<sup>(3)</sup> OJ C 248, 25.8.2011, p. 108.

- the right to appeal to the administrator, under Article 5(d) of the proposal and Article 5(a) of Annex II. In the event of appeal to the administrator, an arrangement must be found whereby the appeal system is managed by independent third parties who can objectively examine the complaint and decide what action should be taken. The six-month period set out in the Commission proposal appears quite excessive.

3.16 As regards consumer protection, the directive on consumer credit includes rules on appropriate information. The directive on mortgage credit, to be adopted in the near future, also addresses this point. These EU rules on consumer protection do not take account of the suitability of benchmarks in financial contracts; the proposal must be consistent with the rest of the EU's legal infrastructure.

3.17 The Committee points out that Article 18 must state clearly that evaluating the suitability of the benchmark proposed for the consumer is mandatory (as required by the Markets in Financial Instruments Directive); should it not be suitable, the body subject to oversight must propose a different, more appropriate benchmark.

3.18 In line with the recommendations of the International Organisation of Securities Commissions (IOSCO), the Committee supports the Commission's intention to use a more objective system for producing benchmarks, based on actual transactions rather than official surveys.

3.19 The Committee supports the broad scope of the principles laid down in the regulation, in line with the principles proposed by the IOSCO and published in July 2013, which potentially covers a wide range of benchmarks.

3.20 At the same time, the Committee suggests that steps be taken to guarantee the proportionality principle as well. Benchmarks vary widely in terms of distribution, meaningfulness and susceptibility to manipulation. The Committee therefore considers that account should be taken of the specific characteristics of individual benchmarks, the way they have been produced and the administrator.

3.21 The discretion granted to administrators to adopt their own methodologies for producing benchmarks might not be enough to guarantee proportionality. The Committee instead suggests fine-tuning the approach set out in the regulation by laying down special rules for critical benchmarks, thus accompanying the more general principles with a set of detailed principles which can take account of the various categories of benchmarks and the potential risks associated with them.

3.22 The Committee believes that this could be the most effective method for plugging potential gaps by introducing appropriate principles without undermining the broad scope of the rules.

3.23 The Committee emphasises the importance of distinguishing between benchmarks, including in relation to potential consequences in emerging markets where benchmarks are important for transparency in information transmission. The Committee therefore recommends tailoring legislation to the degree of systemic relevance of the benchmark in order to avoid obstructing the development of certain markets.

3.24 The Committee is strongly in favour of ensuring that benchmark procedures are subject to civil and criminal penalties in the event of manipulation.

3.25 The Committee considers that benchmark procedures can only be robust and certain if they are guaranteed by good governance. The Committee accordingly endorses the proposal to make the administrator accountable for the integrity of the benchmark and agrees with the Commission that the governance roles and procedures adopted need to be able to deal with potential conflicts of interest.

3.26 In order to improve this provision, the Committee suggests that transparency be made mandatory here.



3.27 In line with the conclusions of IOSCO consultations, the Committee also acknowledges the importance of broad participation in benchmark production, with a view to guaranteeing the key principle of transparency and ensuring that benchmarks are properly representative. The voluntary contribution of input data provided for by the regulation encourages participation, but the Committee proposes that precise rules be laid down regarding the contribution of input data which will guarantee that benchmarks are certain and robust.

3.28 As regards Article 8(3) on internal procedures for reporting breaches of the regulation, the Committee recommends that steps be taken to ensure a flexible, swift and user-friendly reporting process.

3.29 Measures for the protection of whistleblowers are particularly important. The Committee recommends that the rule include a reference to the proposal to amend Directive 2003/6/EC on market abuse, which requires anyone working for a business to report illegal behaviour and explicitly requires the Member States to adopt rules providing for the protection of whistleblowers.

3.30 The Committee considers that measures should be introduced to encourage justified whistleblowing, including by establishing prizes for people who assist the course of justice.

3.31 The Committee endorses the prior consultation of stakeholders affected by any changes in methodology deemed necessary. This approach, particularly in the case of benchmarks which need to be regularly recalibrated, will guarantee continuity in the use of the benchmark.

3.32 It might be useful to make provision for means to circulate and raise awareness of the methodologies used to calculate benchmarks (e.g. publication on websites). The ESMA's guidelines could establish ad hoc rules.

3.33 The Committee urges the Commission to exercise caution when changing over to new and different benchmarks. This is a sensitive matter as it could cause uncertainty regarding existing contracts, giving rise to controversy and market failure. In such circumstances, one solution could be to maintain the old benchmark, applying the new one only to new contracts.

3.34 The Committee stresses that it is important that the administrator's statement affirming that the code of conduct complies with the regulation should further specify whether this has been confirmed by a third party. This additional information could help to verify more effectively whether the code is adequate and to establish accountability in the event of breaches of the principles set out in the regulation.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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

COM(2013) 751 final — 2013/0365 (COD)

(2014/C 177/09)

Rapporteur-general: **Mr PEZZINI**

On 10 December 2013 the Council and, on 18 November 2013, the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Proposal for a regulation of the European Parliament and of the Council adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny*

COM(2013) 751 final — 2013/0365 (COD).

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr PEZZINI as rapporteur-general at its 495th plenary session, held on 21 and 22 January 2014, and adopted the following opinion by 112 votes in favour with 2 abstentions.

## **1. Conclusions and recommendations**

1.1 The Committee supports the Commission’s initiative insofar as it protects the sources of law in the EU, makes for simpler and more efficient procedures, and ensures that full democratic scrutiny can be exercised and all interested parties can access clear and transparent information.

1.2 The Committee welcomes the fact that the Commission has taken account of various points that it raised in its previous opinions when drawing up these proposals.

1.3 The Committee notes that the Commission’s proposal involves changes to over 80 legal acts, including regulations and directives, and regrets that it is not in a position to assess each act individually, given the wide range of topics covered in the areas of:

- networks;
- communications content and technology;
- climate action;
- energy;
- enterprise and industry;
- the environment;
- statistics;
- internal market and services;
- mobility and transport;
- health and consumers; and
- humanitarian aid.

1.4 The Committee recommends that further in-depth assessments be carried out as regards the objectives, content, scope and duration of the delegations, which should allow for full democratic scrutiny at EU level, and also provide for the prerogatives and functions guaranteed to national parliaments in the EU legislative process to be exercised. The Committee considers that the concepts of 'non-essential measures' and 'the Commission's delegated competence' should be defined unambiguously, taking account of the interpretations of the European Court of Justice.

1.5 The Committee stresses the importance of:

- fully involving the EP;
- streamlining and simplifying the committee procedures;
- more information, both on the terms of delegations to committees and on the relevant measures that are established at all stages of the procedure; and
- making the information fully accessible to the public and civil society.

1.6 The Committee reiterates that committee procedures should be as transparent as possible and more accessible to all Europeans, especially those affected by the acts in question.

1.7 The Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as closely as possible to the people, while information must be fully accessible to the public and civil society.

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

## 2. Introduction

2.1 The Treaty of Lisbon introduced a distinction between the powers delegated to the Commission to adopt delegated acts, i.e. non-legislative acts of general application to supplement or amend non-essential elements of a legislative act under Article 290 TFEU (the delegation procedure), and the powers conferred upon the Commission under Article 291 to adopt so-called implementing acts, i.e. uniform conditions for implementing legally binding EU acts.

2.1.1 The arrangements for use of the power of delegation are set out in non-mandatory acts, including:

- the Communication from the Commission on the implementation of Article 290 of the Treaty on the Functioning of the European Union <sup>(1)</sup>;
- the 2006 Common Understanding on delegated acts; and
- Rules 87a and 88 of the European Parliament's Rules of Procedure, as amended by the Decision of 10 May 2012 <sup>(2)</sup>.

2.2 As the Committee pointed out in its 2008 opinion on the regulatory procedure with scrutiny <sup>(3)</sup>, back in July 2006 <sup>(4)</sup>, the Council amended the decision laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>, adding a new regulatory procedure with scrutiny.

2.2.1 This procedure allows the legislator to oppose the adoption of quasi-legislative measures, namely measures of general scope 'amending' non-essential elements of basic acts adopted by co-decision, if it considers that the draft exceeds the implementing powers provided for in the basic act, is incompatible with the aim or the content of that act or fails to respect the principles of subsidiarity or proportionality.

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<sup>(1)</sup> COM(2009) 673 final, 9.12.2009.

<sup>(2)</sup> Doc. A7-0072/2012.

<sup>(3)</sup> OJ C 224, 30.8.2008, p.35.

<sup>(4)</sup> Decision 2006/512/EC (OJ L 200, 22.7.2006).

<sup>(5)</sup> Decision 1999/468/EC (OJ L 184, 17.7.1999).

2.2.2 These are measures typical of the committee procedure, regulated by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, which oblige the Commission to submit draft implementing measures to a committee made up of Member State officials, in accordance with the five committee procedures: consultation, management, regulation, regulation with scrutiny and safeguard. In December 2006, the Commission adopted the 25 proposals concerned <sup>(6)</sup>, on which the Committee expressed its views <sup>(7)</sup>.

2.3 The regulatory procedure with scrutiny has been used to adopt implementing measures which amend non-essential elements of basic legislative acts. Between 2009 and 2014, Article 5a of the Decision on Committee Procedure and the regulatory procedure with scrutiny have provisionally remained in force, pending the adaptation of existing provisions to the delegated acts regime, involving the alignment of a series of regulations, directives and decisions.

2.4 Recently, the Committee issued an opinion <sup>(8)</sup> on two proposals for omnibus regulations covering 12 different areas. It supported the initiative in that it was 'necessary in order to protect the sources of law in the European Union' and would make for 'simpler and more efficient procedures'. However, it advised the Council and the Parliament 'to exercise maximum vigilance and to conduct a detailed evaluation of all the acts included in this alignment', which comprises 165 legal acts that were initially subject to the regulatory procedure with scrutiny and are now subject to the new delegated act regime.

2.5 The Committee notes that its detailed report on the delegation procedure was recently adopted and recommends that it be taken into account as it will make the present opinion more readily comprehensible.

### 3. The Commission's proposals

3.1 This proposal takes the same approach as the previous ones, with a regulatory framework.

3.2 The proposed regulatory framework covers changes to 76 legal acts, including regulations and directives on a range of subjects. As part of the alignment to the provisions of the TFUE, the proposals include the deletion of certain provisions of the following legislation: Regulations (EC) Nos 66/2010 and 1221/2009 on the environment; Directive 97/70/EC on transport; Regulation (EC) No 1333/2008 and Directive 2002/46/EC on health and consumers <sup>(9)</sup>; and Council Regulation (EC) No 1257/96 on humanitarian aid.

### 4. General comments

4.1 The Committee supports the Commission's initiative insofar as it protects the sources of law in the EU, makes for simpler and more efficient procedures and ensures that the European Parliament and the Council can fully exercise their powers of democratic scrutiny.

4.2 While the Committee is pleased that certain elements of its previous opinions have been taken up in the drafting of the proposals under consideration here, it reiterates the point it made recently that 'in accordance with Article 290 TFEU, the duration of the delegation of power must be explicitly defined in the basic legislative act, and that until now, with very few exceptions, delegations have in principle always been granted for a specific period, renewable where necessary, with a requirement for a report on the implementation of the delegation' <sup>(10)</sup>.

4.3 The Committee points out that the European Parliament itself in its Resolution of 5 May 2010 on the power of legislative delegation highlighted the delicate nature of the delegation procedure, stressing that 'the objectives, content, scope and duration of a delegation pursuant to Article 290 TFEU must be expressly and meticulously defined in each basic act'. In the Committee's view, these elements should also allow for the prerogatives and functions guaranteed to national parliaments in the EU legislative process to be fully exercised.

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<sup>(6)</sup> COM(2006) from 901 to 926 final.

<sup>(7)</sup> OJ C 161, 13.7.2007, p. 45.

<sup>(8)</sup> OJ C 67, 6.3.2014, P. 104.

<sup>(9)</sup> For example, further clarification would be desirable regarding the deletion of part (i) of Article 29 ('Community procedure for notifying serious adverse reactions and events and notification format') in Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components.

<sup>(10)</sup> See footnote 8.

4.4 Moreover, the Committee believes that adaptation to the delegation procedure should be approved only where there is a need to 'adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act' under Article 290 and, in the case of purely implementing acts, the provisions of Article 291 TFEU must be applied, while 'the essential elements of an area' should never be subject to delegation. Furthermore, the concept of 'non-essential elements' has yet to be defined and a precise evaluation of how the mechanism actually works in practice needs to be carried out.

4.5 Here, the Committee would reiterate its own recommendations to the Commission 'to tailor this collective alignment more closely to the individual contents of some of the basic legislative acts' <sup>(11)</sup> and to take account of the interpretations by the European Court of Justice of the concepts of 'non-essential measures' and 'the Commission's delegated competence'.

4.6 The Committee stresses the importance of:

- fully involving the EP, which would in the last instance have the right to reject a decision;
- keeping the EP and the Council more informed, both on the committees and on the measures that come before them at all stages of the procedure;
- an EP-Council consultation procedure to be followed where the EP has issued a negative opinion, giving the EP a greater role.

4.7 The Committee stresses, as it has in the past, that '[committee] procedures, involving only representatives of the Commission and Member State governments and tasked (...) with the management, consultation or regulation flowing from the follow-up and implementation of legislative acts, should be more transparent and accessible to (all Europeans) and especially to those affected by these acts' <sup>(12)</sup>.

4.8 The Committee considers it important that a periodic assessment be carried out of the impact of the implementation of the proposed new regulatory framework; a periodic report should be submitted to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of user-friendly information which is accessible to all on delegated Community acts, so that this operation, which combines regulation and actual implementation, can be monitored.

4.9 In this regard, the Committee highlights the need — here, too — to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as closely as possible to the people, while information must be fully accessible to the public and civil society.

Brussels, 21 January 2014

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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<sup>(11)</sup> See footnote 8.

<sup>(12)</sup> See footnote 7.

**Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on new psychoactive substances'**

COM(2013) 619 final — 2013/0305 (COD),

COM(2013) 618 final — 2013/0304 (COD)

(2014/C 177/10)

Rapporteur: **David SEARS**

On 4 October 2013, the European Commission, on 7 October 2013, the Council, and on 8 October 2013, the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

*Proposal for a Regulation of the European Parliament and of the Council on new psychoactive substances*

COM(2013) 619 final — 2013/0305 (COD) — COM(2013) 618 final — 2013/0304 (COD).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January 2014), the European Economic and Social Committee adopted the following opinion by 148 votes with 2 abstentions.

## **1. Summary and recommendations**

1.1 The EESC agrees that the 2005 Council Decision <sup>(1)</sup> on new psychoactive substances (NPS) needs updating. It agrees with the need for better coordinated action between the EU agencies involved, a tighter timetable for data collection, and the possibility of a more nuanced internal classification into substances presenting low, moderate or severe risks. Any actions to restrict supply should follow these classifications in a timely and proportionate manner.

1.2 The EESC also notes that supporting data for the underpinning impact assessment were often not available, that usage of NPS varies across the EU, and that public attitudes and political responses differ sharply. The Commission is right to point out what is politically achievable within the EU treaty and the current financial constraints but should go beyond these to identify what is truly required.

1.3 The EESC believes that there are also lessons to be learned by following developments in countries outside the EU; these should be highlighted in any further impact assessments. Meanwhile improved and better resourced data collection inside the EU on all the inputs (substance availability, supply routes, economic opportunities and social need), communication routes (internet and social media) and outcomes (measurable illness and other harms) is essential.

1.4 There are a number of technical points to be clarified if the proposal for a Regulation stays as it is; these are set out in Section 5 of this Opinion. Success will depend on political support, data provision and funding from Member States. Practical objectives must be agreed. Research must continue and the best (and worst) practices for control and treatment must be identified. Plans for and outcomes from EU-funded research programmes such as eSBIRTes, Orion and ALICE-RAP should be regularly shared with others in the field and better incorporated in impact assessments and in any subsequent legislative proposals. Data collection, risk assessment and knowledge transfer should continue in real time via the Civil Society Forum on Drugs (or perhaps via a wider 'NPS Platform'), involving all stakeholders, in particular the directly involved NGOs and support groups. This should cover all NPS, including those already notified in single use, in mixtures or as adulterants in other NPS. Priorities and possibilities for action should be agreed with Member States more frequently. Alternatives or additions to a uniform EU-wide response restricted to supply-side reduction should be considered.

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<sup>(1)</sup> 2005/387/JHA, OJ L 127/32, 20.5.2005.



## 2. Introduction

2.1 A substance, whether naturally occurring or deliberately synthesised for any purpose, licit or illicit, is said to be 'psychoactive' if, in addition to its other physical, chemical, toxicological and environmental properties, it has the capacity, when consumed by humans for whatever purpose, to interact with their central nervous systems to produce stimulation or depression accompanied by hallucinations and/or alterations in their motor functions, thinking, behaviour or moods.

2.2 These effects may be regarded as helpful when the substances are formulated, prescribed and used under controlled conditions as medical products to treat specific conditions — or as unhelpful and potentially or actually dangerous, sometimes seriously so, if self-administered purely for the perceived benefits of the above effects. These risks increase sharply if the substances are also addictive and if their use is economically exploitable.

2.3 Substances such as morphine, heroin, cocaine, ecstasy and cannabis and their many derivatives and precursors, together with a range of amphetamines, barbiturates, benzodiazepines and other 'psychedelic' drugs are therefore subject to control, with varying degrees of success, under two UN Conventions<sup>(2)</sup> (1961, 1971) and a Protocol<sup>(3)</sup> (1972) implemented, to different extents, at national level around the world.

2.4 Any psychoactive substances (PS) not listed and controlled as above are described, for the purposes of EU (and some other) legislation, as being 'new' — irrespective of the time that they have been known or used for other, often legitimate, purposes. They are named as 'new psychoactive substances' (NPS) only when identified (or suspected) as being marketed or distributed solely for their psychoactive properties, for use by individual consumers acting outside of medical or other supervision.

2.5 Alcohol, tobacco and caffeine, which in various dosages fit all the above criteria for NPS and long-term harm, are specifically excluded under UN and EU definitions. This is less easy to do 'on the street' or in academic studies where their use and effects are comingled — and where the health and social impacts of alcohol and tobacco greatly exceed those of most NPS. However, researchers and regulators do not always agree on these issues and a mutually agreed process to estimate harm and risk on a quantitative basis is now urgently required.

2.6 More than 300 NPS have been identified as being (or having been) in occasional or longer term use across the EU. New notifications from Member States are currently running at around 1 per week. As they are not controlled, their use is not illicit; hence they are licit and can be described as being 'legal' — with the incorrect implication that they are also 'safe' or 'approved'. In most cases there is little scientific data to confirm or deny these assumptions. New molecules, as variants on those specifically banned, can be quickly synthesised in and imported from China or India, in some cases, in response to orders from organised groups or individuals in the EU. Existing molecules can also be diverted from legitimate purposes within the EU. In most cases, the motivation is to make money; in others, circumventing the law is the primary challenge. National Focal Points in the European Information Network on Drugs and Drug Addiction ('Reitox') provide early warnings and share information on newly identified NPS.

2.7 NPS are marketed under many non-systematic, abbreviated and/or exotic trade names, often in mixtures with other banned, new or excluded products including herbal products, medically active ingredients, food additives, tobacco, caffeine and inert fillers. There is no consistency or control over the contents; safety warnings are absent or included only to permit sales ('not for human consumption'). Labelling may be deliberately misleading ('bath salts' or 'incense' for products likely to be inhaled, smoked or injected).

2.8 Sales are by specialised dealers or commercial retail outlets ('head', 'smart' or 'smoke' shops, alongside tobacco-related 'paraphernalia') and on the internet (with credit card purchases, product and supplier reviews, and prompt home delivery all available). Anonymous web sites present special problems. Prices per dose tend to be low v. illicit drugs. Social media encourage new trends and help share experiences. Usage (as 'legal highs', club, party or recreational/designer drugs) varies sharply across the EU and appears to be growing slowly, with above average use reported in Ireland, Poland, Latvia and the UK. The number reported as being hospitalised in direct consequence remains relatively low (which, in the absence of reliable data, may or may not be a true measure of actual harm).

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<sup>(2)</sup> Single Convention on Narcotic Drugs, 1961.

<sup>(3)</sup> United Nations protocol 1972, amending the Single Convention on Narcotic Drugs.

2.9 Consistent with the above, and compared to regular, addicted, users of illicit drugs, users of NPS (in particular, in the UK, where data collection is also high) have so far tended to be young, reasonably affluent, non-criminal and more likely to present themselves for health treatment when required. Being still integrated into family and work life, recovery rates are generally good. When accidents or deaths do occur, they are usually seen as unexpected personal tragedies and tend to receive considerable attention in the media, and therefore politically, for the same reasons.

2.10 Given the above, it is hardly surprising that public and political attitudes in EU Member States and around the world to controls on NPS differ sharply. Uruguay has recently legalised cannabis. New Zealand will authorise 'acceptable' low risk and quality controlled NPS. Ireland has drastically reduced the number of retail outlets; the Netherlands and Canada are considering the same. The UK has traditionally preferred to ban products, singly or in groups but is now looking at alternative strategies. Belgium is planning to ban groups of products. Efforts have been made to restrict internet sales of illicit drugs via anonymous sites; licit sales are however likely to flourish.

### 3. Summary of the Commission's proposal

3.1 A 2005 Council Decision <sup>(4)</sup> set the framework for information exchange, risk assessment and control of NPS. This has proven to be reactive in use, with limited information collected, poor categorisation of risks and few options for restrictive measures. In 2011, the Council requested the Commission to update the Decision.

3.2 This proposal sets out the measures deemed necessary, including a proposal for a Directive revising the Council Framework Decision <sup>(5)</sup> on minimum provisions in the field of drug trafficking. This would widen the definition of 'drug' to bring NPS posing severe health, social and safety risks and subject to permanent market restriction in the EU under the same heading as substances already listed under the relevant UN Conventions and Protocol.

3.3 The proposal for a Regulation specifically on NPS is accompanied by an in-house impact assessment which highlights differences in data availability, actual use, health costs and public and governmental responses across the EU. Estimates are provided where data are not available. Policy options are assessed against their effectiveness in achieving objectives, economic, financial and social impacts, and proportionality and acceptability by stakeholders.

3.4 The proposal is based on Article 114 TFEU to ensure the proper functioning of the internal market with a high level of health, safety and consumer protection. It is intended to shorten reaction times at EU level, to provide opportunities for focused and appropriate responses, to address problems of dual use and the lack of certainty for legal operators, and to connect the market for NPS to the wider internal market.

3.5 The proposal sets out a timetable for gathering data for a joint report by the Commission, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Europol and other European agencies closely involved (for Medicines, Chemicals and Food Safety) based on early warnings from the Member States of newly identified NPS.

3.6 This report may lead to a formal risk assessment by the EMCDDA as a basis for action by the Commission. Criteria are proposed to distinguish between low, moderate and severe health, social and safety risks. Where the risks are deemed to be low, no further action will be taken. In the case of moderate or severe risks, the Commission can impose temporary or permanent bans on the sale of specific NPS and, in particular cases, on their production, distribution, importation or exportation.

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<sup>(4)</sup> See footnote 1.

<sup>(5)</sup> 2004/757/JHA, OJ L 335/8, 11.11.2004.

3.7 The proposal provides for re-evaluations of the levels of risk in the light of new information and for regular reporting and evaluation of the implementation, application and effectiveness of the Regulation. Research and analysis will continue. Member states will be obliged to lay down administrative sanctions necessary to enforce market restriction and to ensure that these are effective, proportionate and dissuasive. The proposal is described as having no direct impact on the EU budget.

3.8 The Regulation will come into force 20 days after publication in the Official Journal of the EU and shall be binding on Member States. The original Council Decision <sup>(6)</sup> will be repealed and replaced.

#### 4. General comments

4.1 The EESC welcomed the 2011 Communication from the Commission entitled 'Towards a stronger European response to drugs' and the 2012 proposal for a Regulation on Drug Precursors. The EESC looked forward to proposals on 'new psychoactive substances' and suggested broad guidelines for effective action at EU and Member State level.

4.2 In the case of drug precursors, particular note was made of the extent to which the involved parties (the Commission and a limited number of legitimate manufacturers, traders and end-users) had fully embraced the requirements of Article 12 of the 1988 UN Convention <sup>(7)</sup> in respect of working together to achieve the desired goals. In this particular case, referring to the diversion of small quantities of acetic anhydride required for the manufacture of heroin, these could be defined quite precisely.

4.3 This is not yet the case with NPS where the situations in Member States and globally with respect to actual use and to public and political responses differ sharply. Key data are often not collected or collated; individual tragedies attract media attention; political reactions are not always supported by, and may go directly against, scientific and professional advice; other confounding factors, including the far more widespread and harmful use of alcohol and tobacco, are deemed too sensitive to incorporate within a uniform regulatory approach; a generational gap with respect to internet marketing and the role of social media in perception formation, risk taking and the recreational use of psychoactive substances, both old and new, is evident.

4.4 In this, clearly very difficult, context for anyone trying to respond on NPS, two comments from the earlier EESC opinions appear relevant, namely that '*a State's response to a threat should not cause more harm than the threat it wishes to prevent*' <sup>(8)</sup> and, as on many other topics of concern to regulators, '*policies should be based on data and evidence — and not the other way round*' <sup>(9)</sup>. These may be easier to say than to achieve.

4.5 The concern with the current proposals is certainly not that they will do harm, rather that they may do insufficient good — and that their existence may delay the wider cross-societal and multi-disciplinary data-based approaches required to agree even on the current situation and on the longer term objectives for specific populations. If these cannot be agreed in advance, and any required political and financial support obtained, then this should be acknowledged in any proposal for regulation at EU level.

4.6 The EESC notes that the proposal has other aims, including addressing problems of dual use, the diversion of licit substances within the EU and the lack of certainty for 'legal operators'. However these are not quantified in the impact assessment and receive little attention in the proposal. Other possibilities to fill gaps left by other legislation have not been considered at all. It is therefore difficult to know whether the treaty base selected (Article 114 TFEU) is appropriate or not. Statistical data on the 300 substances so far listed could be used to clarify this and other points.

4.7 The EESC strongly believes, and has repeatedly stated, that regulation of supply is only one part of the solution — and by itself is unlikely to bring useful or measurable results. There must be more attention given to understanding demand — and better ways proposed to ensure that this can be met with as little risk as possible. As ever, risk can never be totally excluded — but it can be significantly diminished. Better data, properly disseminated, should help.

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<sup>(6)</sup> See footnote 1.

<sup>(7)</sup> United Nations Convention against illicit traffic in narcotic drugs and psychotropic substance, 1988.

<sup>(8)</sup> See EESC opinion, OJ C 229/85, 31.7.2012.

<sup>(9)</sup> See EESC opinion, OJ C 76/54, 14.3.2013.

4.8 The EESC also notes that where criminal sanctions are applied, these must be restricted to those seeking to make commercial gain out of sales of substances already known to be banned or likely to cause serious damage to human health. This is particularly true for NPS where, so far, the risks appear to be lower than for 'old' or excluded PS and where imprisonment of users, with inevitable exposure to 'old' PS, would be the worst possible personal and societal outcome. This needs to be stated clearly in the proposal if the measures are to have credibility with the affected populations, especially the young people directly involved, in the EU.

## 5. Specific comments

5.1 The proposal provides definitions of some but not all of the key terms used — but does not explain how they should apply to this unusually structured, fast growing, part legal, part criminal, part transparent, part regulated market for products manufactured largely outside the EU. An 'economic operator' is not defined — and could presumably be licit (a seller of NPS directly, or via a 'head' shop or the internet) or illicit (a dealer in proscribed drugs). What does 'placing on the market' mean in the context of globally sourced internet sales? Why should a 'mixture' be limited to two or more NPS — rather than for instance one NPS plus varying quantities of tobacco, caffeine, herbs and fillers? Would it be better to focus on 'users' as 'anyone consuming NPS other than under medical supervision' rather than on the wider group of 'consumers' ('persons acting for purposes outside their trade, business or profession') who are largely unaffected by this activity? If the proposal is intended to be pro-active rather than reactive, should it not focus also on NPS 'that might be reasonably expected to emerge, based on scientific assessment and judgement'? Critically, why has the burden of proof shifted from suppliers, who should be required to demonstrate that their products are of 'low risk', to the EMCDDA and Commission — who could then be seen as granting approval?

5.2 The definition of NPS could also be clarified — perhaps with the 'N' standing for 'notified — under this EU proposal' — rather than 'new' only in relation to the existing UN Conventions. Given that substances are not (and cannot and should not be) routinely tested under REACH or other substance-based legislation for their psychoactive properties, there is little information on how many molecules may eventually show (or be marketed as showing) these effects to a greater or lesser degree. Given that the term 'PS' only applies when the effects are experienced by humans, the limitations of animal testing are obvious.

5.3 The EESC notes, with some concern, that the proposal focuses on individual substances rather than on the mixtures that are widely marketed. A timetable is defined for the agencies to respond — but not for the Commission to initiate either the joint report or the risk assessment. The process starts if 'several' Member States identify the same NPS; why not just one, if heavily targeted? How many is 'several'? It is unclear how the Commission will decide in the (probable) absence of further information from the agencies — and critically in the absence of political input from the Member States. There is no provision for action under other EU or Member State legislation, e.g., labelling law, sale of goods acts, general consumer protection, or other chemical, medical or food health and safety legislation. 'Head shops', if allowed to continue, should be brought fully into line with existing consumer protection law.

5.4 The EESC is particularly concerned about the lack of additional funds allocated to this work. If it can be undertaken on existing budgets, why are these procedures not followed at present? Can significant results be achieved without such funding? Is a Regulation (directed at Member States) essential for setting out how the various EU agencies interact — or can these internal processes be modified in a more timely manner by mutual consent in the light of experience?

5.5 The EESC notes that the impact assessment upon which this proposal is based is short of comparable data from all Member States on usage, impacts and health costs of NPS. If these could be shown to be general and significant, then action by the EU agencies would provide a cost-effective solution. The EESC is concerned that the proposal does not set out minimum standards for reporting — which in turn might require better recognition of and support for the largely voluntary National Focal Points who provide essential data via 'Reitox'.

5.6 The EESC agrees that NPS should be internally classified on the basis of previously agreed criteria as being, on currently available evidence of low, moderate or severe risk. However this must not be understood as granting approval for licit or safe sale and any publicly available listings should make this clear. Given the paucity of data available and the difficulties of quantitative risk assessment, reclassification based on further evidence should be expected.

5.7 The EESC also agrees with the current EMCDDA guidance notes on risk assessment of NPS that other 'old' or excluded but widely-used and better known PS should be included as markers on the same scale — including, for instance, heroin, cocaine, cannabis, ecstasy, alcohol and tobacco. If this cannot be done, given all the readily available evidence, then it cannot be done either for NPS where the evidence will be poorly available, incomplete and often contradictory; newly marketed NPS may have few social, criminal or environmental impacts but may still be severely dangerous to human health if used in this way.

5.8 The EESC believes that this more holistic approach to addiction and drug dependency would also lead to better funded preventative approaches and remedial treatments at national level. Understanding the practices and attitudes of different age groups (10-18, 18-25 and 25+) will be essential. The role of social media and online marketing and advice services in forming trends or sharing warnings are already important and will increasingly dominate personal decision making in this area. Projects monitoring this must be encouraged and fully funded. The proper protection of health should take priority over justice and the internal market.

5.9 The EESC recognises that in due course regulation may be required; however the need and shape of this legislation is far from clear. Member States perceive different problems, prefer different solutions and must be allowed to take action on different timescales. Around the world there are stark contrasts between restriction and authorisation. It will be helpful to follow developments in two adjacent, economically and culturally-similar countries in the Southern Hemisphere, Australia and New Zealand. Close cooperation with the USA and other countries providing internet supplies will be essential. Trade talks with China and India should include measures to limit the manufacture and sale of old, excluded and new PS.

5.10 This is above all a truly global problem — and any further impact assessment and proposal for regulation should include these dimensions and consider a wider range of options, even if these are initially seen as being difficult to implement at EU level. The EMCDDA will play a key role in this. If further funding is required it should be provided. Relevant research programmes should be more closely coordinated and their results more widely shared. When legislation, at whatever level, is required it will hopefully have a stronger base of evidence to resolve the questions raised above.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the Naiades II package, comprising the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport**

COM(2013) 621 final — 2013/0303 (COD),

**Proposal for a Directive of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC of the European Parliament and of the Council**

COM(2013) 622 final — 2013/0302 (COD)

**and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards quality inland waterway transport — Naiades II**

COM(2013) 623 final

(2014/C 177/11)

Rapporteur: **Jan SIMONS**

The Commission, the Council and the European Parliament decided on 10 September 2013, 7 and 31 October 2013, and 8 and 22 October 2013 respectively to consult the European Economic and Social Committee under Articles 91(1) and 304 of the Treaty on the Functioning of the European Union (TFEU) on the

*NAIADES II package,*

comprising the

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 718/1999 on a Community-fleet capacity policy to promote inland waterway transport*

COM(2013) 621 final — 2013/0303 (COD)

*Proposal for a Directive of the European Parliament and of the Council laying down technical requirements for inland waterway vessels and repealing Directive 2006/87/EC of the European Parliament and of the Council*

COM(2013) 622 final — 2013/0302 (COD)

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards quality inland waterway transport — NAIADES II*

COM(2013) 623 final

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 140 votes to 2 with 10 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes and supports the measures proposed by the Commission in the Communication and the two legislative proposals, subject to the following recommendations.

1.2 In the Committee's view, the failure of inland waterway transport to increase its share of the transport market is primarily due to the lack of financial and policy support for the sector in the past.



1.3 It therefore calls on the Commission to provide inland waterways and the inland waterway sector with sufficient funds — the Committee anticipates that at least 20% would be logical — from the budget for the Connecting Europe Facility (CEF) and certain areas of Horizon 2020 (in particular innovation) to meet the objectives in its programme. It also urges the Commission to support and encourage Member States in maintaining and expanding infrastructure, and to develop new financing mechanisms.

1.4 Given the major importance of infrastructure in achieving the Commission's objectives, the Committee urges the Member States to shoulder their responsibilities in this area of competence. In this connection, it would point to, amongst other things, the 2010 'Danube Strategy' for boosting the development of the Danube region and the related declaration signed in June 2012.

1.5 The EESC supports the Danube strategy, but notes that, to date, neither the strategy nor the 2012 declaration has been adequately implemented. It therefore urges the Commission to set up a working group to monitor compliance with commitments made under the strategy and declaration.

1.6 The Committee strongly supports the NAIADES Staff Working Document on the implementation of greening measures at sector level, and hopes that, here too, adequate funding will be provided, not least to make up for the opportunity missed under the NAIADES I programme.

1.7 With reference to its opinion on social security in the sector, the Committee calls on all those involved to develop new initiatives in this area. The proposed harmonisation of occupational profiles (based on social dialogue) and coordination of professional qualifications at European level will play a key role here; the Commission will need to put these into effect in close cooperation with river commissions, in particular the Central Commission for Navigation on the Rhine.

1.8 The Committee sees the proposals for institutional cooperation between the European Union and the river commissions as a significant development. It urges the institutions concerned to coordinate the various regulatory regimes closely in order to achieve the desired harmonisation.

## 2. Introduction

2.1 Every year around 500 million tonnes of cargo are moved via inland waterways; this is equivalent to transporting 25 million lorry loads and 140 billion tonne kilometres of cargo. Inland waterways also play a significant role in passenger transport, both in tourism (cruise ships and day trips) and increasingly in urban and regional transport (e.g. ferry services).

2.2 Conventional transport markets such as the long-distance transport of bulk freight are expanding to include new innovative services, with inland waterways also becoming more and more important in short-distance transport.

2.3 Owing to economies of scale and energy efficiency, inland waterways have the lowest external costs in terms of CO<sub>2</sub> emissions, noise, accidents and bottlenecks. With the highest safety standards in the world, this is the principal mode of transport for hazardous goods in Europe.

2.4 The inland waterways sector employs roughly 44 000 people, with around another 12 000 jobs indirectly linked to it. It is facing a shortage of skilled staff, and therefore offers employment opportunities for job-seekers, while new training programmes and career prospects mean that it offers interesting jobs for young people.

2.5 Inland waterways operate in a completely liberalised market, but since 2008 they have been negatively affected by the economic crisis. The recession has caused transport volumes to fall in the past few years, which has led to overcapacity in the sector, associated with low transport prices. Various studies assume that this situation will only improve after a few years.

2.6 The extensive European inland waterways network, consisting of around 37 000 km of rivers and canals, still has the capacity to absorb more transport flows, though this presupposes a well-maintained system of navigable waterways. During the NAIADES I action programme (2006-2014) waterways were not adequately maintained and missing links were not completed, often because of national budget cuts. Waterways infrastructure projects were further hampered by lengthy and sluggish procedures and avoidable red tape.

### 3. Gist of the Communication

3.1 The Commission published its communication *Towards quality inland waterway transport — NAIADES II* 10 September 2013. It notes in the communication that the predecessor programme, NAIADES I, created momentum but that the economic and environmental prospects for inland navigation are deteriorating and that little progress has been made in improving infrastructure. The sector is also currently in an economic crisis, with resulting overcapacity.

3.2 The opportunities and challenges of this mode of transport have persuaded the Commission to extend its previous inland waterways action programme. NAIADES II is intended to promote long-term structural changes in the inland waterway sector without interfering with the free market.

3.3 NAIADES provides for specific measures in the following spheres:

- quality infrastructure, which also means improving the interconnection and integration of inland waterways with other transport modes. Ports (sea and inland) play an important role in interconnections;
- innovation;
- a smooth-functioning market;
- reducing environmental pressure through lower emissions;
- a skilled workforce and quality jobs;
- integration of inland waterway transport into the multimodal logistics chain.

3.4 This action programme is accompanied by two legislative proposals, one relating to technical requirements for inland waterway vessels and the other amending the capacity regulation for inland waterway transport. Both these acts have already been in force in the sector for a long time, and the aim of the Commission's new proposals is to bring them up to date. The Communication is also complemented by an extensive Staff Working Document on greening of the fleet.

3.4.1 The Commission's proposal for a new technical standards directive to replace Directive 2006/87/EC is intended to improve coordination between the various regulatory bodies, and provides for a mechanism to this end. It is the first practical expression of the institutional cooperation envisaged at regulatory level.

3.4.2 The Commission's proposal amending the capacity regulation (No 718/1999) expands the instances in which the reserve funds can be used by the organisations representing inland waterway transport, in particular to include environmental purposes. It ties in with the package of proposed measures as a whole.

3.5 Various players are to be tasked with implementing the measures in the communication. Developing a quality infrastructure is the responsibility of the EU and the Member States. The same goes for creating a better legal framework to establish a level playing-field on the internal market. Responsibility for market transparency and innovation falls to sectoral players.

3.6 The Communication also addresses the issue of improving governance. Inland navigation has historically fallen under various jurisdictions. Freedom of movement on the major European rivers is enshrined in international treaties and the concomitant legislation. The EU also has competence in the sphere of inland navigation. The Commission proposes a new approach to deal with these sometimes overlapping powers and activities; this would consist in close cooperation with the Central Commission for the Navigation of the Rhine, to which end an agreement has been signed.

3.7 NAIADES II has no budget of its own to fund the measures proposed. The Communication instead refers at EU level to the Connecting Europe Facility (CEF) for infrastructure measures and to Horizon 2020 for financing research, development and innovation. Both of these funding instruments would also be used for policy support actions and greening of the fleet.

3.8 The Commission wishes to raise its aspirations for promoting inland waterways by focusing on areas with the highest added value. It also expects the Member States and sectoral players to make a contribution here.

#### 4. General comments

4.1 The Committee is a firm advocate of using inland waterways capacity more effectively, especially in view of the huge advantages this mode of transport offers in relation to transport volumes, sustainability and external costs. The importance and potential of inland waterway transport mean that it offers significant opportunities with regard to both freight and passenger transport. In addition to cruises, waterborne transport is also increasing in prominence in densely populated urban areas where ferry services are provided.

4.2 The Committee shares the Commission's view that inland waterways are underused and backs the Commission's efforts to increase the sector's share in total transport. However, in trying to improve the integration of inland waterways and to create the conditions for doing this, the Commission underestimates the importance of a solid financial basis for the action programme. The EESC notes that NAIADES II presents an ambitious new plan, but that there is still a lack of clarity regarding its funding; it therefore awaits with interest the Commission Staff Working Document on NAIADES financing, and urges the Commission to take account of past shortcomings.

4.3 In the assessment it made as part of the mid-term report on NAIADES I, the Commission notes that the programme has created momentum in the sector and raised awareness of its potential, particularly among policy-makers at national level.

4.4 Moreover, experience with NAIADES I and the latest TEN-T guidelines shows that the Member States cannot remain uncommitted if they subscribe to the objectives of this Communication. The Committee therefore also urges the European Parliament, the Council and the Commission to establish this clearly and explicitly.

4.5 It is clear to the EESC that promoting inland navigation requires effective and close cooperation between the European Commission and the river commissions. The Committee supports the proposals in this regard and points here to the important role played by the Central Commission for the Navigation of the Rhine in developing inland navigation and high technical and safety standards.

4.6 The EESC highlights the importance of infrastructure in meeting the Commission's objectives. A well-maintained waterways network without bottlenecks and missing links is essential in order to improve the integration of inland navigation and ensure its reliability. The Committee urges the Member States to shoulder their responsibilities in this area of competence.

4.7 Given the limited budget of the Connecting Europe Facility, the EESC expects the Commission to make at least 20% of its resources available for waterways and to support and encourage the Member States to maintain and extend this infrastructure. Unlike roads and rail, waterways in Europe still have enough capacity to absorb many times the current transport volume, which means that investment in waterways can produce a maximum return on investment.

4.8 The EESC takes note of the intention to carry out a consultation exercise on infrastructure charging with a view to internalising external costs in inland waterway transport. The Committee points out that the question of internalising external costs in inland navigation must be handled very carefully and that this tool should be used only to increase the volume of inland waterway transport and improve its competitive position.

4.9 One of the aims of NAIADES II is to make the sector more attractive on the labour market and create high-quality jobs, and to promote labour mobility. This is the point of trying to harmonise career profiles and coordinate professional qualifications at European level, which may help to resolve the shortage of skilled staff in inland waterway transport.

4.10 With regard to social security, the EESC refers to its opinion from 2005 (TEN/200) calling for the establishment of a Community social policy for inland waterway transport. There have been further developments in this area in recent years through social dialogue, leading to the drawing up of specific rules on working time in inland waterway transport, on which the social partners have signed an agreement. The EESC calls for more initiatives to be taken in the framework of social dialogue to make careers in the sector more attractive.

## 5. Specific comments

5.1 As regards the new TEN-T guidelines, the EESC urges the Commission to ensure that the position of waterways is firmly established when implementing the new multimodal corridor approach. The multimodal corridor plans should ensure a level playing-field for all modes, and the inland waterways sector must be allowed to play a substantial role when these plans are drawn up.

5.2 The EESC considers the inclusion of all waterways in class IV and above in the TEN-T core network to be very important. This entails a commitment on the part of the Member States to ensure that these waterways are maintained and upgraded, and to fully support the removal of bottlenecks so as to make the most of the spare capacity on Europe's waterways. The Committee would draw attention to those rivers that still have ample capacity to absorb transport volumes, such as the Danube and the Elbe. It urges the Member States, with the support of the Commission, to remove bottlenecks on these rivers and to complete missing links — such as the Seine-Scheldt link — without delay.

5.3 The Danube has a particular role to play in the development of transport in the countries of central and eastern Europe, as the Commission acknowledges in its 2010 'Danube Strategy' to boost the development of the Danube region. Transport on the Danube is one of the pillars of this strategy, and should contribute to the growth of inland waterway transport on this important river. The Danube countries — unfortunately with one exception — followed this up in June 2012 by signing a declaration undertaking to maintain the Danube to the relevant standards in order to prevent future hindrances to inland waterway transport caused by inadequate water depth.

5.4 The EESC supports this Commission strategy, but notes that, to date, neither the strategy nor the 2012 declaration has been adequately implemented. It therefore urges the Commission to set up a working group to monitor compliance with commitments made under the strategy and declaration, and to resolve any problems identified without delay to avoid compromising the envisaged development of transport on this important corridor.

5.5 The Commission notes that inland waterways lag behind other modes with respect to innovation. One reason for this is the longevity of equipment. A culture of innovation is also lacking in the sector. The Commission calls on the sector to take the lead in this area and develop an innovation policy.

5.6 The Committee agrees with these points, but also highlights both the longevity of equipment in the inland waterways sector and the high level of investment, which make the innovation rate slower. High investment costs mean that innovation must be encouraged through adequate financial and economic incentives and easier access to funding, which so far the programme has not provided.

5.7 The Committee notes that with the introduction of LNG-fuelled vessels, the sector itself has already developed very advanced innovation projects. The Committee calls on the competent bodies to create a legal framework and develop infrastructure for these and for alternative fuel supplies without delay so that such innovation can be widely deployed and further encouraged.

5.8 A Staff Working Document on greening the fleet is attached to the Commission Communication. In this document the Commission sets out scenarios for reducing atmospheric emissions. The EESC knows that inland waterways emit much less CO<sub>2</sub> than road and rail, but the document does not mention this.

5.9 By focusing on air pollutants other than CO<sub>2</sub>, the Commission concludes that inland navigation now risks becoming the most polluting transport mode. The Committee notes in this regard that work to develop future emissions standards must avoid distortions of competition and take account of the need for an adequate supply of appropriate engines for the inland navigation sector.

5.10 In the Committee's view, the Commission could play an important role in spurring the sector to innovation and greening and ought to provide substantial financial support. In view of the benefit to society of improving the environmental performance of inland navigation, there is good reason to provide support for this from EU and national resources, which can have a significant catalytic effect.

5.11 The Committee therefore calls on the Commission to use every means to earmark funding from the Connecting Europe Facility (CEF) and Horizon 2020 for putting greening of the fleet and other measures from the NAIADES proposal into effect once the multiannual budget of the EU has been fixed.

5.12 The EESC also urges the sector to make use of the resources available in the reserve fund for greening purposes, in order to improve the industry's image. The option to do so is opened up by the proposed amendment to the capacity regulation, which forms part of the NAIADES II package.

5.13 Professionalisation and closer cooperation within and on the part of the sector will undoubtedly help to improve its economic position on a structural level, given that the economic crisis in inland navigation has recently resulted once again in structural overcapacity in the sector.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on 'New measures on the EU single market for telecoms' covering the following two documents: Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012**

COM(2013) 627 final — 2013/0309 (COD)

**Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market**

COM(2013) 634 final

(2014/C 177/12)

Rapporteur: **Anna NIETYKSZA**

On 23 September and 12 September 2013, the Commission, the Council and the European Parliament respectively decided to consult the European Economic and Social Committee, under Articles 114 and 304 TFEU, on

*New measures on the EU single market for telecoms covering the following two documents: Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012*

COM(2013) 627 final — 2013/0309 (COD)

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market*

COM(2013) 634 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 152 votes to 2 with 5 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC supports the European Commission's proposal for a regulation and the specific measures to accelerate the establishment of a single market for electronic communications as a basis for the dynamic and sustainable growth of all sectors of the economy and the creation of new jobs. It will also assure the high level of consumer protection.

1.2 The EESC considers that the proposed reduction in barriers for European electronic communication service providers through:

- the introduction of a single European authorisation valid throughout the EU,
- the harmonisation of regulatory conditions and spectrum management,

will make it easier for providers to offer competitive, secure electronic communication services for individuals, businesses and institutions throughout the EU.

1.3 The EESC points out that the Commission should reconsider including broadband services in the scope of Universal Service Provision.

1.4 At the same time the EESC stresses that reducing regulatory barriers will open up markets for smaller providers of electronic communications. The major stimulus for the development of providers will be:

- the single authorisation,
- the simplification of the process of investing in networks,
- the opportunity to provide cross-border services in every EU country,
- the incentives for investments.

1.5 The EESC points out that the Commission's regulations and general incentives have to prevent further fragmentation of the market, as these would hamper development of cross-border services and weaken the EU vis-à-vis international competitors.

1.6 The EESC considers that improved accessibility and reduced costs of building and operating high-speed networks will:

- create jobs at European companies, including SMEs and start-ups developing and providing innovative products and services on the global market,
- accelerate the development of modern services in the areas of e-commerce and e-education, as well as advanced public services such as e-government and e-health,
- accelerate the development of modern European cloud computing services, as described in the Committee opinion 'Towards an EU Cloud Computing Strategy' (TEN/494),
- enable the huge opportunities for creating new services to be used in areas where rapid development is expected, such as the Internet of Things (IoT) and machine-to-machine (M2M) communication.

1.7 The EESC recognises that harmonising regulatory conditions will stimulate investments in European electronic communication service providers.

1.8 The EESC supports the proposed harmonisation of guarantees of consumer and user rights, including:

- easier choice of service provider and facilitating change of providers,
- elimination of the high costs of mobile roaming calls and intra-EU cross-border fixed-line calls (Cf. EESC Information Report on 'Stop Roaming Charges Now', CES5263-2013, rapporteur: Mr Hencks).

1.9 The EESC is in favour of harmonising contract conditions for end-users of electronic communication services in all Member States.

1.10 The EESC considers that open access to the network and the possibility of using advanced electronic communication services throughout the EU will increase the mobility of consumers and entrepreneurs, and also facilitate access to European cultural assets and the development of creative industries.

1.11 The future regulation has to provide more financial and legal security for the operators. In return, the EESC recommends that it provide the users with more legal security by better safeguarding their rights.

1.12 The EESC stresses the importance of the right to proper personal data protection, the right to be forgotten and other rights of end-users of electronic communication services pointed out in previous EESC opinions <sup>(1)</sup>.

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<sup>(1)</sup> OJ C 271, 19.9.2013, pp. 133-137, OJ C 229, 31.7.2012, pp. 1-6, OJ C 351, 15.11.2012, pp. 31-35.



1.13 The EESC points out that information and communication technologies (ICT) are a source of sustainable economic growth, contributing to 50% productivity growth in all sectors of the economy in which they are employed. Even if their use leads to the loss of certain jobs, for every two jobs lost five new jobs are created (Cf. Proposal for a Regulation of the European Parliament and of the Council, COM(2013) 627 final 2013/0309 (COD), p. 2). The EESC stresses the need to provide education, retraining and life-long learning for all, implementing new educational mechanisms.

1.14 The EESC stresses the need to comply with competition rules and net neutrality, especially with reference to providers of electronic communication services belonging to the SME sector — as the strengthening of the biggest providers of electronic communication services and consolidating spectrum resources may jeopardise competitiveness in the markets of the Member States.

1.15 The regulation of *virtual broadband access products (a type of wholesale access to broadband network that consists of a virtual access link to any fixed or wireless network architecture, excluding physical unbundling of the local loop, together with a transmission service to a defined sets of points of handover together with specific network elements and functionalities and ancillary IT systems)* appears to be premature. The EESC believes that it would be better to wait until the conditions for the provision of these services and prices have been regulated by the market. However, the requirement to provide an ASQ connectivity product must be regulated in a way which ensures balanced burden-sharing between large operators and smaller service providers from the SME sector.

1.16 The EESC is seriously concerned about the detailed solutions concerning local radio access networks, in particular the possibility of end-users being able to make radio networks available to other, unknown, anonymous users.

1.17 The EESC warns that the proposed regulation sets very ambitious goals. The short timeframe for its introduction (from 1 July 2014), will require a major effort from the main stakeholders, i.e. the European Commission, national electronic communications regulators, competition authorities and European electronic communication service providers.

1.18 Given the need to coordinate scope and procedures for issuing European authorisations and reservations and the conditions for using radio spectrum, the EESC recommends boosting the role of BEREC until the decision on creating a single European regulator has been taken.

## 2. Introduction and background

2.1 Major operators in the United States, Japan and South Korea have made huge investments in infrastructure for fast broadband internet connections, both fixed and wireless. An extremely important issue for the European Union is maintaining global competitiveness in the area of electronic communications.

2.2 Reliable and fast broadband access is especially important for the provision of innovative electronic communication services, including cloud computing. It is therefore in the EU's strategic interest for the electronic communications sector to be in a good state of health, to have home-grown potential to provide modern services for the public and to maintain considerable scope to create electronic communications equipment, solutions and services.

2.3 The digital economy and the products it provides represent an increasing share of GDP, and electronic communication services are key to the growth in productivity in all sectors of the economy — from healthcare to energy and public services. Another key factor in development is the possibility to invest in wireless networks (i.e. the fourth generation and subsequent technologies of mobile communication technology providing high-speed mobile Internet access) and fast fixed-line networks (e.g. FTTH –fiber-to-the-home –fiber-optic networks).

2.4 In order to make electronic communication networks highly profitable, sufficient scale is needed. However, the electronic communications market of the EU's Member States is very fragmented: it includes more than 1 000 fixed-line operators and several hundred operators of mobile networks. Even the largest operator groups provide services in individual countries, not offering cross-border services to consumers and smaller end-users (cross-border services are offered only to the largest corporate customers). No operator is active in more than half the Member States. The market for cable television networks is also fragmented — it includes over 1 500 operators.

2.5 The fragmentation of the market translates into high prices, especially for calls between individual EU countries (roaming in mobile networks and international fixed-line calls).

2.6 Radio spectrum is a limited resource. How effectively it is used has a considerable impact on the implementation of the Digital Agenda for Europe (DAE) and the operating conditions of service providers. At the same time, the conditions for using spectrum (such as assignment rules, duration of reservations, possibilities of spectrum refarming (change in spectrum management aimed, inter alia, at meeting market requirements or increasing the efficiency of spectrum use) and sharing) vary significantly between individual Member States. There are differences in the assignment conditions, time of expiry and the possibility of renewing spectrum reservations. These differences make it difficult to invest and create integrated cross-border wireless networks.

2.7 Although in the 1990s Europe was the world leader in GSM mobile telephony, it currently lags behind the countries referred to above in implementing the latest mobile transmission technologies.

2.8 The rate of development in Europe's ICT sector has been very low in recent years (0,3% annually), especially in comparison to growth in the USA (15%) and in leading Asian countries (26%).

2.9 The proposed changes concern areas which are regulated by acts underpinning the regulation of electronic communications in the EU, namely Directives 2002/20/EC (authorisation directive), 2002/21/EC (framework directive), 2002/22/EC (universal service and users' rights directive), 2002/58/EC (directive on privacy and electronic communications), Regulations (EC) No 1211/2009 (establishing BEREC) and (EU) No 531/2012 (on roaming) and Decision 243/2012/EU (radio spectrum policy programme) <sup>(2)</sup>.

### 3. General objective of the European Commission's regulation

3.1 The basic objective of the European Commission's regulation is to establish a single market for electronic communications in which:

- the public, institutions and businesses can access electronic communication services throughout the EU under equal conditions, without restrictions or additional costs,
- operators and providers of electronic communication services can provide services on competitive conditions outside the borders of the Member State in which they are established and reach consumers throughout the EU,
- the basis of the digital transformation of the economy is developed, which should result in the restoration and maintenance of economic growth, the increased global competitiveness of the EU countries, and the creation of new jobs in the digital economy, the creative industries and all areas of the economy in which electronic communications play an important role.

3.2 In the proposal for a regulation, the European Commission has proposed the following solutions:

- a single EU authorisation for European electronic communications providers based on a single notification system in the Member State of main establishment of the provider;
- harmonisation of the conditions of availability, assignment conditions and the duration of spectrum use rights;
- the introduction of virtual broadband access products and harmonised electronic communication products with assured service quality (ASQ);
- harmonisation of rules regarding the rights of end-users/consumers (requirement for transparent information and contracts, clearly defined conditions for entering into and terminating contracts, net neutrality, assured service quality, easier switching and number portability);
- sanctioning powers of the competent national authorities and rules on the Commission's power to adopt delegated or implementing acts;

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<sup>(2)</sup> OJ C 123, 25.4.2001, pp. 55-56; OJ C 123, 25.4.2001, pp. 56-61; OJ C 123, 25.4.2001, pp. 53-54; OJ C 24, 28.1.2012, pp. 131-133; OJ C 133, 9.5.2013, pp. 22-26.

- rules on roaming calls in mobile networks;
- limiting the cost of intra-EU fixed-line calls, which is not to exceed the tariff for domestic long-distance communications;
- increased stability for BEREC as an advisory body to the European Commission on electronic communications.

3.3 As the European Council stressed in its Conclusions of 24—25 October 2013, overcoming the fragmentation of the electronic communications market, promoting effective competition and attracting private investment through a predictable and stable legal framework, while ensuring a high level of consumer protection, as well as harmonising spectrum assignment are crucial for the economic and social development of the Member States (European Council document of 25 October 2013 (EUCO 169/13, CO EUR 13 CONCL 7), points 5 and 9).

3.4 Increased availability and lower costs for using fast connections will enable all service providers, including European SMEs, to create and offer innovative products and services on the global market.

#### **4. Specific comments on the European Commission regulation**

##### *4.1 Single EU authorisation*

4.1.1 The EESC considers that the provision of cross-border services is currently hampered by red tape stemming from fragmentation of national systems for granting authorisations, radio spectrum assignment, regulation of access products and rules on consumer rights.

4.1.2 Operators exploit the fragmentation of the market at the expense of end-users, by providing more expensive cross-border services.

4.1.3 The EESC considers that the proposal for a regulation will promote consolidation of operators and the emergence of pan-European providers of electronic communication services. This process is beneficial from the point of view of the competitiveness of the Member States' economies on global markets.

4.1.4 Strengthening electronic communication service providers and uniform legal conditions will increase European service providers' attractiveness to institutional investors, including private equity funds. The provision of additional capital to operators will increase their investment capacity.

4.1.5 The EESC welcomes the introduction of a single EU authorisation as an essential condition for improving the operation of the system. Cooperation procedures and principles need to be clearly defined.

4.1.6 The EESC would have welcomed the proposal taking a position in favour of a single European regulator, as proposed and defended by the Committee in several of its opinions.

##### *4.2 Coordination of the use of radio spectrum*

4.2.1 The harmonisation of spectrum management on the basis of uniform conditions for spectrum use (assignment rules, duration of reservations, possibilities of spectrum 'refarming' and sharing) will facilitate the introduction of new wireless broadband access technologies (4G and subsequent technologies).

4.2.2 In the EESC's view, the regulation pre-empts the planned 2016 review of the effectiveness of the existing rules on roaming and the decisions on allocation of bands which are expected to be taken at the ITU-R (ITU-R — (ITU Radiocommunication Sector) — one of the three sectors (units) of the International Telecommunication Union (ITU), responsible for radio communication) World Radio communication Conference in 2015 (WRC 2015).

##### *4.3 European virtual access products*

4.3.1 The EESC considers that rules on virtual broadband access are being proposed against a background of great uncertainty regarding the regulation of the NGN/NGA networks (high-speed Next Generation Networks/Next Generation Access) and differences in the regulatory practices of individual Member States. Stable regulatory principles which encourage operators to invest in costly NGN/NGA infrastructure must be introduced very cautiously, as regulatory practices for these issues are only beginning to take shape. Wholesale products must be developed bearing in mind the needs of customers in the individual national markets and should not be designed for the 'average European country'.

#### 4.4 *Assured service quality (ASQ) connectivity product*

4.4.1 The introduction of an assured service quality (ASQ) connectivity product may turn out to be very useful for creating and providing specialist, advanced digital services.

4.4.2 In the EESC's view, the obligation to provide ASQ must be regulated in such a way as to ensure balanced burden sharing between major operators and smaller service providers from the SME sector.

#### 4.5 *Harmonised rights of end-users*

4.5.1 In the EESC's view, harmonisation of end-user rights, obligations regarding transparency and clear consumer information about conditions, quality, rights, tariffs and rules on facilitating a change of provider will bring major benefits for consumers of electronic communication services. It will strengthen their position vis-à-vis service providers and reduce information asymmetry.

4.5.2 The EESC approves the provision of specific information and contract obligations covering:

- provision of services for disabled end-users, details of products and services,
- the type of action that might be taken by the provider in response to security or integrity incidents or threats and vulnerabilities,
- control by end-users of their consumption of electronic services.

4.5.3 EESC approves the proposed obligation on electronic service providers to distribute public interest information on:

- the most common uses of electronic communications services for engaging in unlawful activities or disseminating harmful content and their legal consequences;
- the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services.

4.5.4 The EESC regrets, however, the ambiguous way in which chapters IV and V of the proposed Regulation have been drafted, in particular when it comes to the subjective factors on which certain consumer rights continue to depend; it was hoped that these would become binding guarantees, and this concerns especially Articles 23(3), 27, 28 and 30 of the proposal.

#### 4.6 *Roaming and international calls*

4.6.1 Although the ultimate objective set under the Digital Agenda for Europe is to eliminate the difference between domestic prices and roaming charges in order to establish an internal market for mobile communication services, the prices charged for roaming mobile communications within Europe continue to be inflated and significantly higher than the rates charged for the same service domestically.

4.6.2 Since, despite the introduction of a cap on charges within Europe, the average charges applied by operators are not far short of the caps imposed by legislation and are preventing healthy competition, the Commission says that it has been obliged to introduce a new legislative package proposing the abolition of surcharges for roaming calls received while abroad, whilst the other roaming charges are supposed to be phased out by encouraging competition between operators, or at least between alliances of operators.

4.6.3 The EESC is, in principle, in favour of the abolition of all roaming charges (for voice calls, text messages and data transmission), not just charges for calls received. In addition, it considers that, in order to create a genuine European internal market for mobile electronic communications, the charges applied for transit mobile communications within the EU should also be reviewed.

4.6.4 Nevertheless, given that the structural reforms will not be in place until July 2014, the EESC considers that the date set for the abolition should depend on the outcome of the structural reforms provided for in the 2012 Regulation, once these have been fully implemented.

4.6.5 This schedule should allow the regulatory authorities to take advance measures to prevent operators from compensating for the drop in revenue resulting from the abolition of roaming charges by increasing domestic charges. Any such increases would penalise all consumers, especially people who, for whatever reason, do not travel outside their own country of residence and have no occasion to make roaming calls.

4.6.6 The EESC also proposes that, to make charges more transparent, particularly where bundled offers are concerned, the regulatory authorities should work with consumer organisations to develop a standard format for presenting the breakdown of charges to allow comparisons to be made between the various bundles and make it easier to find the best deal.

4.6.7 Lastly, the Commission will have to be extremely rigorous when it comes to ensuring that the partnerships between operators it advocates so strongly do not give rise to agreements or oligopolies that would result in the abuse of dominant market positions.

#### 4.7 *Change in the status of BEREC*

4.7.1 In the EESC's view, the proposed changes regarding the status of BEREC, e.g. a full-time post of chairperson of the Board of Regulators, may prove insufficient in the light of competitiveness challenges and the need to create investment incentives, particularly regarding broadband communications and the NGN/NGA network.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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## **Opinion of the European Economic and Social Committee on 'European higher education in the world'**

COM(2013) 499 final

(2014/C 177/13)

Rapporteur: **Mr SOARES**

On 11 July 2013 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

*European higher education in the world*

COM(2013) 499 final.

The Section for External Relations, which was responsible for the Committee's work on the subject, adopted its opinion on 17 December 2013.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 158 votes in favour with 3 abstentions.

### **1. Conclusions and recommendations**

1.1 The EESC attaches importance to, and agrees with, the strategic priorities put forward by the Commission in its Communication on internationalising European higher education, including the mobility of students, teachers and researchers, 'internal' internationalisation by building subjects of relevance to the world scene into study programmes, and on the importance of strengthening international partnerships and alliances between higher education institutions, at a time when the large-scale introduction of free online courses is transforming access to knowledge.

1.2 The EESC welcomes the Commission's recognition of the importance of putting in place a comprehensive internationalisation strategy for European higher education, but regrets that the strategy is limited to reiterating actions that the European Union already has under way, not bringing anything substantially new, and is unsuited to current competition conditions in the sector.

1.3 Likewise, the EESC appreciates the acknowledgement that this is not a purely scientific or technical matter, but is closely related to the political, economic and social environment, whether at national, EU or global.

1.4 The EESC hopes that the Commission will bring forward proposals and measures more effectively promoting the presence of European universities on the world stage and removing all the obstacles that hinder knowledge exchange and student and teacher mobility with third-country higher education institutions, particularly with regard to obtaining visas and immigration policy in general.

1.5 Mobility for students, teachers and researchers represents added value for both the countries of origin and the host countries and so it is important to foster return mobility in order to prevent loss of the qualified human resources that are essential to societies' development.

1.6 The EESC would suggest the possibility of creating a fully-fledged European school, building on the cooperation already undertaken by a number of European universities and providing a forum for academic and research excellence.

1.7 The EESC would repeat the recommendation it has made in previous opinions that when internationalising higher education, the values that have marked European higher education should be maintained and promoted, that the contributions, asymmetries and diversity of all involved be recognised, and that it be remembered that not only academic, but also political, economic and cultural interests are at stake.

1.8 The EESC therefore holds that since this is a strategic objective, it must be accompanied by financial and human resources that can contribute to the social and economic development and well-being of all concerned.

1.9 As a result, the EESC is greatly concerned at the harmful impact that austerity policies are likely to have on the education sector, as repeatedly pointed out by many higher education institutions. The EESC feels duty-bound to emphasise that cuts in the education sector are jeopardising the very objectives set out in the Commission's communication.

1.10 The EESC believes that as part of this internationalisation process, cooperation between higher education institutions and businesses should be promoted, generating synergies to boost the business and creative skills of students and teachers and fostering a climate of innovation, so necessary to society today.

1.11 Widespread, free use of the new technologies within international programmes has transformed access to knowledge and can give 'mobility' to millions of students who would not otherwise effectively have this opportunity. The EESC would, however, warn that this use can give rise to technical, education and ethical challenges concerning, for example, respect for the intellectual property of teachers and researchers compiling courses, or the crystallisation of two different, and discriminatory, types of recognition between those who travel internationally in person and those who do so online.

1.12 The EESC would restate its conviction that the internationalisation of European higher education should serve to affirm the core values of European culture, such as upholding human rights, recognising societies' cultural heritage and promoting greater social cohesion.

1.13 The EESC urges the Commission to provide regular, detailed information on how the commitments made in the communication are fulfilled, and believes that this question should be included among the country-specific recommendations under the European Semester.

1.14 Lastly, the EESC recommends that the resources allocated to this area be substantially increased in forthcoming EU budgets, focusing especially on research needs.

## 2. Introduction

2.1 In a globalised, competitive society such as today's, knowledge is a vital tool for human development in all its dimensions — social, economic and in terms of well-being. Higher education naturally continues to be recognised as an essential element in creating and disseminating new knowledge and as a factor for innovation that can contribute to the development of individuals and of society as a whole. Innovation and knowledge are crucial for economic growth, and also for social development and social cohesion.

2.2 Ways of acquiring knowledge and know-how have of course always been highly diverse, but have today taken on a completely new dimension, partly because of the extension of education to an ever-larger number of people, but mostly through the growing use of the new technologies, posing a major challenge to European higher education institutions.

2.3 Higher education lies (or should lie) at the heart not only of scientific research and technological innovation policies, but also of research that can help generate innovative social policies, social cohesion and more effective, competitive and sustainable business strategies.

2.4 Europe has some 4 000 higher education institutions with over 19 million students and 1,5 million employees (teachers and others), cooperating and competing with universities in other parts of the world in the drive to generate and share knowledge, but also with a view to innovating and creating value for the societies of which they are part.

2.5 There are currently 99 million higher education students around the world, a number set to grow to 414 million by 2030. Increasing numbers of students seek to begin or to complete their studies in a country other than their own, with Europe attracting some 45% of the migrant student population, a population that according to the Commission's forecasts will grow from 4 to 7 million by the end of the decade. In spite of these sizeable figures, it is both possible and desirable to do more and better<sup>(1)</sup>.

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<sup>(1)</sup> According to data from the UNESCO Institute for Statistics.



2.6 Education, and higher education in particular, lie at the heart of the 2020 strategy and of Europe's ambition to develop a sustainable, smart and inclusive economy. One of the preconditions for achieving such an economy is to relaunch a genuine industrial policy that acknowledges training of human capital as absolutely vital. This is another reason why the importance of universities is set to increase.

2.7 Consequently, international cooperation is of outstanding importance in training and harnessing the new skills that are essential in a radically changing world.

2.8 The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on European higher education in the world comes against this backdrop.

### 3. Summary of the Commission communication

3.1 In its communication, the Commission argues that three strategic priorities need to be defined in moving towards a comprehensive internationalisation strategy <sup>(2)</sup>:

- on mobility: systematically focusing internationalisation strategies to include a strong student, researcher and staff mobility component, supported by a quality guidance and counselling framework; setting up two-way mobility schemes with non-EU countries; ensuring fair and formal recognition for knowledge gained abroad for internationally mobile students, researchers and staff;
- on internationalisation 'at home' (integrating global elements into curriculum design and content and the teaching/learning process) and digital learning: capitalising on the international experience of HEI (higher education institution) staff in order to prepare international curricula that benefit both non-mobile and mobile students; offering students, researchers and staff the opportunity to develop their language skills, in particular by providing local language tuition to maximise the benefits of European linguistic diversity; promoting international collaboration through the use of ICTs and Open Education Resources;
- on partnerships: strengthening the capacity of higher education and research to identify global challenges and engaging in innovation-oriented international partnerships and alliances; overcoming remaining obstacles to recognition of joint and double degree programmes; providing innovative courses that stimulate entrepreneurship, including the option of international training with employers from inside and outside the EU; ensuring strong coherence between internationalisation strategies and EU development cooperation policies.

3.2 The Commission rightly points out that globalisation and technological development have brought new actors to higher education, such as the emerging countries including China, India and Brazil.

3.3 Similarly, the Commission draws attention to the results of various initiatives already under way (the Bologna Process, programmes such as Erasmus, Tempus, Erasmus Mundus and Marie Curie, and transparency tools such as the European Credit Transfer and Accumulation System (ECTS) and the European Qualifications Framework (EQF)) in achieving a significant degree of intra-European internationalisation.

3.4 It echoes the message previously conveyed by the communication on *Enhancing and focusing EU international cooperation in research and innovation* <sup>(3)</sup> that international mobility offers higher education institutions new opportunities to enter into strategic partnerships.

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<sup>(2)</sup> The Lithuanian Presidency held a conference together with the European Commission on this question, the conclusions of which can be found at [http://ec.europa.eu/education/news/30082013-european-higher-education-conference\\_en.htm](http://ec.europa.eu/education/news/30082013-european-higher-education-conference_en.htm).

<sup>(3)</sup> COM(2012) 497 final.

3.5 In order to contribute financially to internationalisation strategies, the Commission will provide increased funding, through the new Erasmus+ programme and Marie Skłodowska-Curie Actions, allowing 135 000 students and staff to exercise mobility and 15 000 researchers to pursue their careers, as well as providing 60 000 high-level scholarships, and support to 1 000 capacity-building partnerships between EU and non-EU HEIs.

#### 4. General comments

4.1 The EESC regrets that the communication does not in fact bring anything substantially new to the internationalisation strategy, which many EU HEIs have been pursuing for several years. The EESC does however welcome the fact that the Commission's communication succinctly recognises the importance of a comprehensive internationalisation strategy for European higher education, and urges HEIs and the Member States to press ahead with and step up this strategy.

4.2 In a previous opinion, the EESC voiced its interest in this area, explaining that 'in [its] view, the aim of making European universities centres of excellence attracting students from all over the world is of the utmost importance and should help to demonstrate the high quality of higher education and research in Europe' <sup>(4)</sup>.

4.3 Attracting new talent is essential nowadays to inject dynamism into the economy and look towards sustainable social growth. To achieve this, Europe's universities must cooperate more closely with each other in order to ensure that European higher education continues to be internationalised in a highly competitive way and is of benefit to the European Union as a whole and to all the relevant stakeholders <sup>(5)</sup>.

4.4 Cooperation can also be increased by closer and better coordination between the higher education institutions of the various European countries that have a presence around the world. Creating a fully-fledged European school as a result of such cooperation could serve as a powerful signal of the Union's role as a forum for excellence.

4.5 This internationalisation strategy must recognise the geographical diversity and range of possible approaches, and of the interests at stake, whether political, economic or academic. The internationalisation of higher education must also take account of the interests of individual faculties or even departments since this can help their research and innovation strategy.

4.6 Moreover, in the light of recent attempts to introduce supposed hierarchies in the sciences, it is important to avoid marginalising the social sciences and humanities in favour of other areas of knowledge.

4.7 The interests of students and teaching staff must also be taken into consideration if the aim is to achieve a holistic view of internationalisation. In this regard, it is crucial to overcome the various obstacles to effective mobility for all of them. This means special attention must be focused on recognising and acknowledging the value of the skills people acquire in research, teaching and training.

4.8 It is consequently essential to step up the implementation of bilateral agreements on recognition of qualifications, and to examine and include clauses covering these issues in any cultural and education exchange agreements reached with third countries and their universities. These agreements should be appraised periodically, and the education community should be involved in this.

4.9 At the same time, the asymmetries between education systems in the host countries and countries of origin must be recognised with a view to identifying the best solutions. The scientific contributions and socio-cultural values instilled by teacher and researcher exchanges must also be acknowledged: these should be seen as enriching — in the widest meaning of the word — all the societies involved.

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<sup>(4)</sup> OJ C 191, 29.6.2012, p. 103.

<sup>(5)</sup> According to the Commission, 63% of all third-country students entering the EU go to three countries — the United Kingdom, France and Germany.

4.10 The EESC therefore warmly welcomes the mention of the shared responsibilities of the Commission, the Council, the Member States, the education sector and the participating non-EU countries and universities.

4.11 Consistency of strategies between the EU, countries, higher education institutions, businesses and other sectors of society when internationalising their own interests is crucial to overall success in internationalising higher education. Shifting from sector-based international action to an internationalisation strategy on an institutional footing is thus a necessary step that should be encouraged.

4.12 Internationalisation of higher education must be tied to high-quality research promoting the common good and social and economic development. It also requires the involvement of teachers and researchers, via democratically elected structures, in all European and non-European higher education institutions and research centres, alongside other stakeholders (student associations, businesses and business associations, local and/or regional public authorities, etc.).

4.13 Lastly, the EESC would restate its conviction that the internationalisation of European higher education should serve to affirm the core values of European culture, such as upholding human rights, highlighting societies' cultural heritage and promoting greater social cohesion.

## 5. Specific comments

5.1 The EESC notes that the Commission recognises the principle of subsidiarity (national responsibility), without overlooking the importance of the EU's contribution, particularly at a time when the internationalisation of European higher education is being called into question.

5.2 When defining priorities for project funding, one instrument available to the EU would be to envisage specific additional support for national agencies in the various European countries working to internationalise higher education and to encourage the establishment of such agencies in countries where they do not exist. The EESC believes that boosting cooperation between these agencies would stimulate cooperation between European universities.

5.3 One of the major issues facing the internationalisation of European higher education and efforts to attract young talent from third countries is that of immigration policy and visa procedures for students and teachers from outside the EU. The EESC calls for the removal of these obstacles, which have long since been identified and which deter many students, teachers and researchers from choosing Europe as their preferred destination.

5.4 The EESC has always upheld the idea that mobility for students, teachers and researchers represents added value for both the countries of origin and the host countries. It is important in this regard to foster return mobility in order to prevent loss of the qualified human resources that is essential to societies' development.

5.5 Rather than keeping account of mobility on the part of students, teachers and researchers, however, it would be more useful to analyse the outcomes. The bulk of the investment should therefore be earmarked for cooperation programmes, incorporating the scholarships that produce mobility and enabling the establishment of networks with a strong multiplier effect.

5.6 The EESC also draws attention to the particular need to boost the involvement of women in research mobility, since the number of women researchers in senior academic leadership positions in scientific and university institutions remains very low, in spite of some growth in recent years.

5.7 Mobility should also represent an opportunity to its beneficiaries for the cultural and indeed linguistic enrichment that only Europe, as a multicultural and multilingual area, can offer. Including local language courses in the study programmes of migrant students, teachers and researchers and framing a strategy to integrate them into local host communities would unquestionably open up broader cultural horizons and enable them to live to the full the environment in which they spend their period of study or research<sup>(6)</sup>.

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<sup>(6)</sup> 'All persons have (...) the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity'.

5.8 Another important question for the successful internationalisation of higher education concerns the recognition, certification and validation of qualifications and skills. In a recent opinion, the EESC argued that 'Recognition of professional qualifications from other Member States is a key instrument for promoting the mobility of EU citizens and thereby implementing the Single Market. It will strengthen the competitiveness of Member States, support sustainable growth and reduce unemployment. National economies will benefit from the varied professional experiences acquired by their citizens while working in different Member States' <sup>(7)</sup>.

5.9 The Commission communication indicates the importance of the emerging countries in the globalisation and internationalisation of higher education. Although the EESC agrees that these new players on the international scene must be taken into due account, it would point to the need to keep a permanent focus on new 'competitors' who may be about to emerge or other countries and geographical regions with which certain European countries have long-standing special relations for a wide range of reasons.

5.10 The EESC notes that the Commission communication makes little mention of the necessary cooperation between universities and business: such cooperation must respect the independence and working methods of both sectors. Linking them can however make a substantial contribution to economic and social development.

5.11 Cooperation between higher education institutions and companies should indeed also be encouraged at international level. In their international activities, it is important that universities make use of the results of research, foster innovation in their teaching and promote the creative and innovative capacities of their students and teachers. The EESC however warns of the danger of subordinating basic research to immediate applications of science.

5.12 The EESC appreciates the acknowledgement that this is not a purely scientific or technical matter, but is closely related to the political environment, at both national and EU level.

5.13 For this reason it voices its serious concern at the budgetary situation in a number of European countries, particularly those subject to EU and IMF intervention, where the budgets of higher education institutions have been slashed, possibly compromising the intentions set out in the communication. The main attraction of European universities in fact lies in their quality and the excellence of their academic qualifications.

5.14 The EESC underlines the need to have reliable and comparable European statistics so that a dialogue can be established on a sound basis with non-EU partners with a view to forging real knowledge alliances.

5.15 The EESC believes that the question of following up on the situation of higher education and its internationalisation should be included among the country-specific recommendations under the European Semester.

5.16 As the communication points out, using the new technologies within international programmes could give 'mobility' to millions of students who do not effectively have this opportunity. The large-scale introduction of free online courses is effectively transforming access to knowledge, creating new opportunities and at the same time giving rise to new educational and methodological challenges.

5.17 The EESC would however warn that this use can give rise to technical and ethical questions concerning, for example, respect for the intellectual property of teachers and researchers compiling courses, or the crystallisation of two different, and discriminatory, types of recognition between those who travel internationally in person and those who do so online.

5.18 The Commission plans to introduce *U-Multirank*, a new model for ranking HEIs, in 2014 in order to reflect the diversity of profiles in a more transparent way. Although it shares these aims, the EESC wonders how effective it will be compared to other systems that are already recognised, and whether it is advisable to allocate such substantial resources at a time of economic and financial difficulty.

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<sup>(7)</sup> OJ C 204, 9.8.2008, p. 85.

5.19 The EESC welcomes the recognition given by the High Level Group on the modernisation of higher education when it argues that the greater cultural, economic and social diversity of students demonstrates the need for specific training for teachers. Just as Europe has decided that by 2020, 40% of European young people should hold a higher qualification, so by the same year all teachers in higher education institutions should be professionals who can guarantee the quality of the subjects taught and the qualifications awarded.

5.20 The United Nations' International Covenant on Economic, Social and Cultural Rights requires countries to assume full responsibility for funding education, stipulating that 'higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education'.

5.21 Within the 2014-2020 budget framework, the Commission plans a EUR 3 000 million package to finance the internationalisation of higher education (from a total of EUR 16 000 million earmarked for Erasmus+ programmes). With this funding, the Commission is committed to ensuring the mobility of 135 000 learners and staff, 15 000 researchers and 60 000 high-level masters and doctorate students. The EESC expects to receive regular, detailed information on how this commitment is fulfilled, and recommends that the amounts allocated for this purpose be increased in the future.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Consultative communication on the sustainable use of phosphorus’**

COM(2013) 517 final

(2014/C 177/14)

Rapporteur: **David SEARS**

On 8 July 2013 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 — Consultative communication on the sustainable use of phosphorus*

COM(2013) 517 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 2014.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 21 January), the European Economic and Social Committee adopted the following opinion by 155 votes in favour with 4 abstentions.

## **1. Summary and conclusions**

1.1 This Consultative Communication forms part of a wider debate on how the EU can maintain supplies of critical raw materials in a cost-effective and environmentally acceptable manner for both manufacture and the support of animal and human life in an increasingly populated and competitive globalised world. It provides a well-informed, balanced and sufficient summary of the situation applying to the import and usage of phosphorus-based products, for the production of food stuffs and other essential applications.

1.2 The Commission poses 11 questions to which the EESC provides answers and specific recommendations. The EESC notes the contribution being made by the European Sustainable Phosphorus Platform (ESPP) and likely to result from the work of the European Innovation Partnership (EIP) on agricultural productivity and sustainability. The EESC endorses these initiatives and trusts that their work will be put to good use.

1.3 The EESC commends this approach which, as the Commission notes, is not necessarily aimed at producing specific legislation. Asking the right questions and ensuring that the right data are available to allow others to make better informed decisions may be more appropriate. Best practices must be identified and well communicated to allow others to follow.

1.4 This may require short term market support for new technologies and, where necessary, longer term regulatory support for changes agreed to be essential. Targets for phosphorus stewardship and recycling are likely to be helpful; implementation at national level should be left to those more closely concerned.

## **2. Introduction**

2.1 Phosphorus is an element essential for life. It can be recycled indefinitely but cannot be replaced. It is widely distributed in the earth's crust but workable reserves of phosphate rock are concentrated in just a few countries, all but one of these (Finland) being outside the EU.

2.2 Waste products including bio-solids from plants, animals and humans all contain phosphorus; these are recycled to land use to varying degrees to aid waste disposal and to feed crops. Some areas have a surplus, seeing this as a problem leading to deterioration in water quality and eutrophication (growth of vegetation due to an excess of nutrients); others have a deficit and cannot achieve high crop yields. Changing concentrations of people and animals exacerbate these difficulties.

2.3 Problems and opportunities arising from the above received little attention for the first 50 years of phosphate rock usage. Supplies seemed adequate; prices remained stable and low; crop and animal yields soared. In 2008 this changed abruptly. China, seeing a potential domestic shortage, imposed a tax on exports; world prices rose dramatically; food prices were affected; the possibility of 'peak phosphorus' having already occurred was mooted.

2.4 Two years later world reserves were re-estimated and increased ten-fold and the problem seemed to vanish, although doubts about the true state of affairs were reinforced. Whatever else, it was time to start asking serious questions.

### 3. Responses to questions

3.1 *Do you consider that security of supply issues for the EU in relation to the distribution of phosphate rock are a matter of concern? If so, what should be done to engage with producing countries in order to tackle these issues?*

3.1.1 Phosphate rock is the primary source of phosphorus to increase crop yields and animal growth and thereby to sustain ever larger populations. Known reserves are concentrated in a few countries. Only those with a marked surplus over their own needs are likely to export. Only a small part (16%) of the tonnage extracted is believed to be traded (Rosemarin & Jensen, European Sustainable Phosphorus Conference, March 2013). Many of the supplying countries are regarded as politically vulnerable. The market is not fully transparent or perfectly functioning. The EU is not self-sufficient and has lost jobs as the production of finished products (fertilisers and phosphorus-based chemicals) has moved to the supplying countries.

3.1.2 This can only be answered on a global basis; if one populous and/or rich high demand country perceives itself to be at risk with regard to the supply of raw materials, including food, then all countries or regions dependent on imports are put at risk. This applies equally to the goods manufactured from the raw materials. Any study must take this into account, in particular where manufacturing patterns have changed and primary demand now lies outside the EU.

3.1.3 The answer to the first question is clearly 'yes'. The challenge is to find cost-effective ways to increase self-sufficiency. Developments following the 700% price hike in 2008 proved valuable. Although prices have fallen since then, an awareness of ongoing risks has helped stimulate investment throughout the supply chain. Raising awareness of environmental impacts at all stages of the supply chain, and understanding how to minimise these in a cost-effective manner, are equally important. Commission support for research and involvement of stakeholder groups via the EIP and ESPP will be vital.

3.1.4 75% of known reserves are in Morocco and Western Sahara (Rosemarin & Jensen, European Sustainable Phosphorus Conference, March 2013). Exports from Morocco dominate world trade. Others supplying the EU include Tunisia and Syria. Russia is a major supplier of rock and finished products. Jordan and Egypt export large quantities. The incentives to strengthen neighbourhood and other bi-lateral treaties are obvious.

3.1.5 This topic has been discussed fully in a recent EESC Opinion 'Securing essential imports for the EU — through EU trade and related policies'<sup>(1)</sup>, adopted in October 2013. The need for a coherent, collaborative, holistic, data-based, timely, politically aware and tactically delivered approach across the institutions of the EU on behalf of the Member States is also obvious.

3.2 *Is the supply and demand picture presented here accurate? What could the EU do to encourage the mitigation of supply risks through, i.e., the promotion of sustainable mining or the use of new mining techniques?*

3.2.1 The EESC supports the Commission in using the current, post 2010, data on supply — and, broadly speaking, on demand, however all must be regarded as 'indicative' rather than 'accurate'. It seems to the EESC highly unlikely, given that known reserves represent less than 1 ppm of the total phosphorus in the earth's crust, that all the aggregated and exploitable reserves have been discovered — and even more unlikely that extraction and recovery techniques will not improve further. Demand can be reduced by continuing the process of removal from detergents and by more efficient use in fertilisers or by moving to low-meat diets or stabilising populations.

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<sup>(1)</sup> OJ C 67, 6.3.2014, p. 47-52.



3.2.2 Given the many variables and uncertainties over actual reserves, it is difficult to see that 'Hubbert curves' and predictions of 'peak phosphorus' are likely to be helpful tools for forecasting in the short term.

3.2.3 The EESC supports technical and financial cooperation with supplying countries to identify new reserves, to reduce the environmental impacts of mining, distribution and processing, to build required infrastructure, including railways and ports, and to increase the degree of local processing to higher added value fertiliser products.

3.2.4 This does not however affect the primary aims of EU policy on phosphorus — to increase self-sufficiency inside the EU and to mitigate the effects of over-use. Improved data on flows within the EU, in particular in Member States where demand is rising, will be critical to developing cost-effective practices and policies. Progress towards sustainable food safety will depend on this.

3.3 *Do you consider that the information on the worldwide supply and demand of phosphate rock and fertiliser is sufficiently available, transparent and reliable? If not, what would be the best way to obtain more transparent and reliable information at EU and global level?*

3.3.1 World wide data, especially on reserves, are produced by the United States Geological Survey with input from the International Fertilizer Development Center and from other organisations such as the Australian Joint Ore Resources Committee. Given the events of recent years, it can only be hoped that they will improve their performance. The UN Food & Agriculture Organisation has a strong interest in obtaining reliable data; the EU could focus efforts here, including efforts to reduce demand in high consuming countries, essentially in Asia, and supporting the re-assessment of reserves in all supplying countries.

3.3.2 Improved data on demand flows and opportunities to optimise both supply and demand within Europe are also essential; the ESPP provides the most obvious route. Informed and up-to-date input from all affected stakeholders, including Fertilisers Europe, will continue to be critical.

3.4 *How should we handle the risk of soil contamination linked to phosphorus use in the EU?*

3.4.1 Phosphate deposits contain varying trace quantities of metals, including cadmium, uranium and chromium. These can be removed for food and technical use but the processes are expensive and generate wastes. Common sedimentary deposits contain 25-150 mg Cd/kg P2O5. Igneous deposits (in Russia, Finland and South Africa) have around 10 mg Cd/kg P2O5. EU imports are typically low in cadmium, however long term use can lead to a build-up in soil, plants and animals and may therefore constitute a risk to human health. Decadmiation increases costs for farmers in the EU, reducing competitiveness with imported crops where such restrictions do not apply. Phosphate from animal and human waste is low in cadmium but may be contaminated in different ways. The determination of safe levels for all contaminants is therefore critical.

3.4.2 The EESC therefore encourages the Commission to continue and complete all outstanding studies, to undertake new risk assessments where these are required and to make appropriate recommendations, in particular on available decadmiation technologies, costs and applicability to different production routes.

3.4.3 The EESC recognises that farming practices are often localised and may seem imprecise. Technical advice and best practices continue to evolve but are not always well communicated. Change tends to be slow in the absence of strong financial incentives. The sale and use of mixed N, P and K fertilisers does not take into account needs which may vary from field to field. As in other areas, life-long learning is essential.

3.4.4 A move towards 'precision agriculture', with greater attention to local needs, availabilities and release patterns, to encompass both natural and synthetic fertilisers, is therefore now essential, with incentives as necessary to encourage change. The EU DGs responsible for both Research and Agriculture will have key roles to play in this process.

*3.5 Which technologies have the greatest overall potential to improve the sustainable use of phosphorus? What are the costs and benefits?*

3.5.1 Phosphorus is a stable non-radioactive element, and can therefore be recycled and re-used indefinitely. It does not exist significantly in the atmosphere but may be lost by soil erosion or water transfer, generally ending its life on the sea bed. Recovery from inland water systems is being investigated as a step towards purification; recovery for re-use needs more attention.

3.5.2 Sustainable use requires life-cycle analysis (LCA) from 'mine' to 'farm' to 'fork' to 'sea'. Mineral extraction requires large amounts of energy and water, often in areas short of both. Transport and processing require hydrocarbons and generate greenhouse gases. Current wastage is high; only about 15% of mined phosphorus reaches the food that we eat (Rosemarin & Jensen, European Sustainable Phosphorus Conference, March 2013 quote 20-25%; input from ESPP suggests 15% only). This usage is however essential to life of any sort. The process can be optimised but not replaced.

3.5.3 Non-food usage is different. Domestic detergents can be made without phosphates and usage has been greatly reduced. The diversion of crops to biofuels produces a much bigger threat. Energy costs and benefits at all stages must be better quantified. The EESC has looked at some of the social and economic impacts; a full-scale LCA including phosphorus use is now urgently required and policies adapted where necessary.

3.5.4 In all cases efforts must be made to reduce the consumption of primary phosphorus (new inputs, requiring imports to the EU) and to increase the reuse of organic materials (food, processing wastes and composts) and the safe recycling of phosphorus-rich materials currently regarded as 'wastes' (animal and human excreta, water waste and sewage sludge). Uses must be developed for by-products produced during processing.

3.5.5 There is a need to identify appropriate routes to achieve the above and to educate regulators, suppliers, farmers, retailers and their customers to adopt the desired new products and practices. Work is on-going to identify commercially viable solutions. The ESPP and other bodies are working closely with the Commission to bring these to fruition.

3.5.6 The Commission and other institutions, agencies and advisory bodies of the EU should continue to identify legislation that needs either review or better implementation in the light of experience or changing external needs. The whole approach to 'waste' must be — and is being — reconsidered. As noted in the Communication, the current approach is fragmented and unhelpful and hinders the desired outcomes of reuse and recycling.

*3.6 What should the EU promote in terms of further research and innovation into the sustainable use of phosphorus?*

3.6.1 The Commission should encourage research where there is a desired outcome but market-driven commercial incentives are unclear (e.g. due to the continuing availability of relatively low cost primary phosphorus) or where there are likely to be unresolved conflicts of interest (e.g. with regard to quality standards for recycled v. virgin phosphate fertilisers) or where national practices within the EU differ sharply (e.g. with regard to current phosphate use and trends in consumption) or where obvious synergies cannot easily be achieved (e.g. with respect to transferring animal and other P-rich wastes from surplus to deficit Member States).

3.6.2 The need for improved communication across the sectors involved, the different legislation applying, and the split and sometimes conflicting responsibilities inside the Commission and other regulatory bodies, should also be recognised.

3.7 *Do you consider that the available information on the efficiency of phosphorus use and the use of recycled phosphorus in agriculture is adequate? If not, what further statistical information might be necessary?*

3.7.1 Here the answer is 'no'. There is a clear need for authoritative and less fragmented and more complete information on other contaminants and their sources and uptakes in food, including heavy (and lighter) metals, pharmaceuticals and metabolites, pathogens, associated nutrients, availability, release patterns, overall agronomic efficiency, recycling technologies, environmental impacts and so on.

3.7.2 Statistical data, if available, would be a good start. Education and ownership and acceptance of change will be essential. Partnership between the Commission and bodies such as the ESPP looks the most likely route to achieving this.

3.8 *How could the European Innovation Partnership (EIP) on 'agricultural productivity and sustainability' help to take forward the sustainable use of phosphorus?*

3.8.1 5 EIPs have been launched within the framework of Europe 2020. 3 of these, on agricultural productivity, water and raw materials, will impact the farming sector in general and phosphorus in particular — as will, to a lesser extent, the remaining 2 on smart cities and active and healthy ageing. As a new problem to be solved, the approach to phosphorus could set a model for others to follow.

3.8.2 A High Level Steering Board is in place and a Strategic Implementing Plan (SIP) has been agreed. This will be a success if stakeholders act together and if all stakeholders are represented and actively engaged. The focus is on actions possible within the EU — broadly from 'farm' to 'fork' — so does not include some topics, as above.

3.8.3 The EESC agrees with the very broad all-embracing content of the SIP but notes that it lacks clearly defined priorities, mechanisms to resolve legitimate disputes, or timetables for action. There is little discussion of areas where existing EU or Member State policies (to subsidise, or not to subsidise or even allow, specific activities in the pursuit of other goals) have led to economically unsustainable or undesirable outcomes in or outside the EU.

3.8.4 The EESC hopes that the EIP meets its objectives in a timely manner; this would be a useful outcome for phosphorus. Discussion should include nutrient use, fertiliser efficiency, recycling, contaminant levels, manure and other organic waste treatment, transport and use. This should support the work programme of the ESPP. Clearly the two should interact.

3.9 *What could be done to ensure better management and increase processing of manure in areas of over-supply and to encourage greater use of processed manure outside these areas?*

3.9.1 'Waste' is any material seen by its immediate owners as having no or negative value; once a value can be attributed, it becomes a product that can be traded. A fully efficient process would valorise and use all its output streams. Globalisation has made this more complicated to analyse but more pressing to resolve. Plant, animal and human waste streams in liquid and solid form must now be seen as commercial opportunities rather than as costly problems.

3.9.2 This is easier to say than to achieve. Research and new technology will be required; regulations should be adapted to ensure greater clarity and certainty of content for cross-border and internal movements. Financial incentives must be made clear. Local solutions encompassing manure, processed or otherwise, and synthetic fertilisers look the most likely to succeed. Community or regional projects could be developed to solve specific problems, to make good use of investments and to minimise environmental impacts.

3.9.3 Stakeholders in the EIP or ESPP will have a key role in matching global solutions to actual opportunities at farm, community, municipal or regional level; Member States and other representatives of civil society will need to be fully engaged.

3.10 *What could be done to improve the recovery of phosphorus from food waste and other biodegradable waste?*

3.10.1 The best way to reduce food waste is to ensure that the food is distributed and eaten as part of a balanced and healthy diet by those in need of sustenance. Labelling law and retail practices with regard to 'quality' (shape, appearance and size v. taste or nutritional content), portion sizes, 'best-by' or 'sell-by' dates, and disposal of unsold food all need review. Large scale commercial users (food processors, caterers, restaurants) should minimise waste on normal commercial grounds — and should be required to compost all that they cannot use directly. Industry wide initiatives involving retailers should be encouraged. Domestic food waste can and should be minimised by effective buying and timely use — and that is largely a matter of consumer education. Individual composting of residues is possible in the country, less easy in large cities.

3.10.2 Separated collection of biodegradable waste, apart from garden waste, is generally quite limited and is subject to available budgets and priorities. Composting of anything that cannot be consumed keeps the phosphorus within the food chain and, where this is required, improves soil quality. Attention needs to be given to adding value rather than merely disposing of waste.

3.11 *Should some form of recovery of phosphorus from waste water treatment be made mandatory or encouraged? What could be done to make sewage sludge and biodegradable waste more available and acceptable to arable farming?*

3.11.1 Solutions already exist for small scale domestic applications, primarily to solve problems of excess phosphorus in remote locations leading to eutrophication in adjacent still water. These are however expensive and seem difficult to adapt to higher-density urban populations. City size often determines what is possible.

3.11.2 Urban waste water disposal is governed by regulations on the quality of the effluent and not on the potential value of specific components. This should be reviewed as a matter of urgency. Retrofitting existing sewage disposal systems can be expensive; providing designs for new investments that add greater value for operators makes better sense. The use of bio-solids on land should focus on optimising crop yields v. meeting disposal limits.

3.11.3 New standards will be required for food use applications, including arable farming, for use alongside synthetic (and therefore more easily quality and performance controlled) fertilisers. Non-food applications (parks, golf courses, urban and industrial landscaping, environmental reclamation, forestry, erosion protection, sea defence, etc.) provide easier outlets.

3.11.4 There is a continuing need for focused research and the development of new cost effective technologies. It is to everyone's benefit if this is encouraged, funded and publicised at EU level and supported by the identification and effective transfer of existing best practices. Successful technologies generate jobs and open up markets. Efficiencies in food production, distribution, use and waste management help reduce costs for consumers and assist in reaching other targets on energy and climate change.

3.11.5 Road blocks to progress should be removed. Harmonised 'End-of-Waste' criteria and a new approach to the definition and control of waste should be developed. Framework directives on chemicals (REACH), soil and water quality, fertiliser and food use and waste disposal should be re-evaluated to ensure that their objectives are still relevant and complete and that they meet the priorities of the EU as it is today, in the globalised world in which we now live. Proper and proportionate implementation at national and local level will be important. The EESC will be happy to assist in this process.

Brussels, 21 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the 'Proposal for a regulation of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species'**

COM(2013) 620 final — 2013/0307 (COD)

(2014/C 177/15)

Rapporteur: **Mr CINGAL**

On 12 September 2013 the European Parliament and on 20 September 2013 the Council decided to consult the European Economic and Social Committee, under Articles 192(1) and 304 of the Treaty on the Functioning of the European Union, on the

*Proposal for a regulation of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species*

COM(2013) 620 final — 2013/0307 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 January 2014.

At its 495th plenary session, held on 21 and 22 January 2014 (meeting of 22 January), the European Economic and Social Committee adopted the following opinion by 143 votes to one with 4 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission communication and the desire to adopt an EU legal instrument, which is all the more necessary given the climate problems (natural migrations towards the north), but emphasises that the response may well appear overdue to those who raised alarms long ago. The EESC believes that the Commission would be advised to ensure that the actual title of the communication in the Unions' various languages meets with scientists' approval. The Committee prefers the term 'espèces allogènes invasives' (or 'envahissantes', EEE) for the French text.

1.2 The EESC believes that combating invasive species should be considered as a major European concern. It welcomes the Commission's commitment to introduce a general mechanism for combating invasive alien species. Nevertheless, the EESC advises it to explain the causes of these problems more clearly, in order to make clear the need for a large-scale mobilisation of stakeholders to provide all the relevant details to the body responsible for the question. The EESC also advises the Commission to point out the efforts already made in conducting experiments to combat the proliferation of introduced species that are problematic, such as the LIFE programmes. The Committee has doubts about limiting the list of invasive species to 50.

1.3 The EESC appreciates the Commission's desire to involve the public in combating the proliferation of alien species already identified. But the EESC would appreciate it if the Commission also called on the public to find out about and take part in preventive measures. The EESC also emphasises the important role played by civil society organisations, particularly in the management of natural or recreational areas.

1.4 The EESC thus calls on the Commission to examine the possibility of setting up a European invasive alien plant monitoring centre to be responsible for both the European scoreboard and for exchanges with countries outside the EU. What the EESC understands by a monitoring centre is a clearly identified focal point that would bring together scientists and the public by mobilising them on specific problems. It would then be possible to build on local initiatives and emphasise points of convergence in a modest publicity programme (Internet web pages). The EESC believes that setting up a monitoring centre responsible for managing horizontal and trans-disciplinary issues would probably encourage the required generalised mobilisation of experts, motivators on the ground and project promoters.

1.5 The EESC hopes that the mechanism will actually be presented during the European Parliament's current term of office, which would enable it to be operational before 2016. The monitoring system as proposed should be based on a validation by scientific communities and help to draw up a list of indicators recommended by the Convention on Biological Diversity, particularly those set out in target 9: 'By 2020, invasive alien species and pathways are identified and prioritised, priority species are controlled or eradicated, and measures are in place to manage pathways to prevent their introduction and establishment.' The EESC calls on the Commission to consider setting up, on the basis of Regulation (EC) No 338/97, a Scientific Study Group, which might amend the list.

1.6 The EESC welcomes the fact that the IAS issue is prompting the Commission to take an interest in derelict land (poor land, disused railway lines, etc.) which are often sources of infestation, pathways for dissemination and colonisation. The EESC hopes that efforts to eradicate problematic colonising species will make it possible to develop specialised companies and jobs.

## 2. Background and summary of the communication

2.1 The impact of invasive alien species (IAS) on biodiversity is significant. IAS are one of the major, and growing, causes of biodiversity loss and species extinction. When it comes to social and economic impacts, IAS can be vectors of diseases or directly cause health problems (e.g. asthma, dermatitis and allergies). They can damage infrastructure and recreational facilities, hamper forestry or cause agricultural losses, to mention but a few. IAS are estimated to cost the Union at least EUR 12 billion per year and this is continuing to rise <sup>(1)</sup>.

2.2 Member States are already taking measures to tackle some IAS, but such action is predominantly reactive, seeking to minimise the damage already being caused without sufficient attention to prevention or to detect and respond to new threats. Efforts are fragmented, with substantial gaps in species coverage, and are often poorly coordinated. IAS do not respect borders and can easily spread from one Member State to another. Thus, action taken at national level will be insufficient to protect the Union from the threat of certain IAS. Moreover, this fragmented approach can lead to action in one Member State being undermined by a lack of action in neighbouring Member States.

2.3 This proposal aims to establish a framework for action to prevent, minimise and mitigate the adverse impacts of IAS on biodiversity and ecosystem services. Furthermore, it will seek to limit social and economic damage. This will be achieved through measures to ensure coordinated action, focusing resources on priority species and on increasing preventive measures, in accordance with the Convention of Biological Diversity approach and with the Union's plant and animal health regimes. In practical terms, the proposal seeks to attain these objectives through measures addressing the intentional introduction of IAS into the Union and their intentional release into the environment, the unintentional introduction and release of IAS, the need to set up an early warning and rapid response system, and the need to manage the IAS spread throughout the Union.

2.4 The 'Citizens' Summary' which was produced after the consultation and is on the Commission website is clear.

## 3. General comments

3.1 The Commission is responding to the alarms raised by professional and amateur naturalists and frequently conveyed by journalists in all the media. The Commission is also responding to those in charge of regional authorities who have already begun to take action locally. The Commission is proposing a sensible application of the precautionary principle to draw up a prevention policy when a risk is established or a new problem identified. The Committee is particularly pleased that the communication is ambitious and fit for the enormous task in hand. On 11 June 2009, the NAT/433 opinion <sup>(2)</sup> was adopted completely unopposed. The Committee was already drafting considered recommendations at that time. It is unhappy that it is taking so long to implement biodiversity action plans, particularly when social or economic activities are underpinned by exceptional ecosystems.

3.2 The Commission proposal aims to use a regulation to launch the fight against any biological invasion, a phenomenon whereby introduced species proliferate and invade an area causing damage (definition of the International Union for Conservation of Nature (IUCN)). There are three kinds of damage: a threat to the biodiversity of our ecosystems, a threat in some cases to the health of certain groups of people, and a threat to certain economic activities. Cases of species from one region proliferating and causing a problem in another should be managed directly by the Member States. Problems caused by populations of catfish should thus be treated on a case-by-case basis, applying the subsidiarity principle.

3.3 The Committee has appreciated the educational work undertaken by the European Environmental Agency and DG Environment which recently published a thematic brochure on IAS (Science For Environment Policy: Thematic issue on Invasive Alien Species, 18/09/2013).

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<sup>(1)</sup> COM(2013) 620 final.

<sup>(2)</sup> EESC Opinion 'Towards an EU strategy on invasive species', OJ C 306 ,16.12.2009, p. 42.



3.4 The Commission has chosen as its guiding principle an initial ceiling on the number of priority species of 3% of the approximately 1 500 invasive alien species established in Europe. The EESC notes that this choice is not founded on any scientific basis, but is imposed by limited funding. The EESC appreciates that the Commission is working at international level and is talking with Member States already geared up to manage IAS. The EESC calls on the Commission to consider setting up, on the basis of Regulation (EC) No 338/97, a Scientific Study Group, which might amend the list.

#### 4. Specific comments

4.1 The Commission has carefully examined all of the problems. However, there would appear to be a problem of terminology in French (and perhaps in other languages). A distinction should be made between 'espèce invasive' (non-indigenous invasive species) and 'espèce envahissante' (indigenous invasive species): the former comes from elsewhere, whilst the latter could be an indigenous species with a reproductive potential that might disproportionately dominate an environment and thus impoverish it. If this definition were to be accepted, reassurances would be needed that the French title of the communication was accepted by all. The Commission has used the term 'espèces allogènes envahissantes' for the Citizens' Summary. It would thus seem necessary to make sure that the term 'espèce exotique envahissante', which is often used (for example, in Wallonia), does not trigger a negative reaction from certain biologists specialising in the area. The question concerning the French text should be raised for the other EU languages.

4.2 The communication should explain more clearly why the situation is so serious, particularly as it is getting worse. It is imperative to explain that proliferation essentially occurs when species are of no interest to consumers (predators), when they are not interfering with human activities (urban areas) and finally because they are spreading in areas that are difficult to access. In all of these cases, the problem relates to sources of infection: water primrose, water milfoil, Japanese knotweed, etc. in wet areas, and wild cane, buddleia, box elder, Japanese varnish tree, etc. more generally. On the other hand, the communication rightly points out that some species have been positively welcomed. In this respect, it is perhaps worthwhile bearing in mind that items brought in from abroad were valued because they had acclimatised: the false acacia (*Robinia pseudoacacia*) is still much appreciated: for stakes, sturdy wood for outdoor furniture, honey, etc. By contrast, it is unfortunate that Sosnowsky's Hogweed (*Heracleum spp.*) has spread through its use in silage, as its proliferation is threatening biodiversity and the toxin it secretes can cause severe burns.

4.3 The Commission does not sufficiently highlight the crucial environmental problems that have been clearly identified by the managers of the Natura 2000 sites, for example. The EESC wonders whether there is not an underlying feeling of guilt. NGOs remember calling in vain for years for bans on imports of exotic varieties of turtles. This request was only met when proof of reproduction in natural environments was provided. The EESC feels that this communication is long overdue, but welcomes the fact that it is never too late to do the right thing.

4.4 The Commission refers to legislation in other countries. This is all well and good, but why not state candidly that a decision has been reached to draw inspiration from best practices elsewhere. One international initiative is worthy of mention: Ragweed Day on the first Saturday in summer to combat the proliferation of allergenic plants (Ragweed (*Ambrosia artemisiifolia*) is a colonising plant that grows on any land where competition is not unduly fierce. The EU has shown the way in industry by identifying and drawing on the best available techniques (BATs).

4.5 The Commission emphasises that 'existing Union action leaves most IAS unaddressed'. The EESC deplores this situation as much as the Commission, but must remind it that the environment is supposed to be included in all sectoral policies. The EESC would appreciate it if the Commission could explain, for example, how the problem could be dealt with as part of the Common Agricultural Policy. For instance, the problem of grasslands invaded by water primrose (*Ludwigia grandiflora*) needs to be tackled.

4.6 The Commission has analysed the problem perfectly, but in an abstract fashion. The EESC wonders whether it might not be useful to illustrate the reasoning with examples, such as: the harlequin ladybird (*Harmonia axyridis*) or the wild black cherry (*Prunus serotina*) as an example of intentional introduction and *Caulerpa taxifolia* (killer algae) and the Asian predatory wasp (*Vespa velutina*) as examples of unintentional introduction. The current irresponsible introductions of catfish (a specific case of intentional introduction) should perhaps also be added. Failing that, the EESC advises the Commission to quote its own work (the excellent brochure published in May 2009) and add links to internet sites of interest.

4.7 The analysis of the models of proposals for a regulation is clear and the reason for choosing option 2.4 is obvious: it will be the responsibility of the Member States to act as soon as a new problem is identified (transmission of information, analysis of the situation, proposed action).



4.8 The legal elements appear to be appropriate and the proposal must make it possible to address any situation past, present or future. The Committee has doubts as to whether it is legitimate to limit the list of invasive alien species potentially harmful for the Union to a maximum of fifty species.

4.9 However, the financial analysis seems too optimistic. When the mechanism becomes operational, the upward flows of information will actually be such that the dedicated service will have difficulty in processing all the information, in which case the Commission will have to pay the price for its own success!

4.10 At the present stage, not all the details are settled and it will be the task of Member States to come up with a practical response to the various issues, the most frequent undoubtedly being the most appropriate means for destroying a living species. The EESC fears that this might give rise to local disputes.

4.11 The question of information and public involvement is included in chapter 5 of the proposal when cross-cutting aspects of the problem are addressed. Prevention cannot be the exclusive domain of specialists. The EESC would like to point out that alerts are often raised by local stakeholders and sent directly to governments and/or to DG Environment. It would seem sensible that requests from members of the public — who often have no contact with research bodies, even though the latter frequently call on them to provide them with data — might also be able to make an active contribution. Moreover, the case of the Asian predatory wasp epitomises the problem very well: it competes with the European wasp, it stings and is a predator of bees close to their hives. Members of the public tried every possible method for eliminating the invader, then — accepting that it was impossible — tried to find a sufficiently clean chemical option (SO<sub>2</sub>), only finally to discover that it was enough to station chickens around hives to provide a biological defence. The EESC thus calls on the Commission to involve as many members of the public as possible via their organisations (unions, NGOs, etc.).

4.12 Application of the regulation (Article 27) seems satisfactory inasmuch as the EU should not repeat the same timetables that caused problems for other products, such as certain chemical products. The destruction of species of no great commercial interest and amendment of the authorisation process for others seem well thought out.

Brussels, 22 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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**Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions**

COM(2013) 722 final — 2013/0344 (COD)

(2014/C 177/16)

Rapporteur-general: **Jan Simons**

On 24 October 2013, the European Parliament and on 18 November 2013 the Council decided to consult the European Economic and Social Committee, under Articles 192(1) and 304 of the Treaty on the Functioning of the European Union, on the

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions*

COM(2013) 722 final — 2013/0344 (COD).

On 12 November 2013, the Bureau of the European Economic and Social Committee instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Simons as rapporteur-general at its 495th plenary session, held on 21 and 22 January 2014 (meeting of 22 January), and adopted the following opinion by 173 votes to 4 with 7 abstentions.

## **1. Conclusions and recommendations**

1.1 In the interests of legal certainty for aircraft operators and national authorities, the Committee advises that the proposals be accepted for the continued implementation of the 'stop the clock' decision in 2013 and for extending the 2013 emission rights surrender and reporting deadlines by one year.

1.2 The following should also be accepted: the exemption of small, non-commercial aircraft operators that produce hardly any CO<sub>2</sub> emissions, and allowing small companies that do not qualify for the exemption to make use of the simplified administrative procedures.

1.3 This does not, however, apply to the parts of the proposal concerning flights to and from third countries for the period 2014-2020. It is in the interest of all parties to avoid an aviation and/or trade war and therefore encourage negotiations first to find a global solution.

1.4 As flights between aerodromes in the EEA will continue to be subject to the EU's ETS rules for aviation, the Committee calls on the EEA institutions:

- to introduce the Single European Sky without delay in order to end unnecessary emissions resulting from re-routing and delays caused by air traffic control <sup>(1)</sup>;
- to conduct intensive multilateral and bilateral discussions with a view to introducing interregional MBM systems in addition to that of the EEA by 2016.

## **2. Introduction**

2.1 Emissions from aviation, although relatively low at about 5% of the total, are one of the fastest growing sources of greenhouse gas emissions and have nearly doubled in the last 20 years. The technological potential for emissions reduction is limited in the aviation sector, but airlines worldwide are willing and able to contribute to emission reductions by offsetting their strong emission growth through funding emission reductions in other sectors, inter alia using market-based measures (MBMs).

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<sup>(1)</sup> EC/549/2004.  
EC/1070/2009.

2.2 Partly at the instigation of the EU, inter alia through the suspension of Directive 2008/101/EC (directive including aviation activities in the greenhouse gas emission allowance trading scheme) for operators flying to or from the European Economic Area (EEA) by the 'stop the clock' decision of early 2013, the International Civil Aviation Organization (ICAO) Assembly decided on 4 October 2013, in line with the roadmap adopted for 2016 — the date of the next three-yearly ICAO meeting — to draw up a worldwide market-based mechanism for international aviation emissions and if approved, apply it from 2020. Until then countries or groups of countries like the EU may take interim measures, but no compromise was reached on the detailed arrangements.

2.3 These developments are in line with statements in previous Committee opinions <sup>(2)</sup>: 'It will be necessary to work through the International Civil Aviation Organization (ICAO) in order to ensure the worldwide application of an Emissions Trading Scheme (ETS); as a practical first step, an intra-EU ETS could be a very feasible option, if this proves appropriate in the course of the negotiations' (2006); 'By bringing aviation within the remit of the European Emissions Trading Scheme (ETS) the scheme is itself potentially strengthened and made more robust as the pre-eminent model for tackling CO<sub>2</sub> emissions at a global level' (2007); and more recently 'The Committee accordingly welcomes initiative, which provides for a moratorium on the application of the Emissions Trading Scheme (ETS) to airlines operating flights into and out of the European Economic Area, pending the completion of the global negotiations' (2013).

### 3. Gist of the Commission document

3.1 The European Commission proposes that the geographical scope of the EU emissions trading system for aviation be adapted for the period leading up to the introduction of a global trading system, in the light of the results of the Assembly of the International Civil Aviation Organization (ICAO) of 24 September to 4 October 2013.

3.2 The Commission proposal aims to give a further impetus to the development of a global system. The proposal makes no distinction between companies on the basis of nationality.

3.3 Originally the EU's ETS applied to all flights to and from airports within the EEA and flights to and from third countries. From 2012, however, as a consequence of Decision No 377/2013/EU (the 'stop the clock' decision), the system temporarily applied only to flights within the EEA, and not to flights to and from third countries.

3.4 The Commission proposes that this approach be continued in 2013. It is also proposed that the 2013 emission rights surrender and reporting deadlines for airlines be extended for one year.

3.5 It is proposed that, for 2014 to 2020, the rules be extended beyond the arrangements for 2013 to include that part of flights to and from countries outside the EEA which takes place above the territory of EEA countries. The proposal describes how this can be done in practice.

3.6 The proposal would have three other consequences:

- flights between aerodromes in the EEA remain fully covered, as under the original Directive and Decision No. 377/2013/EU;
- flights to and from third countries which are not developed countries and which emit less than 1% of global aviation emissions would be exempted. This would exclude routes to around 80 countries on a non-discriminatory basis;
- flights to and from third countries are responsible for emissions taking place not beyond EEA countries, as from 2014. A simplified procedure is proposed to determine the relevant proportion of emissions of a given flight which is covered by the ETS. It is proposed that operators can choose between approaches to monitoring, reporting and verification (MRV) methodology for compliance.

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<sup>(2)</sup> OJ C 185, 8.8.2006, p. 97; OJ C 175, 27.7.2007, p. 47; OJ C 133, 9.5.2013, pp. 30-32.

3.7 Finally, the Commission proposes that small, non-commercial operators with very low CO<sub>2</sub> emissions be exempted from the EU's ETS for aviation. Small companies that do not qualify for the exemption are allowed to make use of the simplified administrative procedures.

#### 4. General comments

4.1 As a consequence of the 'stop the clock' decision, the EU's ETS temporarily applies only to flights within the EEA, and not to flights to and from third countries. The Commission proposes that this approach be continued in 2013. It is also proposed that the 2013 emission rights surrender and reporting deadlines for airlines be extended for one year. The Committee considers these proposals to be very sensible with a view to ensuring legal certainty for operators and national authorities and therefore recommends that they be adopted.

4.2 As flights between aerodromes in the EEA will continue to be subject to the EU's ETS rules for aviation, the Committee calls on the EU and EEA institutions to introduce the Single European Sky <sup>(3)</sup> without delay in order to end unnecessary emissions resulting from re-routing and delays caused by air traffic control.

4.3 The Committee warmly welcomes the exemption of small, non-commercial aircraft operators that produce hardly any CO<sub>2</sub> emissions, and allowing small companies that do not qualify for the exemption to make use of the simplified administrative procedures.

4.4 This does not, however, apply to the parts of the proposal concerning flights to and from third countries for the period 2014-2020. It is in the interest of all parties to avoid an aviation and/or trade war and therefore encourage negotiations first to find a global solution.

4.4.1 It is clear just from reading the information contained in the impact assessment concerning the ICAO discussions in 2013 that, in view of the standpoints and relationships of the members of that organisation, very careful manoeuvring will be needed if the planned global outcome is to be achieved in 2016. We have never been so close to the goal but there is an historic record of delay and success cannot be guaranteed!

4.4.2 To tell third countries directly and indirectly — because this is what unilateral EU action will amount to if the proposal is adopted — that their airlines will have to pay for CO<sub>2</sub> emissions in EEA airspace would be challenging and should be considered only after bilateral and/or multilateral negotiations according to ICAO resolution Art. 16 a), in order to avoid the risk of a worldwide aviation/trade war.

4.4.3 Although legally the EEA is entitled to apply the proposals, the US administration is also entitled, on the basis of the Emissions Trading Scheme Prohibition Act ('Thune Bill') to prohibit airlines registered in the USA from taking part in the EU's ETS, quite apart from possible Chinese and Indian reactions, in the light of their opposition to the ICAO Resolution of 4 October 2013. At this stage, however, it is not necessary to modify the content of the Commission's proposal.

#### 5. Specific comments

5.1 It would appear that the definitions of 'extra-EEA flights' and 'intra-EEA flights' in Annex I, Glossary of the Impact Assessment, to SWD (2013) 430 final (p. 51 of EN version) have been inadvertently switched.

Brussels, 22 January 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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<sup>(3)</sup> EC/549/2004.  
EC/1070/2009.









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