

Official Journal of the European Union

C 458



English edition

Information and Notices

Volume 57

19 December 2014

Contents

I *Resolutions, recommendations and opinions*

OPINIONS

European Economic and Social Committee

501st plenary session of the EESC on 10 and 11 September 2014

2014/C 458/01	Opinion of the European Economic and Social Committee on the 'Structure and organisation of social dialogue in the context of a genuine economic and monetary union (EMU)' (exploratory opinion) . . .	1
2014/C 458/02	Opinion of the European Economic and Social Committee on 'European immigration policies' (exploratory opinion)	7
2014/C 458/03	Opinion of the European Economic and Social Committee on 'Social Impact Investment' (own-initiative opinion)	14

III *Preparatory acts*

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

501st plenary session of the EESC on 10 and 11 September 2014

2014/C 458/04	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies' COM(2014) 212 <i>final</i> — 2014/0120 (COD)	19
2014/C 458/05	Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council relating to appliances burning gaseous fuels' COM(2014) 258 <i>final</i> — 2014/0136 (COD).	25
2014/C 458/06	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 concerning the European Union Strategy for the Adriatic and Ionian Region: COM(2014) 357 <i>final</i> and The European Union Strategy for the Adriatic and Ionian Region: research, development and innovation in SMEs (exploratory opinion requested by the Italian presidency of the EU).	27

EN

2014/C 458/07	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008' COM(2014) 163 <i>final</i> — 2014/0095 (COD) and the 'Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code)' COM(2014) 164 <i>final</i> — 2014/0094 (COD)	36
2014/C 458/08	Opinion of the European Economic and Social Committee on the 'Proposal of the European Parliament and of the Council on establishing an European platform to enhance cooperation in the prevention and deterrence of undeclared work' COM(2014) 221 <i>final</i> — 2014/0124 (COD)	43
2014/C 458/09	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and No 1967/2006 and repealing Council Regulation (EC) No 894/97' COM(2014) 265 <i>final</i> — 2014/0138 (COD)	52
2014/C 458/10	Opinion of the European Economic and Social Committee on the 'Green Paper on mobile health ("mHealth")' COM(2014) 219 <i>final</i>	54
2014/C 458/11	Opinion of the European Economic and Social Committee on the 'EU Maritime Security Strategy' . . .	61

I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

501ST PLENARY SESSION OF THE EESC ON 10 AND 11 SEPTEMBER 2014

Opinion of the European Economic and Social Committee on the ‘Structure and organisation of social dialogue in the context of a genuine economic and monetary union (EMU)’

(exploratory opinion)

(2014/C 458/01)

Rapporteur: **Mr Dassis**

On 5 February 2014 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

Structure and organisation of social dialogue in the context of a genuine Economic and Monetary Union (EMU)

Exploratory opinion.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 27 August 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 169 votes to 1, with 9 abstentions.

1. Recommendations and conclusions

1.1 Social dialogue in the European Union (EU) is an inherent part of the European project and of the growth and employment policies and measures aimed at overcoming the crisis that must necessarily be based on the wealth of social dialogue at every level: national, sectoral, regional and company.

1.2 Social dialogue is bipartite, between social partners, supplemented by tripartite coordination with the European institutions and political bodies and various forms of consultation at European and national levels.

1.3 A clear distinction must be drawn between *social dialogue*, the subject of this opinion, and *civil dialogue*: both are a reality. Although they cannot be merged, as at European level the treaty defines the participants, competences and procedures involved in social dialogue and gives the social partners a quasi-legislative role in the area of working conditions in the broadest sense, neither should they be completely divorced from each other. The European social partners take an open approach and have already broadened their range of activities, undertaking specific work with a number of European associations and NGOs.

1.4 The social partners must continue to increase their autonomy and their capacity for collective bargaining and the European institutions must take their joint declaration of October 2013 ⁽¹⁾ into account. It is the institutions' responsibility, and especially that of the Commission, to facilitate European-level social dialogue and help to translate its achievements into practice at interprofessional and sectoral levels.

1.5 The social partners must also implement their autonomous agreements more effectively so as to cover every country and guarantee all European Union workers and companies proper application of the rights laid down in them, in accordance with national legislation and practice.

1.6 The complexity and scale of the challenges engendered by the crisis and by the economic and social changes call for ad hoc cooperation with other civil society representatives with due consideration for their respective responsibilities and competences.

2. From the European Coal and Steel Community (ECSC) to EMU: the importance of the social partners and social dialogue in the European project

2.1 The commitment of social partner organisations to the European project was not born of necessity but, leaving aside their differences, of the conviction that the European Community was the only way to reunite our peoples in peace, democracy, economic growth and social progress. The history of social partner involvement in the development of the European project, from the ECSC to EMU, is thus characterised by this basic commitment and shows the decisive role that social partner organisations have played and must continue to play in the current phase of EMU in order to address the cyclical challenges of the crisis and the structural changes facing our countries. Against this backdrop, EMU must guarantee sustainable economic and social recovery in all EU countries, generating high-quality jobs and ensure that all stakeholders are involved in the areas under their remit. The European dimension of social dialogue must also take account of the backdrop of globalisation and allow the EU to be part of the necessary global regulation that will ensure, as the EESC announced in its opinion of May 2007 ⁽²⁾, that achieving 'both globalisation with a human dimension and European integration' become 'matters which involve the people and organised civil society'.

2.2 With its specific experience, the ECSC Consultative Committee proved its effectiveness for each of the aspects of interest to the industrialists and the workers, namely industrial policy, market development, social intervention mechanisms, and technical and social research. It therefore made sense to ensure that the treaties continued to include both provisions relating to industrial policy and social consultation instruments; now it is a matter of developing them further. As part of its responsibilities, the EESC can therefore play a major part in supporting and anticipating these developments, (as was the case with its opinion on the 1989 Community Charter of the Fundamental Social Rights of Workers ⁽³⁾).

2.3 It was in 1985, with the launch of bipartite social dialogue promoted by Jacques Delors, president of the Commission, that social dialogue at Community level evolved into a genuine European forum for negotiation.

2.4 The social partners reached a key milestone with their agreement of 31 October 1991, which would subsequently be incorporated in the Treaty of Maastricht's Social Protocol ⁽⁴⁾. They affirmed their willingness to take part in the EU's social governance by themselves becoming regulators, by means of negotiation, alongside the legislative dimension.

2.5 **Subsidiarity:** the principle of subsidiarity is generally understood to mean making the upper level — in this case, the European Union — responsible for what the lower level — the Member States — could not implement as effectively (Article 5 of the Treaty on European Union (TEU)). Recognising that the social partners have the capacity to resolve problems in areas in which they are competent within the framework of social dialogue might be considered another application of the principle of subsidiarity ⁽⁵⁾. This capacity is clearly extended to the European social partners under Articles 154 and 155 of the Treaty on the Functioning of the European Union (TFEU). Providing they are effectively and regularly followed through in practice and adequately publicised, these provisions, which bring decision-making closer to the public, can promote the role of organised civil society in general and combat the poor image that the public have of the EU and its institutions as being distant powers.

⁽¹⁾ http://ec.europa.eu/europe2020/pdf/2014/socjointcontrib_ags2014.pdf

⁽²⁾ OJ C 175, 27.7.2007, p. 57.

⁽³⁾ http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/c10107_en.htm

⁽⁴⁾ OJ C 191, 29.7.1992, p. 90.

⁽⁵⁾ Sometimes referred to as horizontal subsidiarity.

3. Ever stronger monetary union while economic governance and social integration remain weak

3.1 The economic and financial crisis affecting most EU countries has resulted in a tendency to seek competitiveness by cutting immediate production costs (the cost of wages, raw materials, etc.) whereas Europe should be making serious efforts to excel in non-cost competitiveness (quality of products and services, research and innovation, quality of work and industrial relations, organisation of work and corporate social responsibility, education and training, etc.).

3.2 In order to overcome the crisis and restore public confidence it is time to stimulate the economy properly through public, private and social investment (see EESC opinion ⁽⁶⁾) at European and national levels, in order to achieve sustainable and innovative development that generates high-quality jobs and social progress and also secures sound and sustainable macroeconomic conditions.

3.3 In October 2013, the European social partners adopted 10 principles to underpin their involvement in EU economic governance ⁽⁷⁾. The second principle states: *'Social dialogue and well-developed industrial relations at all levels are a crucial element of the European social model and democratic government. Appropriate involvement of social partners in economic and employment policies is thus essential.'*

3.4 In the fifth principle, the social partners point out that *'Social dialogue can be a driving force for successful economic and social reforms. Social partners can raise awareness of the consequences of economic and social change on social systems and labour markets. They can also play a key role in putting in place the conditions that will stimulate job creation, notably by facilitating economic recovery and labour market and social inclusion.'*

3.5 Social dialogue must therefore be strengthened in terms of its autonomy and the importance of its contributions so as to be able to rise to the challenges of current times.

3.6 European social dialogue must be based on the wealth of national social dialogue at the various levels: inter-professional, sectoral, regional and company. At these levels, coverage by collective agreements in a significant number of countries is currently growing weaker, however, partly as a result of European intervention in governance, undermining the position of workers and contributing to growing inequality.

3.7 What is needed is a new approach that gives greater consideration to the regional dimension, so as to find appropriate responses to the consequences of restructuring leading to redundancies and site closures. These situations often have a dramatic local and regional impact, not only for workers and their families but also for local authorities and the companies that depended directly or indirectly on the site concerned.

3.8 In these difficult times of change and adaptation, one might expect a driving force to emanate from the euro area, whose governance is more developed and where there might be more joined-up action. Any such move must take account of the need to maintain the economic and social cohesion of the EU as a whole. Bearing in mind the social divisions that already exist, a mechanism is needed to monitor disparities with a view to taking corrective action. This monitoring mechanism would be based on closer surveillance and take account of the fact that employment systems are interdependent. The task could be assigned to the European Foundation for the Improvement of Living and Working Conditions or be based on the work of the Employment Committee which has drawn up the 'Employment Performance Monitor'.

4. The different forms of coordination, consultation and social dialogue: the challenge of a new form of governance

4.1 The Laeken declaration on social dialogue (2001) and the joint declaration by the social partners on governance (2013) are part of a logical progression.

⁽⁶⁾ EESC own-initiative opinion on The impact of social investment on employment and public budgets, OJ C 226 of 16.7.2014, p. 21.
⁽⁷⁾ http://www.etuc.org/sites/www.etuc.org/files/other/files/layout_declaration_governance_21_10_13_clean_3.pdf

4.1.1 **Adopting precise definitions:** reference should be made here to the social partners' contributions to the Laeken Summit (December 2001) ⁽⁸⁾:

'UNICE/UEAPME, CEEP and ETUC insist on the importance of making a clear distinction between three different types of activities involving the social partners:

1. *tripartite concertation to designate exchanges between the social partners and European public authorities,*
2. *consultation of the social partners to designate the activities of advisory committees and official consultations in the spirit of article 137 of the Treaty,*
3. *social dialogue to designate bipartite work by the social partners, whether or not prompted by the Commission's official consultations based on article 137 and 138 of the Treaty.'*

4.1.2 **Step up the partners' role in EU governance:** the important joint declaration by the social partners of 24 October 2013 ⁽⁹⁾ on social partner involvement in European economic governance, intended for the Tripartite Social Summit, highlights the key role of social dialogue at both national and European levels as well as the broadened sphere of consultation that should be shored up (annual report on growth, national reform programmes, country-specific recommendations, macroeconomic imbalance procedure, labour market indicators).

4.1.3 **Deepening the contractual dimension of social dialogue:** at difficult times, every kind of instrument available (agreements transposed by directives or implemented autonomously, action frameworks, joint declarations, etc.) should be deployed to put forward effective solutions, particularly with respect to employment and quality of work.

4.1.4 **Consolidate the results of social dialogue:** various assessments made by both the social partners (see the joint final reports on teleworking in June 2006 ⁽¹⁰⁾, on stress in June 2008 ⁽¹¹⁾, on harassment and violence in the workplace in October 2011 ⁽¹²⁾ and on inclusive labour markets in June 2014) and the Commission (see reports ⁽¹³⁾) have revealed major disparities when it comes to transposing autonomous agreements, weakening their effectiveness and scope compared with legislation and resulting in European workers and companies not all having the same rights. It seems obvious that autonomous agreements should entail mandatory implementation, regardless of how the legislative or contractual transposition is undertaken. It is up to the social partners to develop current arrangements further and define new rules for ensuring that their European agreements are effectively implemented within their set timeframe, not only by the European signatory organisations, but also their statutory members at national level. All autonomous concluded under Article 155 TFEU should of course be considered part of the Community acquis.

4.1.5 **Strengthening capacity for autonomy and synergy with EU policies:** the social partners' autonomy must be increased and extended (see reference below to the social partners' joint declaration on governance of October 2013) but this does not absolve the Commission from necessary and urgent action in areas such as restructuring, health and safety, mobility and structural reforms, particularly of the labour market, with a view to encouraging job creation. Boosting the social partners' capacity for autonomy should not weaken the Commission's ability to take the initiative and act as a catalyst; on the contrary, it should work in synergy and in tandem with this process. The social partners have already made progress in managing the way social dialogue is carried out at both the inter-professional and sectoral levels, not least through the negotiation of biannual programmes. Their declaration on governance of October 2013 ⁽¹⁴⁾ marked a new milestone. Increasing their autonomy could lead the social partners, if they so wished, to conduct a trial involving setting up a permanent secretariat for social dialogue with bipartite membership. The EESC already mentioned this idea in its opinions of 24 November 1994 and 29 January 1997 ⁽¹⁵⁾.

⁽⁸⁾ Joint contribution of the social partners to the Laeken European Council. UNICE has since become BUSINESSEUROPE and Articles 137 and 138 TEC have been replaced by Articles 153 and 154 TFEU.

⁽⁹⁾ See footnote 7.

⁽¹⁰⁾ http://www.ueapme.com/docs/joint_position/061010_telework_implementation_report_final.pdf

⁽¹¹⁾ http://www.ueapme.com/IMG/pdf/Stress_Final_Implementation_report_231108.pdf

⁽¹²⁾ http://www.etuc.org/sites/www.etuc.org/files/BROCHURE_harassment7_2_.pdf

⁽¹³⁾ Framework Agreement on Telework (SEC(2008) 2178; Framework Agreement on Work-related Stress (SEC(2011) 0241).

⁽¹⁴⁾ See footnote 7.

⁽¹⁵⁾ OJ C 89, 19.3.1997, p. 27; OJ C 397, 31.12.1994, p. 40.

4.1.6 Broadening consultation: as our increasingly complex societies evolve, all stakeholders representing trade unions, employers, the voluntary sector, the social economy and public interests should be involved in consultations regarding Community policies and projects within the areas under their remit. The social partners already often take part in European public consultations, which helps to improve exchanges with other elements of civil society. These exchanges also take place within the quadripartite forum on corporate social responsibility. Nevertheless, the practical arrangements for consultations have to be managed carefully, especially if use is made of electronic consultation, and consideration must be given to the various contributors' competences and representativeness, depending on the subject concerned: the social partners, meanwhile, already undergo representativeness assessments regularly.

5. The various dimensions of social dialogue

5.1 Interprofessional: the 2012-2014 work programme brought the action framework on youth employment to completion. The social partners made a commitment to begin negotiations on a new joint work programme for 2015-2017 that will be of major importance over the next three years. They will need to use all the mechanisms at their disposal to establish rights and launch practical policies to meet the challenges of the moment.

5.2 Sectoral: thanks to the Sectoral Social Dialogue Committees (SSDCs) in particular, there is considerable scope for anticipating the changes under way and managing them more effectively. In the context of industrial and sectoral policy especially, the European Works Councils, in conjunction with their professional federations, can also make a valuable contribution by using their expertise and experience to generate proposals and alternatives for industrial policy.

5.3 European works councils (EWCs): in a context of globalisation and on-going technological innovation, companies and workers in all European countries are faced with continuous and rapid change in the way work and production are organised. Experience shows that EWCs can help management and workers to build a corporate culture and adapt to change in fast-evolving transnational companies or groups, when changes relate to the group's strategy and affect sites in several countries. In the case of global companies, European Works Councils also play an essential role in building the human dimension of globalisation on the basis of the EU's democratic and social values and promoting ILO standards. They can also be involved in the implementation of European or international framework agreements or agreements on corporate social responsibility⁽¹⁶⁾.

5.4 SMEs: the industrial fabric needs to be regenerated by encouraging the development of SMEs and securing their prosperity and stability. To this end, social dialogue should be underpinned by a policy of resource-pooling, for instance in the area of training and health and safety at work.

5.5 Cooperatives, mutuals and social enterprises: their specific characteristics and the way their development is based on solidarity, cooperation and the distribution of the wealth generated by the enterprise make them major stakeholders in terms of growth and job creation. It is therefore natural to take their characteristics into account as part of the social dialogue and to think about how to encourage their development.

5.6 Cross-border areas: our cross-border regions are new zones for mobility and economic development. Appropriate forms of social dialogue should be set up for these cross-border regional areas encouraging employment and equality of treatment and safeguarding the conditions for cross-border mobility.

6. Building on the synergies between and complementary nature of social and civil dialogue in order to respond to societal challenges⁽¹⁷⁾.

6.1 Society has become more complex and social and environmental problems more interdependent. For companies there is a connection between what is internal and what is external: building the regional dimension into business development; the transition to a low-carbon economy; a sustainable development policy bringing together public and voluntary sector stakeholders; enabling the unemployed to find work, not least by setting up mentoring schemes bringing together company workers and the voluntary sector fighting for inclusion through the economy; corporate social responsibility with particular regard to companies sub-contracting in developing countries, etc.

⁽¹⁶⁾ See the opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A renewed EU strategy 2011-14 for Corporate Social Responsibility COM(2011) 681 final, OJ C 229 of 31.7.2012, p. 77.

⁽¹⁷⁾ A major seminar was held at the EESC in June 2003, in conjunction with Notre Europe and involving Jacques Delors, on the theme *European social dialogue: differences and complementarities* (<http://www.notre-europe.eu/media/semi19-en.pdf>)

6.2 Social and civil dialogue exist side-by-side. They cannot be merged, but neither can they fail to influence one another. Bipartite social dialogue is focused on salaries, employment, organisation of work, health and safety, etc. through collective bargaining at all levels. Civil dialogue covers a wide range of subjects ranging from the environment, consumption, family policy, discrimination and combating poverty to human rights, and is part of the process for resolving societal problems. The social partners have already broadened their spheres of activity as part of a more open and people-friendly approach, as reflected in their agreement on 'Inclusive labour markets' of March 2010 ⁽¹⁸⁾ and the specific activities they undertake with European NGOs and associations working on environmental protection, consumer protection, disabled people's rights, women's rights and gender equality, the fight against poverty, and for social inclusion, etc.

Faced with this complexity and the wide range of stakeholders, existing links between social dialogue and civil dialogue must be strengthened to secure synergies and mutually beneficial measures, within the scope of each party's competences and responsibilities.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁸⁾ This agreement acknowledges the need for social partners to work together with the third sector in order to support people experiencing particular difficulties in connection with the labour market (<http://www.etuc.org/framework-agreement-inclusive-labour-markets>)

Opinion of the European Economic and Social Committee on 'European immigration policies'**(exploratory opinion)**

(2014/C 458/02)

Rapporteur-general: **Giuseppe Iuliano**

On 3 June 2014, in accordance with Article 304 of the Treaty on the Functioning of the European Union, the Italian presidency of the EU decided to ask the European Economic and Social Committee to draw up an exploratory opinion on

European immigration policies

(exploratory opinion).

On 8 July 2014, the Committee Bureau instructed the Section for External Relations to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 RP), the Committee appointed Mr Iuliano as rapporteur-general at its 501st plenary session, held on 10 and 11 September 2014 (meeting of 11 September), and adopted the following opinion by 161 votes to 6 with 6 abstentions.

1. Conclusions and recommendations

1.1 The new phase of European immigration policy should adopt a strategic approach, with a medium- and long-term vision, and should focus on finding a holistic and comprehensive way of providing legal, open and flexible channels for admission to the EU. On the basis of the work done by the EESC and the European Integration Forum, this opinion calls on the representatives of the Community institutions and national governments to take account of the key role of the social partners and organised civil society in providing European immigration policies with a social dimension and added value. Their impact on the labour market, living and working conditions and fundamental rights should also be taken into account.

1.2 The EESC believes that 15 years after the first attempts to construct an European immigration policy, it is time to put into practice the political values and principles set out in the Lisbon Treaty by means of concrete and specific policy measures that go beyond the discussions on powers between the EU and national governments. The EESC believes that tangible results must be achieved in order to develop a truly common and joint policy on immigration, asylum and external borders.

1.3 By means of a common immigration policy, the EU can provide considerable added value. The EESC would like to see priority given to tackling barriers and discrimination on the labour market. The EU should adopt a Common European Immigration Code, and a Handbook of Common European Guidelines to ensure its implementation and accessibility. This should go hand in hand with an European strategy to make the EU more attractive to talent and to tackle barriers relating to qualifications. The EU should establish a permanent European platform for work-related migration. The EESC offers its services for this task, to be the place where the social partners discuss and analyse national policies on immigration for employment purposes and where good practices are exchanged.

1.4 The EU has embarked on the second phase of the Common European Asylum System (CEAS). And yet, Member States continue to apply different practices and different levels of protection. The principle of solidarity and shared responsibility must be implemented to ensure a more balanced distribution of asylum applications between Member States. The Dublin Convention should be replaced with a more inclusive system that takes account of asylum seekers' wishes and that ensures a more proportionate distribution of responsibility among the Member States. The European Asylum Support Office (EASO) should also be given greater powers to carry out its work, in particular its operational support activities and joint asylum support teams in Member States that need special or emergency support. The EU must ensure that the Member States make more harmonised, coherent, independent and flexible use of humanitarian visas, as set out in the Common Visa Code.

1.5 European borders policy should be rooted in greater shared responsibility for their monitoring and surveillance and for safeguarding rights and principles when administering them. Member States forming the EU's common external territorial border face difficult situations related to migration flows and asylum seekers. The EU should put in place procedures for the provision of financial, operational and reception support. The role of Frontex should be stepped up, and it should become an European border-guard service comprising an European body of border guards to support Member States. At the same time, a more effective and standardised system of accountability should be developed for its activities, and for the implementation of the provisions of Regulation 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

1.6 The EU should promote an international regulatory framework for migration and play a part in promoting Member States' ratification and implementation of international human rights instruments and standards for migrants. The EU should forge a strategic alliance with other international players working in the fields of human mobility and human rights, such as the UN and the Council of Europe.

1.7 The challenges posed by the cross-border mobility of persons cannot be addressed solely through the 'outsourcing' of border monitoring and surveillance. Work should therefore continue on the Global Approach to Migration and Mobility. The EU should offer these countries and their nationals further opportunities for immigration for the purposes of employment or education via legal, flexible and transparent procedures. Mobility partnerships should be more balanced and also legally binding on the signatories. The European External Action Service should ensure better coordination between the priorities of external policy and immigration policy, adopting an approach in which human rights form a central strand.

2. Introduction: Towards a new immigration, asylum and borders policy up to 2020

2.1 The Italian EU presidency asked the European Economic and Social Committee (EESC) to draw up an exploratory opinion on the future European immigration, border and asylum policy. The EESC wishes to contribute by making strategic proposals based on its previous opinions on immigration-related matters ⁽¹⁾. The **social partners and representatives of organised civil society and social dialogue** should be involved throughout the discussion process leading to the next phase of the **European immigration policy up to 2020**. The **'social dimension' is key** to ensuring the added value, proportionality and impact of these policies.

2.2 The EESC has stated on numerous occasions that European immigration policy should take a **strategic medium- and long-term** view and should focus on providing a **holistic and comprehensive approach** to open and flexible legal channels for entry to the EU. It should ensure that fundamental rights are safeguarded, provide sustainable and inclusive solutions for access to international protection, take into account the situation on the labour market and address the challenges inherent in integration policies and their effects on vulnerable groups, racism and xenophobia.

2.3 The Committee has given a major commitment to ensuring that immigration policies are implemented in a way that involves immigrants themselves, in particular in the framework of the **European Integration Forum** ⁽²⁾ that the Commission decided to set up, based at the EESC, in 2009. The Forum has established itself as the **European platform for facilitating multi-stakeholder dialogue and the active participation** of civil society organisations and immigrants in key discussions on European integration-related policies. The Forum is currently in a process of redevelopment, with a view to covering all policies on immigration. On the basis of an assessment study on its workings and results, **the Committee wishes to further develop its commitment to the Forum**, in particular to strengthen its ties with immigrant organisations, to ensure that it contributes by following up policies, and to improve cooperation with Parliament and the Committee of the Regions.

3. A common immigration policy

3.1 15 years have now passed since the Treaty of Amsterdam in 1999 took the first steps towards developing a common policy on immigration, asylum and borders. The EESC considers that when the future European immigration agenda is drawn up, it should return to its **founding principles, set out in the Tampere programme in 1999** ⁽³⁾, in particular, the principles of fair and equal treatment of third-country nationals, solidarity and shared responsibility, the fundamental rights laid down in the EU Charter of Fundamental Rights, and the rule of law. The Lisbon Treaty serves as the **common working guide**. These **general principles**, which are laid down in the treaties, **should be fully implemented**.

⁽¹⁾ EESC, Immigration: Integration and Fundamental Rights, 2012. <http://www.eesc.europa.eu/resources/docs/qe-30-12-822-en-c.pdf>

⁽²⁾ <http://ec.europa.eu/ewsi/en/policy/legal.cfm>

⁽³⁾ European Council Conclusions, Tampere Programme, 15–16 October 1999, SN 200/99.

3.2 The Committee believes that European aspirations and values have been replaced by rhetoric, and too often practice and laws conflict with values ⁽⁴⁾. The EESC calls on the Council and the Member State representatives to take a **decisive step that goes beyond rhetoric and declarations of principles and adopt tangible initiatives that will achieve real results when implemented**. This must be done not only in close inter-institutional partnership with the European Commission and the European Parliament; the social partners and organised civil society are also major allies in this process.

3.3 The migration-related challenges faced in the Mediterranean and all along the EU's common external borders are well-documented and their coverage in politics and in the media often borders on the irrational and on nationalist populism. The EESC calls for a rational debate based on objective and independent data and studies. Clear priority should be given to what is really needed in order to **consolidate and develop a truly common and joint policy on immigration, asylum and external borders**. The EESC believes that it is time for a new European strategy for the common European immigration policy, one that is linked to the Europe 2020 strategy and geared towards **putting principles into practice**.

3.4 In areas where the political interests of Member State representatives are so great, it is essential that the **fundamental rights** of all third-country nationals subject to these policies (including undocumented immigrants) are the cornerstone of any future policy ⁽⁵⁾. Priority should be given to the challenges of improving the **living and working conditions** of the millions of migrants working in the EU ⁽⁶⁾. The EESC attaches particular importance to issues concerning the **impact of immigration policies on employment and social policies**, and has promoted an approach that analyses employment and the implications of migration policies for the exclusion or socio-economic integration of workers and their families ⁽⁷⁾.

3.5 Policies on conditions for the entry and residence of third-country nationals are competences shared between Member States and the EU. The Treaty of Lisbon requires the EU to develop a common immigration policy in all of its stages. The Committee considers that the EU could provide considerable added value by means of a common policy and shared legislation on issues of employment and education, which enjoy a **high degree of harmonisation, adopting a horizontal approach**, instead of sector-specific rules ⁽⁸⁾. The current legal framework is fragmented, opaque and diffuse. This situation creates **legal uncertainty and policy incoherence**, which need to be remedied as soon as possible.

3.6 The EESC believes that there is need to consolidate existing legislation by means of an **Immigration Code**. The code should provide greater transparency and legal clarity regarding the rights and freedoms of third-country nationals residing in the EU, and should consolidate legislation through a uniform and transparent framework of common rights and standards, including those that cover undocumented migrants ⁽⁹⁾. The code should also address the socio-economic situation of third-country workers in the EU ⁽¹⁰⁾. Another priority should be to improve access to European rights and standards, and the fight against discrimination and racism in the labour market, on the basis of a **Handbook of Common European Guidelines**.

3.7 One of the greatest problems afflicting many immigrants and many businesses in Europe, **the recognition of academic and professional qualifications**, also needs to be resolved ⁽¹¹⁾. The EESC calls for an **European strategy to be drawn up to make the EU more attractive to international talent**, and calls for unjustified barriers to professional and academic qualifications to be tackled. These steps should go hand in hand with the adoption of horizontal legislation ⁽¹²⁾.

⁽⁴⁾ CESE 343/2009 — SOC/320, OJ C 218, 11.9.2009, p. 78.

⁽⁵⁾ OJ C 128, 18.5.2010, p. 29.

⁽⁶⁾ European Trade Union Confederation, Action Plan on Migration, adopted by the ETUC Executive Committee, 5–6 March 2013, http://www.etuc.org/documents/action-plan-migration#.U_MOE-JU3To

⁽⁷⁾ EESC opinion of 17 March 2010, CESE 450/2010, OJ C 354, 28.12.2010, p. 16.

⁽⁸⁾ OJ C 286, 17.11.2005, p. 20.

⁽⁹⁾ EESC opinion of 15 September 2010, SOC/373, OJ C 48, 15.2.2011, p. 6. The EESC underlined the need to harmonise the rights of undocumented migrants in the EU. See point 11.2 of the opinion.

⁽¹⁰⁾ European Trade Union Confederation, Action Plan on Migration, adopted by the ETUC Executive Committee, 5–6 March 2013, http://www.etuc.org/documents/action-plan-migration#.U_MOE-JU3To

⁽¹¹⁾ EESC opinion of 15 September 2010, SOC/373, OJ C 48, 15.2.2011, p. 6.

⁽¹²⁾ OJ C 80, 3.4.2002, p. 37. EESC opinion of 15 September 2010, SOC/373, OJ C 48, 15.2.2011, p. 6.

3.8 Due account should be taken in this regard of **the demographic situation and the ageing of the population and the labour markets** in the Member States. In its 2011 exploratory opinion⁽¹³⁾ on the **role of immigration in the demographic situation in Europe**, the EESC stressed that over the coming years, immigration by workers from non-EU countries and their families should be increased. The EU needs an **open and flexible form of legislation** that allows work-related immigration through channels that are legal and transparent, not only for highly-skilled workers and workers with mid-level skills, but also for those working in less skilled jobs as long as Member States remain free to determine their volumes of admission. The EESC would like priority to be given to **tackling barriers and discrimination in the labour market** for vulnerable migrant worker groups such as women. At the same time, however, it is to be acknowledged that immigration is not the only response to labour market shortages and Member States may consider other complementary solutions which may be more appropriate.

3.9 The EU should establish a **permanent European platform for work-related migration** at the EESC, where the social partners, the public employment services of the Member States, recruitment agencies and other stakeholders discuss and analyse national labour migration policies and exchange practices to identify labour market needs and existing barriers to equal socio-economic inclusion. The EESC reiterates its support for the Commission⁽¹⁴⁾ and proposes that the Council request an exploratory opinion on setting up such a body.

4. A common European asylum policy: the Common European Asylum System (CEAS)

4.1 The EESC welcomes the adoption of the **second phase of the CEAS**. Nevertheless, despite the high level of legislative harmonisation, national legislation is given too much discretion, which means that Member States can have very different policies and philosophies⁽¹⁵⁾. Divergent national traditions have remained in place and levels of protection still vary from one Member State to another⁽¹⁶⁾. The EU should prioritise achieving a **high level of protection, reducing the current scope for interpretation and ensuring access to effective remedy for asylum seekers** so that those rights and principles are accessible in practice.

4.2 The **Dublin Convention** determines which Member State is responsible for examining an asylum application but, in the EESC's view, this system does not make for solidarity between the EU's Member States. The system was designed on the assumption that asylum systems in the Member States are similar, which is not yet the case. The Dublin Convention should be replaced with a **more inclusive system in the EU** that takes account of asylum seekers' wishes and ensures a more proportionate sharing of responsibility among the Member States⁽¹⁷⁾.

4.3 **The European Asylum Support Office (EASO)** in Malta should be given greater scope to identify and assess the state of asylum in the EU⁽¹⁸⁾ and the differences in asylum practices between the Member States, as well as the differences in their legislation, and to propose the necessary changes in the CEAS. The EASO should be developed further still as a centre for monitoring and analysing the results of the second phase of the CEAS, in close collaboration with the Fundamental Rights Agency (FRA). The EESC recommends increasing EASO's powers to provide permanent technical and operational support for Member States whose asylum and reception systems require special or emergency support, in the form of **joint asylum support teams**.

4.4 The Committee has on several occasions stated its desire for the EU to launch **regional protection and reception programmes** in cooperation with neighbouring States, funded by the EU, in line with UNHCR⁽¹⁹⁾ guidelines and in close cooperation with organised civil society⁽²⁰⁾. Before continuing to support this policy, an independent assessment should be made of all these programmes and of the funding earmarked for their implementation; only then should they be expanded and converted into a new mechanism that commits the EU. Existing programmes appear to attach greater priority to preventing asylum seekers from entering the EU and to international protection than to ensuring a genuine improvement in the protection of refugees⁽²¹⁾.

⁽¹³⁾ OJ C 48, 15.2.2011, p. 6.

⁽¹⁴⁾ EESC opinion SOC/352 of 4 November 2009, point 4.4.14 (OJ C 128, 18.5.2010, p. 80). The Commission, in Communication 154 of 11 March 2014, has again presented its initiative for the platform, which was rejected by the Council in the Stockholm Programme.

⁽¹⁵⁾ <http://www.unhcr.org/pages/49c3646c4d6.html>

⁽¹⁶⁾ See the EESC opinion of 12 March 2008 on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail-Marlière, OJ C 204, 9.8.2008, p. 77, point 1.1.

⁽¹⁷⁾ See the EESC opinion of 12 March 2008 on the Green Paper on the future Common European Asylum System, rapporteur: Ms Le Nouail-Marlière, OJ C 204, 9.8.2008, p. 77.

⁽¹⁸⁾ <http://easo.europa.eu/wp-content/uploads/EASO-AR-final1.pdf>

⁽¹⁹⁾ UNHCR Resettlement Handbook, July 2011 (with 2013 and 2014 revisions), available at: <http://www.unhcr.org/4a2ccf4c6.html>

⁽²⁰⁾ See EESC opinion SOC/320 of 25 February 2009, OJ C 218, 11.9.2008, p. 78.

⁽²¹⁾ *ibid.* (point 7.2.2).

4.5 These regional programmes could be bolstered by **resettlement programmes** that establish a system for inviting people who have been granted refugee status by third countries to take up permanent residence in an EU Member State. Here too, the experience of organised civil society and international organisations must be taken into account before such programmes are developed. The EESC proposes enhancing solidarity and responsibility within the EU through an adequate distribution of obligations and the implementation of **resettlement programmes**. These steps should be accompanied by a study of the proposal to establish a **system for the joint processing of asylum applications in the EU and the possibility of establishing the principle of mutual recognition for approved asylum applications and the free movement of beneficiaries of protection**.

4.6 The EESC also believes that it is necessary to simplify entry into the EU for people in need of protection. It recommends a more harmonised, consistent, independent and flexible use of **humanitarian visas** by Member States, as set out in the Visa Code, and the establishment of a mechanism for monitoring its implementation in practice and access by applicants to effective legal remedy and the right of appeal in the event their application is refused⁽²²⁾. The EESC supports the Commission's new proposal revising the Visa Code⁽²³⁾ and hopes that negotiations secure the use of humanitarian visas.

5. Towards a common borders policy

5.1 The creation of the Schengen area stands out as one of the most significant achievements of European integration. The EU's external borders are borders common to all the States participating in Schengen, and **responsibility for their monitoring and surveillance and for safeguarding rights and principles in its administration** should also be common to all. Member States whose location means that they form the EU's common external territorial border face difficult situations related to migration flows and asylum seekers. The EESC stresses the importance of the principle of **solidarity and fair sharing of responsibility** enshrined in Article 80 of the Treaty on the Functioning of the European Union. The EU should put in place **procedures for the provision of financial, operational and reception support**, taking account of individual Member States' economic and social situations, and should provide support for Member States whose asylum systems are under greatest pressure.

5.2 The Schengen Borders Code regulates the crossing and monitoring of borders, taking account of the requirements that non-EU nationals must meet in order to enter and stay. The EU draws up lists of countries whose nationals need a visa and has a common policy on short-stay visas set out in the Visa Code. The EESC recommends giving priority to ensuring **the consistent, flexible and effective application of both codes**, and to ensuring that the rights and guarantees provided for third-country nationals are accessible.

5.3 The EU should shoulder greater responsibility for monitoring its external borders. The role of **Frontex** (the External Borders Agency) should be strengthened, not only from the financial point of view, but also in terms of its powers and operational capacities. The EESC reiterates its recommendation that Frontex⁽²⁴⁾ become a **common European border-guard service**⁽²⁵⁾ comprising an European body of border guards to support Member States⁽²⁶⁾. At the same time, a more effective and standardised system of accountability should be developed for Frontex's activities and its joint operations and exchanges of information, also covering Eurosur (the external border surveillance system). The role of the Consultative Forum on Fundamental Rights⁽²⁷⁾ should be strengthened and a complaint mechanism developed⁽²⁸⁾.

⁽²²⁾ Articles 19(4) and 25(1) of the Visa Code. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243, 15.9.2009, p. 1.

⁽²³⁾ European Commission, Proposal for a Regulation on a Union Code on Visas (Visa Code) (recast) (SWD(2014) 67 final) (SWD(2014) 68 final), COM(2014) 164 final, 1 April 2014, Brussels.

⁽²⁴⁾ OJ C 44, 11.2.2011, p. 162.

⁽²⁵⁾ S. Carrera (2010), *Towards a Common European Border Service*, CEPS Working Documents, Centre for European Policy Studies, Brussels.

⁽²⁶⁾ The European Council conclusions of 26—27 June 2014 set the goal of studying the possibility and feasibility of their establishment as one of the policy priorities for the future Area of Freedom, Security and Justice (AFSJ) agenda up to 2020. European Council conclusions, 26—27 June 2014, EUCO 79/14, Brussels, 27 June 2014.

⁽²⁷⁾ <http://frontex.europa.eu/news/first-annual-report-of-the-frontex-consultative-forum-on-fundamental-rights-published-WDPSjn>

⁽²⁸⁾ <http://www.ombudsman.europa.eu/en/cases/specialreport.faces/en/52465/html.bookmark>

5.4 The EESC has expressed its support for establishing smarter borders, in particular the Entry/Exit System (EES) and the Registered Traveller Programme (RTP) ⁽²⁹⁾. Before developing other large-scale IT systems an independent assessment of the Visa Information System (VIS) and the Schengen Information System (SIS) II ⁽³⁰⁾ would need to be carried out. The links between these systems and the smart borders package are not clear, and no further systems should be put in place unless their necessity, proportionality and compatibility with fundamental rights are proven ⁽³¹⁾.

5.5 The rules applicable to **search and rescue situations which may arise during a border surveillance operation at sea** are a key common challenge. Member States have obligations under international law that stipulate respect for the human rights of asylum seekers and undocumented migrants. The EESC welcomes the adoption and entry into force of the Regulation on rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex ⁽³²⁾. The EESC considers that priority should be given to the **effective practical application** of these search and rescue rules.

5.6 **The illegal trade and trafficking of persons** must be combated, while guaranteeing that victims are protected by international humanitarian law and by the European conventions on human rights. The EESC does not consider **a person without legal papers to be a person without rights or a criminal**. The EU and the Member States should protect their fundamental rights. The expression 'illegal immigration' should not be used when referring to migrants who find themselves in an irregular administrative situation. Making a link between illegal migration and crime stirs up fear-driven and xenophobic attitudes.

6. The external dimension of immigration policies

6.1 The EESC has proposed ⁽³³⁾ that the EU promote **an international legal framework for migration**, on the basis of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. This international legal framework should include the main ILO conventions and the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which has not yet been ratified by the EU Member States ⁽³⁴⁾.

6.2 The EESC calls on the European institutions to adopt a **strategic alliance with other international players** working in the fields of human mobility and human rights, such as the UN and the Council of Europe. The EU should play a role in promoting common international standards adopted by these international organisations and covering the rights and freedoms of migrants, asylum seekers and refugees in the framework of organisations such as the UN, the Council of Europe and the ILO.

6.3 The EESC has frequently stated its support for the **Global Approach to Migration and Mobility (GAMM)** ⁽³⁵⁾ and for the conclusion of different mobility partnerships. The challenges raised by the cross-border mobility of persons cannot be addressed solely through an approach based on border controls or on the 'outsourcing' of this monitoring to third countries. The Committee has repeatedly supported the GAMM as the most appropriate framework. A common immigration policy should have a 'comprehensive approach' that goes beyond security or policing considerations which view human mobility as a crime and link it artificially to other threats facing Europe.

6.4 Mobility partnerships should include mobility and legal migration strands in a more comprehensive and balanced way, as a key priority. The EESC supports the mobility partnerships that have been agreed with some countries of origin ⁽³⁶⁾. It proposes, however, that these agreements be more **balanced and legally binding** on the signatories. Their priorities hitherto have focused on security, return, the readmission of unlawful migrants and border surveillance. The EU should also offer these countries and their nationals opportunities for immigration for the purposes of employment or education via **legal, flexible and transparent procedures**.

⁽²⁹⁾ OJ C 271, 19.9.2013, p. 97.

⁽³⁰⁾ See EESC opinion SOC/456 of 11 July 2012, point 16.2, OJ C 299, 4.10.2012, p. 108.

⁽³¹⁾ http://ec.europa.eu/bepa/european-group-ethics/docs/publications/ege_opinion_28_ethics_security_surveillance_technologies.pdf
See the European Court of Auditors report ecadocuments/sr14_03/sr14_03_en.pdf

⁽³²⁾ Regulation No 656/2014 of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 27.6.2014, OJ L 189, 27.6.2014, p. 93.

⁽³³⁾ EESC opinion, OJ C 44, 16.2.2008, p. 91.

⁽³⁴⁾ EESC opinion, OJ C 302, 7.12.2004, p. 49.

⁽³⁵⁾ REX/351, OJ C 191, 29.6.2012, p. 134.

⁽³⁶⁾ See EESC opinion REX/398 of 9 July 2014.

6.5 In particular, the EESC proposes that the EU offer its partner countries **channels facilitating mobility, visa acquisition and the admission of new immigrants**. The Committee supports the inclusion of other matters in the new agreements, such as:

- enhanced access to information on job vacancies in the EU;
- capacity-building for matching labour supply and demand;
- recognition of academic and professional skills and qualifications;
- development and implementation of legal frameworks for better portability of pension rights;
- measures to improve cooperation on matters related to skills and how to better match labour supply and demand;
- making entry and long-term residency laws more flexible in order to facilitate voluntary return without loss of the right of immigrants to remain in the country.

6.6 Immigration and asylum policy needs to ensure **better coordination between the EU's external and immigration policy priorities**. The European External Action Service (EEAS) should play its full role and cover immigration, asylum and border control policies, in order to ensure a more consistent approach with a wider outlook than Member States' Home Affairs Ministries. The European Parliament should also be given a greater role in these matters, in order to ensure greater democratic scrutiny ⁽³⁷⁾.

Brussels, 11 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽³⁷⁾ EESC opinion on *European immigration policy and relations with third countries* (not yet published in the OJ).

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

(2014/C 458/03)

Rapporteur-General: **Ariane Rodert**

On 5 June 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on

Social Impact Investment

(own-initiative opinion).

On 3 June 2014 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms Rodert as rapporteur-general at its 501st plenary session, held on 10 and 11 September 2014 (meeting of 11 September 2014), and adopted the following opinion by 176 votes to 37 with 19 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the interest in social impact investment but stresses that it should be seen in the context of the Social Investment Package (SIP) and the Social Business Initiative (SBI).

1.2 The EESC considers that social impact investment is about combining different cross-sectoral resources to create social impact and that it is one component in the social financial ecosystem.

1.3 Social impact investment should not aim to replace the public responsibility of financing core activities in the social sector, but can rather complement other funding streams. The EESC supports the debate taking place at the Commission on excluding social investments from the calculation of net government deficits under the EMU's fiscal rules, in line with the financial 'golden rule'.

1.4 Recognising that access to finance is a general concern for all SMEs, tailored financial ecosystems should be developed to suit the various enterprise models. However, the EESC stresses that social impact investment is not CSR-aimed, but rather aimed at investing in social enterprises as per the SBI definition.

1.5 When measuring social impact as part of the return on investment, the EESC urges stakeholders to build on the work done and principles set out already by the Commission and EESC in this field, rather than inventing new methods.

1.6 It is the EESC's view that the best models for social impact investment are hybrid capital solutions, such as patient blended capital, often with a guaranteed element. The Commission should explore the broad financial ecosystem of innovative instruments that is now emerging and review its potentially positive effect on capital provision for social economy enterprises and social policy innovation.

1.7 When developing new investment instruments, the specificities of social enterprises must be considered, this to ensure access to high-quality services and continuity of services.

1.8 Since the social economy and social enterprises are underdeveloped in many Member States, developing a social investment market is secondary to the full implementation of the SBI at national level, which consists of equally important actions such as capacity building, recognition and visibility.

1.9 Social economy enterprises are closely connected to the civil society sector. Recognising and safeguarding the work in this sector as well as the specific models within the social economy are crucial to create the much needed trusting and innovative partnerships between sectors.

2. Introduction

2.1 Europe is recovering much too slowly from an unprecedented crisis and faces significant societal challenges calling for social innovation, structural change and stable and sustainable welfare systems. This requires the mobilisation of all stakeholders and resources in society to create new sustainable solutions to support and improve the social situation in Europe.

2.2 In this context, the Commission's Social Investment Package (SIP) ⁽¹⁾ highlights the importance of well-designed welfare systems in which social enterprises and social entrepreneurs ⁽²⁾ are supported as pioneers of change and innovation to complement public sector efforts.

2.3 Further, the Commission's Social Business Initiative (SBI) ⁽³⁾ prioritises the creation of a favourable environment to grow and develop social enterprises and the social economy in Europe. The EESC has provided specific expertise in this field over the years ⁽⁴⁾. Both these EU policy frameworks clearly identify social economy enterprises' need for better access to tailored finance, an issue they share with SMEs generally.

2.4 Moreover, there is increasing interest amongst investors in combining social or environmental benefits with a financial return on investment ⁽⁵⁾. In June 2013, the Social Impact Investment Taskforce ⁽⁶⁾ was created at the G8 Social Impact Investment Forum, which aims to catalyse the development of a social impact investment market. This taskforce is currently working on a report with recommendations to be published in September 2014.

2.5 This opinion explores the perspective of social economy enterprises and social impact investment since they are well placed to tackle social needs and complement public efforts to strengthen social policies. It adds to the Social Impact Investment Taskforce's work but also aims to feed into the broader discussion about access to finance for social economy enterprises.

3. Social impact investment

3.1 The EESC **welcomes the interest** in social impact investment but stresses that it should be seen in the **context of the SIP and SBI** and should focus on supporting social innovation to tackle social needs rather than generating financial revenue. The EESC recommends that the common starting point must be social need, then identifying the best solutions and, as a third step, how best to finance the intervention.

3.2 The EESC considers that **social impact investment** is about **combining different cross-sectoral resources**: public, private and social economy with the aim to creating social impact. With this view, social impact investment is one component in the social financial ecosystem.

3.3 However, since this is an emerging field, the EESC urges the various stakeholders **not to define this field too quickly or too narrowly**, rather to identify common characteristics and monitor how this field emerges in the Member States. It is crucial that private social investment should not aim to replace public responsibility for financing core activities in the social sector based on social laws and legal rights.

⁽¹⁾ COM(2013) 83 final.

⁽²⁾ The social economy, also referred to as the 'third sector', refers to non-government actors such as community organisations, voluntary organisations, and social enterprises that undertake activities for social benefit. Social enterprises are businesses with primarily social objectives, and whose surpluses are usually reinvested into the business or in the community rather than distributed as profits to owners and shareholders.

⁽³⁾ COM(2011) 682 final.

⁽⁴⁾ OJ C 318, 23.12.2009, p. 22, OJ C 24, 28.1.2012, p. 1, OJ C 229, 31.7.2012, p. 44, OJ C 229, 31.7.2012, p. 55, and OJ C 170, 5.6.2014, p. 18.

⁽⁵⁾ This interest includes private investors ranging from venture capital providers to pension funds, foundations and public and private banks, as well as networks such as TONIIC, EVPA and the Ashoka Support Network.

⁽⁶⁾ <https://www.gov.uk/government/groups/social-impact-investment-taskforce>

3.4 Interest in social impact investment is a fact but is still new and developing. A first challenge is **to describe the concept and the intended investment targets**. In the current G8 discussion, social enterprises are the main target, with several 'sub-set' investment targets emerging. These have varying combinations of social and profit missions: as a main activity (social enterprises — social-purpose-driven) or a side activity (SME — profit with social purpose). It is worth noting that even if social enterprises have their specific nature they are still a normal part of the economy.

3.5 Given that many enterprises today may have some social or environmental engagement they cannot all be classified as social enterprises. Some enterprises undertake **corporate social responsibility** (CSR), which the Commission defines as the responsibility of business for its impact on society and the environment ⁽⁷⁾, an activity by mainstream profit-seeking businesses, which is voluntary.

3.6 Therefore, the EESC stresses that any initiatives in this area must adhere to the **SBI description** of a social enterprise, since it captures the diverse models of social enterprise in the Member States. According to the SBI, a social enterprise is 'an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders', and fulfils three main criteria ⁽⁸⁾.

3.7 With this in mind the EESC believes that it is crucial to **provide tailored financial ecosystems** with a wide variety of instruments, models and products for all diverse models and structures, ranging from socially responsible businesses to social economy enterprises for social action, whilst bearing in mind that they are not always the same. Even if social impact investment initiatives are mainly aimed at the latter, it must be noted that SMEs share similar concerns in terms of access to finance, which also need to be addressed in full.

3.8 In the EESC's view, **social innovation financing must include the full range of funding sources — from grants to investments — with different expectations of return, taking into account the existing business models of social entrepreneurs**. This is in contrast with the most commonly used description by the GIIN ⁽⁹⁾, which says that 'Impact investments are investments made into companies, organisations, and funds with the intention to generate a measurable, beneficial social and environmental impact alongside a financial return'. From the EESC's perspective, this definition does not capture the variety of social investment that already exists and ought to develop, nor its aim of identifying new sources of finance for social progress. It primarily considers social investment from a private investor's point of view, lacking the connection to social policy innovation.

3.9 A crucial part of social impact investment is the **measurement of the social impact** resulting from the intervention. Referring to the EESC opinion on social impact measurement ⁽¹⁰⁾, the EESC argues that social impact measurement should support the social mission, be proportionate, and recognise that impact can be measured in a number of different ways depending on the enterprise's activities. Similar principles are stated in the GECES sub-group report adopted in June 2014 ⁽¹¹⁾. Here the EESC urges the Member States and relevant stakeholders to build on this European work and practices rather than inventing new methods. Moreover, any further rules developed to support the European Social Entrepreneurship Fund (EuSEF) should be proportionate and reflect the needs and limited resources of the social enterprises being invested in.

4. The social enterprise perspective

4.1 To unleash fully the potential in the social economy enterprise sector there is a need for an **inter-connected financial ecosystem** built from the existing ethical and alternative financial system, rather than applying mainstream financial instruments and logic focusing primarily on the investors' perspective.

4.2 As expressed in a previous EESC opinion ⁽¹²⁾, there is a risk that social investment designed as **equity** instruments will be **difficult** for many social economy enterprises to access, since ownership and control may be incompatible with the models, values and legal forms of social economy enterprises.

⁽⁷⁾ http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

⁽⁸⁾ COM(2011) 682 final, p. 2.

⁽⁹⁾ Definition of the Global Impact Investment Network, <http://www.thegiin.org/cgi-bin/iowa/aboutus/index.html>

⁽¹⁰⁾ OJ C 170, 5.6.2014, p. 18.

⁽¹¹⁾ http://ec.europa.eu/internal_market/social_business/docs/expert-group/social_impact/140605-sub-group-report_en.pdf

⁽¹²⁾ OJ C 229, 31.7.2012, p. 55.

4.3 It is therefore the EESC's view that social impact investment should encourage **hybrid capital solutions**. This blended capital model combines grants with long-term, 'patient' loans and similar where durability and long-term nature are underwritten by public ownership or guarantees.

4.4 The EESC calls on the Commission, as a first step in this emerging field, to **facilitate best practice policy experiences associated to the various models** of social impact investment and financing that are now developing. This review could evaluate the opportunities and challenges of specific instruments and forms of capital and their providers, such as the currently discussed Social Impact Bonds⁽¹³⁾, Community Reinvestment Acts or the Italian Social Bonds⁽¹⁴⁾.

4.5 Since, for the time being, these innovative financial instruments primarily appear at local, regional and national level, there is limited cross-border interest. The EESC therefore believes that the **EU does not need to provide further stimulus** for an European social impact investment market at this point.

4.6 Other **specific features of social enterprises** must also be considered in the context of social impact investment. Issues to consider include divestment, long-term rather than short-term investment, effect on continuity of service provision, impact on social enterprises' social mission, etc.

4.7 Incentives, such as tax incentives, should also be examined more closely as one element of the revenue model, as should the question of how to **balance the incentives** given to investors against their expected market return. Returns should not be allowed to be higher than the current market rate of return when public funds or incentives are involved. The Commission should review types of capital incentive and the financial and/or social return in the Member States. It may be useful to invite pension funds to consider such investments as part of a diversified portfolio.

4.8 It is also important that the Commission **monitor the progress** of social impact investment on a regular basis to ensure that the main target groups of social enterprises and of the social economy do actually have greater access to appropriate capital.

5. Further considerations on social impact investment and the policy framework

5.1 Given the importance of access to suitable finance throughout an enterprise's life cycle, any developments must take place within a **policy framework for social finance and investment** that supports the social enterprise sector at Member State level, thus avoiding some Member States' exploring individual instruments instead of creating a broad policy framework.

5.2 It is equally important that **all types of investors — public, private and civil society — should be considered**, whilst taking into account their individual motives and expectations to ensure the best partnerships and results. But most importantly, the construction of an impact investment infrastructure has to influence positively welfare models in Europe. Policy should be carefully shaped within the national context with the aim of having social enterprises and the public sector mutually strengthen welfare systems whilst ensuring universal access to quality and affordable services.

5.3 In this context, the **government plays a central role** as a 'buyer' of social impact but primarily as the key responsible of guaranteeing social rights. Initiatives for a social investment market must originate from the perspective of achieving a positive social impact for the common good, and not for the government to withdraw from its obligation to deliver social policy, social security and social services.

5.3.1 The EESC supports the debate taking place at the Commission on excluding social investments from the calculation of net government deficits under the EMU's fiscal rules, in line with the financial 'golden rule'⁽¹⁵⁾.

⁽¹³⁾ <https://www.gov.uk/social-impact-bonds>

⁽¹⁴⁾ <http://www.ubibanca.com/page/ubicomunita-social-bond>

⁽¹⁵⁾ OJ C 226, 16.07.2014, p. 21.

5.4 The EESC opinion on the Social Investment Package and related work⁽¹⁶⁾ should be considered in this context, calling for innovative financing recognising that well-planned, effective and efficient social investment will maximise social effects and that **welfare state investments bring social progress and reduce future social cost**.

5.5 Investing in social enterprises is particularly complex since the services provided often involve **people in need**. The success of the interventions relies on resources, the flexibility to adapt to changing condition and ensuring continuity of services. Applying a traditional investment and market logic in this field requires careful thinking to avoid negatively impacting the key target group, the end-user.

5.6 Social impact investment must also be explored in the **wider context of financing such as public procurement and contracting**. Social impact investment for innovation requires a different relationship relying on an equal partnership between the stakeholders where the public authorities are central.

5.7 Since the **social enterprise sector still is underdeveloped** in many countries, any initiative in the field of social impact investment must be carefully considered. A social investment market requires supply and demand, and therefore a well-established social enterprise sector. Developing an investment market is only secondary to establishing a sustainable social enterprise sector.

5.8 In this context, it is also important to mention that social enterprises emerge within a civil society context. **Supporting an independent and sustainable civil society** is therefore crucial to the development of social enterprises, as is dialogue with the social economy at all stages.

5.9 Even if a supply of suitable finance (social impact investment or other) is available, this market will not fully function without **capacity building in social impact measurement and investment readiness programmes**. The emergence of providers of these capacity building services, who are often social enterprises themselves, should be encouraged. There is also a need to create interfaces between social enterprises and the social investment world, with special intermediaries playing a central role. However, the EESC warns against adding too many intermediary levels or large-scale actors since true social innovation partnerships rely on direct and close contact between stakeholders (often small and local) to build trust, and do not do this via brokers.

5.10 The EESC underlines the importance of clearly distinguishing **between the social impact of a social enterprise as such and the social impact generated through a specific activity** or programme of the enterprise. Social enterprises should always respect labour law, workers' rights and relevant collective agreements.

5.11 Supporting the social economy and social enterprises requires a holistic view of where great ideas come from, who drives them, and how they grow. Each of these questions challenges governments and private investors to think outside the box of providing investment capital to realise the full potential of the social enterprise sector and society. Besides access to finance, other key components are required to create an enabling environment for the social enterprise sector in Europe. The EESC therefore urges the Member States to **take advantage of the provisions available in the context of the SBI and develop national support plans** for the sector, and calls on the Commission to assign a lead unit to develop a second phase of the SBI for the coming years.

Brussels, 11 September 2014.

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

⁽¹⁶⁾ OJ C 271, 19.9.2013, p. 91 and OJ C 226, 16.7.2014, p. 21.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

501ST PLENARY SESSION OF THE EESC ON 10 AND 11 SEPTEMBER 2014

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies’

COM(2014) 212 final — 2014/0120 (COD)

(2014/C 458/04)

Rapporteur: **Oliver Röpke**

On 16 April 2014 the European Parliament, and on 6 May 2014 the Council, decided to consult the European Economic and Social Committee, under Article 50 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies

COM(2014) 212 final — 2014/0120 (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 15 July 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 127 votes to 50, with 15 abstentions:

1. Conclusions and recommendations

1.1 The European Commission's proposal for a directive on single-member private limited liability companies (*Societas Unius Personae* — SUP) ⁽¹⁾ is designed to make it easier for SMEs to operate on a cross-border basis. The EESC believes that, as it stands, the proposal is in need of further development, since many of its provisions entail (serious) potential risks to the proper conduct of trade on the internal market and to the interests of creditors, consumers and employees. Therefore, the EESC strongly urges the Commission to take account of the recommendations set out in this opinion and to apply them.

1.2 The choice of legal basis (Article 50 TFEU) is unconvincing, and appears to be primarily aimed at circumventing the requirement for unanimity in the Council and ensuring that this initiative does not fail as the European private company (SPE) has. The intention may be for SUPs to be formally enshrined in national law as an alternative company form, their essential characteristics are nonetheless clearly defined in supranational law. The legal basis should therefore be Article 352 TFEU.

1.3 The EESC endorses the objective of making it as easy as possible for SMEs, in particular, to set up companies. However, the minimum capital requirement for SUPs of EUR 1, and the prohibition on requiring them to build reserves, effectively constitute a 'free' limitation of liability. They may cause market parties to require personal guarantees from the business owner to reassure third parties (consumers, suppliers, creditors) which will nullify the advantages of the limited liability.

⁽¹⁾ COM(2014) 212 final.

1.4 The EESC stresses the need to encourage the creation of healthy companies and therefore recommends requiring a substantial minimum share capital appropriate to the company's purpose, in the form of a 'credibility threshold' for SUPs, in order to protect the interests of creditors, consumers, employees and the general public and to avoid any risk to business. This could be based on the experience of certain Member States where a reduction in the initial share capital requirement has been counterbalanced by a 'saving' scheme whereby the company has to build reserves in subsequent years, to avoid long-term undercapitalisation. For the sake of 'company clarity', a reference to limitation of liability and the country of registration should be added to the name of a SUP.

1.5 The EESC believes that a SUP should not be registered in a place where it carries out no business activities whatsoever (letter boxes). The proposed distinction between a company's registered office and its administrative headquarters, which is a first for an European company form, therefore sets a precedent, which has raised concerns at the EESC. In conjunction with the provision that SUPs are subject to the law of the State in which they are registered, it could jeopardise employees' participation rights, but also enable circumvention of national tax law.

1.6 It is possible that the formal transfer of a company's registered office, and the resulting change of company statute, could undermine the right to participate in company decision-making bodies (supervisory board or management board). The EESC therefore explicitly calls for SUPs to have a single registered office and administrative headquarters, as is the case for other supranational legal forms such as the European company (SE) or European cooperative society (SCE). Furthermore, the EESC calls for employee participation rights in a Member State where a SUP carries out its main business activities to be guaranteed and for unfair competition to be resolutely tackled. The EESC therefore feels that uniform rules on SUPs in relation to employee participation are also needed.

1.7 The EESC believes that, in the interests of company founders, it is important to ensure that a company can be established quickly within an appropriate time frame. However, the use of a purely online procedure for registering SUPs can raise problems and risks if the identity of the company founder is not checked. The omission of identity checks would reduce transparency concerning business partners, undermines the integrity of legal transactions, and harms consumer interests. It would encourage and facilitate the creation of 'letterbox companies' and bogus self-employment. Nevertheless, in order to take account of the desire for online registration, the Member States should be free to provide for this type of registration on a voluntary basis. In this case, however, there should be a preliminary identity check, as well as measures by the competent authority and/or notaries to provide the founder of the company with information and advice.

1.8 The EESC approves the intention to introduce a new form of company making it easier for SMEs (including start-ups and micro-enterprises) in particular, to operate in the single market. To ensure the proposed directive is favourable for SMEs, its scope should be restricted to such companies. This instrument is not intended to give internationally operating groups of companies the option of running subsidiaries that may have hundreds or thousands of employees as SUPs. The EESC therefore proposes that the SUP should only be available to companies which meet the criteria set out in Article 3 (2) ⁽²⁾ of the Accounting Directive (2013/34/EU) ⁽³⁾. This would mean that when the SUP reaches a certain size, the company has to be turned into another legal form.

1.9 To sum up, it should be noted that adoption of the draft directive would result in national principles of company law for limited companies being called into question in a number of Member States. In view of the choice of legal basis, the EESC questions whether the proposal is compatible with the subsidiarity principle. It therefore calls for the status of SUP to be available only to companies that are active internationally and are operating in at least two Member States at the time of registration or can credibly demonstrate that they will be doing so at the latest within a specified time (two years, for example) of their registration. The Proposal for an European Foundation (EF) ⁽⁴⁾ and the European Parliament's interim report on this could serve as a model here.

⁽²⁾ Such companies do not exceed the limits of at least two of the three following criteria on their balance sheet dates: balance sheet total: EUR 4 000 000; net turnover: EUR 8 000 000; average number of employees during the financial year: 50.

⁽³⁾ OJ L 182, 29.6.2013, p. 19.

⁽⁴⁾ COM(2012) 35 final.

1.10 For the reasons given, although the EESC welcomes the Commission's efforts to support SMEs in the area of company law, it still sees a considerable need to discuss the directive's actual content. The EESC can only endorse the proposal if the recommendations set out in this opinion are followed. In particular, a balanced solution now needs to be found in close cooperation with the stakeholders, which unfortunately were not consulted on an equal basis by the Commission beforehand.

2. General comments on the proposal for a directive

2.1 Back in 2008, the European Commission tried, by means of the proposal for an European private company statute (SPE) ⁽⁵⁾, to offer SMEs an instrument facilitating their cross-border activities, which would be simple, flexible and uniform in all Member States. This initiative ultimately failed in the Council, and the Commission consequently announced that it was withdrawing the SPE proposal as part of the REFIT programme ⁽⁶⁾.

2.2 The Commission gave interested parties the opportunity to express their views at a general public consultation on the future of European company law (February 2012) and an online consultation on single-member companies (June 2013). On 13 September 2013, the Internal Market and Services DG then met business representatives to discuss the Commission's proposed initiative. According to the Commission, this discussion included, among others, *BusinessEurope*, the European Small Business Alliance, chambers of industry and commerce, and *Eurochambres*. Evidently, workers' representatives were not invited, nor were equivalent discussions held with the trade unions and consumer associations.

2.3 Subsequently, on 9 April 2014, the European Commission published its proposal for a directive on single-member private limited liability companies (SUPs), which is specifically described as an alternative approach to the SPE. Its aim is to make it easier for SMEs to set up companies abroad.

2.4 Member States should provide in their legal systems for national company law forms that would follow the same rules in all Member States and would have an EU-wide abbreviation — SUP (*Societas Unius Personae*). The stated aim of the proposal is to diminish set-up and operational costs. It provides for simplified online registration, and dispenses almost completely with minimum legal capital for establishment. Creditors would, it claims, be protected by the obligation for the director(s) to control distributions.

2.5 Member States would no longer be allowed to require that an SUP's registered office and its central administration be necessarily located in the same Member State. This is the first time that an European company form has allowed for such a separation. The SUP would be subject to the law of the Member State in which it is registered. The Commission proposal makes absolutely no mention of employees' participation rights.

2.6 The Commission stresses that the proposal 'does not establish a new supra-national legal form for the single member company', but aims to progressively abolish 'restrictions on freedom of establishment'. It is therefore based on Article 50(2) (f) TFEU.

3. Preliminary findings

3.1 Experience in individual Member States has shown that in some sectors it is more attractive for individual businesses to commission an independent 'Me PLC' than to hire someone as an employee. It is common for national collective bargaining agreements to be circumvented in this way. By making it easy to set up SUPs and at the same time limiting liability without requiring capital investment, and by allowing the separation of a company's registered office and administrative headquarters, the proposed directive provides further impetus for bogus self-employment. Moreover, this typically affects people who are in a weak position on the labour market and for whom the protection of labour law and collective bargaining agreements is particularly important.

⁽⁵⁾ COM(2008) 396 final.

⁽⁶⁾ See annex to COM (2013) 685 final.

3.2 The EESC recognises that the overwhelming majority of businesses and employees in the EU abide by the legal system that is applicable to them. However, on account of the SUP's design, the EESC believes that the proposed structure presents a potential risk of an increase in corporate fraud, other criminal activities (e.g. money laundering) or bogus self-employment. For example, persons would be able to choose or transfer their 'virtual' registered office at will, and conceal their identity through a 'Russian doll' structure extending throughout Europe. The draft directive thus runs counter to European efforts to combat money laundering.

3.3 There are question marks over whether the positive steps taken by the Commission to promote SMEs' cross-border activities will be successful with this draft directive. The EESC considers that some Member States previously called, in the negotiations on the European private company, for substantial minimum capital requirements, for the registered office and administrative headquarters to be required to be the same, and for common employee participation standards. In the EESC's view, the fact that the legitimate demands of those Member States have been disregarded in the draft directive is not useful.

4. Specific comments

4.1 *Legal basis and scope*

4.1.1 The Commission's aim, with the new proposal for a directive on single-member private limited liability companies, is effectively to introduce the European private company by a different route. The regulatory detail of the new legal form of SUP is basically identical to that envisaged for the European private company. Not only are SUPs to have a single European name, but also all their key characteristics (formation, minimum share capital, registered office, articles of association) are to be defined by supranational law. In substantive terms, SUPs must indeed be regarded as a supranational legal form, for which Article 352 TFEU would be the appropriate legal basis.

4.1.2 Even if ultimately there are to be 28 different SUPs under the SUP proposal, this does not mean that it is a national legal form. The SE also has 28 different forms and its supranational nature is not called into question. There should therefore be a large question mark over whether it was right for the Commission to use Article 50 TFEU as the legal basis for the proposal.

4.1.3 The Commission proposal is also not in line with the subsidiarity principle enshrined in the EU treaty, because unlike the SE or SCE it does not stipulate any cross-border requirements and is therefore designed not only for cross-border but also for purely national circumstances. This means that even those who intend to run their business exclusively in the domestic market would be able to set up a SUP ex nihilo. Converting a national legal form into a SUP without any cross-border connection would also be possible under the directive. Community law is therefore creating a new national company form, which is in direct competition with existing national legal forms. Regardless of the inconsistency with the subsidiarity principle, Article 50(2)(f) TFEU stipulates the requirement for sites in various Member States. It therefore calls for the status of SUP to be available only to companies that are active internationally and are operating in at least two Member States at the time of registration or can credibly demonstrate that they will be doing so at the latest within a specified time (two years, for example) of their registration. The Proposal for an European Foundation (EF) ⁽⁷⁾ and the European Parliament's interim report on this could serve as a model here.

4.1.4 The Commission emphasises that the proposed directive would facilitate the cross-border activities of SMEs and the establishment of subsidiaries in other Member States. However, the Commission has neglected to limit the scope of the directive to ensure the intended support for SMEs. To ensure the proposed directive is favourable for SMEs, its scope should therefore be restricted to such companies. The Accounting Directive (2013/34/EU), which applies to all companies throughout the European Union, provides a suitable definition here ⁽⁸⁾. Only companies which meet the criteria for size set out in Article 3(2) ⁽⁹⁾ of Directive 2013/34/EU ⁽¹⁰⁾ should be eligible to become SUPs. This would mean that when the SUP reaches a certain size, the company has to be turned into another legal form. Given the disclosure requirements which companies have to meet, compliance with these criteria can easily be checked and monitored.

⁽⁷⁾ See footnote 4.

⁽⁸⁾ See footnote 3.

⁽⁹⁾ Such companies do not exceed the limits of at least two of the three following criteria on their balance sheet dates: balance sheet total: EUR 4 000 000; net turnover: EUR 8 000 000; average number of employees during the financial year: 50.

⁽¹⁰⁾ See footnote 3.

4.2 *Setting up companies online and minimum share capital*

4.2.1 The mandatory electronic registration procedure proposed by the Commission may contribute to the SUPs' lack of transparency if there is no requirement to check the company founder's identity. However, consultation on the rights and obligations associated with starting a business is also of vital importance to the company founder. It is difficult to verify a person's identity by electronic means. Online registration without identity check would also undermine the Commission's efforts to combat money laundering.

4.2.2 In the interests of SMEs, the EESC believes that establishing an 'appropriate time frame' to set up a SUP is important. The Member States should be free to decide whether they wish to provide for SUP online registration. The electronic registration procedure should, however, entail a 'preliminary check'. In this way, the relevant authorities and/or notaries could, in particular, verify the identity of the company founder and inform them about important legal consequences.

4.2.3 Removing the minimum capital requirement while retaining limited liability of the shareholder suggests to company founders that the business risk will be borne by the public. This suggestion is false, and utterly contradicts free market principles. Minimum capital requirements are also very important as a credibility threshold, as they indicate to company founders that a substantial risk contribution is required in order to obtain limited liability, and thus that the opportunities and risks of a project need to be weighed up carefully. A substantial minimum share capital appropriate to a company's purpose is therefore an essential element of any company. A requirement to build reserves would also be an appropriate means of ensuring that companies have more capital, in the interests of preventing insolvency.

4.2.4 The EESC believes that a solvency statement from the director is no substitute for a substantial minimum capital and associated capital maintenance requirements, especially as the solvency statement is in any case fraught with uncertainty and the risk of an incorrect forecast is incurred by the creditor. The solvency statement should be signed by an independent, external auditor.

4.3 *Registered office*

4.3.1 The separation of the registered office and administrative headquarters means that SUPs could very easily evade any legal systems under which they in fact operate. Various examples show that this is at the expense of creditor and consumer protection but also employee participation, which can be easily circumvented in this way. A completely free choice of registered office without any connection to local activity also increases the risk of abuse, not least because it will be much easier to evade official oversight. The employee participation rights in a Member State in which a SUP carries out its main business activities must not be circumvented through the choice of a registered office in another Member State. There is also still no common European business register. It is therefore vital to improve this situation before considering further liberalisation.

4.3.2 Separation of a company's registered office and its central administration also makes it more difficult to pursue complaints, because it may be necessary to file the claim with the registered office, or because a legally awarded entitlement needs to be enforced in the country of registration. Past experience has shown that international service of documents remains difficult in spite of European regulations on the matter (Service of Documents Regulation, European Enforcement Order Regulation), which means that it takes much longer and is much more difficult to pursue claims before the courts and to enforce them. The Directive should therefore absolutely require a company's registered office to be the same as its central administration, in line with the requirement in EU law for European Companies (SEs) and European Cooperative Societies (SCEs).

4.4 *Employee participation and corporate governance*

4.4.1 Depending on the size of the business, a legal form that has the same name and the same key characteristics throughout the EU must also follow common EU-wide minimum standards with regard to the establishment of a supervisory body and employee participation. Common rules should therefore be laid down regarding the need to set up a supervisory body (supervisory board or non-executive directors) and regarding employee participation in the SUP (in the event of conversion, on the same lines as the European Company Regulation). Otherwise, the proposed directive will increase 'forum shopping' and thus generate competition to weaken and dismantle national company-law standards and to circumvent employee participation requirements. Employee participation in the supervisory board is a cornerstone of the European social model and an element of European corporate governance, and must be protected from mechanisms to bypass it. In the interests of 'company clarity', the name of every SUP should contain a reference to limitation of liability and the country in which it is registered.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council relating to appliances burning gaseous fuels'

COM(2014) 258 final — 2014/0136 (COD)

(2014/C 458/05)

Rapporteur: **Mr COULON**

On 22 May 2014 and 3 July 2014, respectively, the Council and the 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 appliances burning gaseous fuels

COM(2014) 258 final — 2014/0136 (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 15 July 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 142 votes to 1, with 3 abstentions.

1. Conclusions and recommendations

- 1.1 The proposal is part of the Commission's move to give new impetus to promoting the free movement of goods.
- 1.2 The EESC welcomes the form of legislation selected, namely a regulation, giving special force to this issue which affects the majority of Europeans, as well as the competitiveness of European firms.
- 1.3 It strongly emphasises the need to stand firm on matters of security for people, animals and goods, all along the chain of designing, manufacturing, distributing, installing and using the materials concerned.
- 1.4 Likewise, the EESC urges those concerned to remain extremely alert to attempts at counterfeiting, especially for appliances manufactured outside the Union.
- 1.5 The rules on penalties have to be applied strictly, and the type of penalties and the threshold for them to be applied also have to be specified.
- 1.6 It asks that the Commission particularly monitor provisions on the Member States' gas supply situation. This question requires good coordination between the various directorates-general.

2. The proposed regulation, its consequences and points for discussion

- 2.1 Directive 2009/142/EC provides codification of Directive 90/396/CEE on gas appliances. It was one of the first harmonisation directives based on the principles of the 'new approach'.
- 2.2 The EESC believes that the proposal can ensure that consumers have confidence in the quality of products on the market and that due prominence is given to strengthening market surveillance.
- 2.3 Experience has shown the need to update and clarify some provisions of the directive, without changing its scope: definitions particular to the sector, content and form of the information sent by Member States on their gas supply situation, and links with other Union harmonisation legislative acts applying to gas appliances. The proposal for a regulation is of course based on Article 114 of the Treaty.
- 2.4 The EESC supports replacing the current directive with a regulation, which will update and clarify some of its provisions, ensure that the proposed legislation is applied uniformly throughout the European Union and put a stop to economic operators being treated differently in the EU.

2.5 At the same time, the key mandatory requirements and procedures for assessing conformity which manufacturers have to follow must be identical in all the Member States.

2.6 The proposed regulation aims to align Directive 2009/142/EC on Decision 768/2008/EC, which relates to the new legislative framework (NLF), and on the 'goods package' (often referred to as the 'Verheugen package') adopted in 2008. The proposal also takes into account regulation (EU) 1025/2012, as well as the proposal for a regulation adopted by the Commission on 13 February 2013 on the market surveillance of products, which aims to set out a single legal instrument on market surveillance activities in the field of non-food goods.

2.7 It provides amongst other things for:

- the removal of the 105 °C temperature limit;
- the introduction of definitions currently missing from Directive 2009/142/EC and of harmonised content and a standardised form for all Member States.

The effect of the proposal will be to strengthen the competitiveness of European enterprises.

2.8 Improved readability as regards communications on gas supply conditions in Member States

2.8.1 Note that to date, the information published has not been adequate. The proposal defines the parameters that should be included in the communications in order to better ensure compatibility of the appliances with the different types of gas being supplied to Member States, and provides for a harmonised form for those communications. The EESC deems this question to be an essential one, both out of a concern to facilitate access to gas for consumers and with a view to diversifying supply sources for Member States. This question requires good coordination between the various directorates-general (Enterprise, Energy, etc.).

2.9 Making available appliances and fittings on the market, obligations on economic operators, CE marking, free movement

In accordance with the NLF decision, the proposal contains the recurring provisions for product-related EU harmonisation legislation and sets out the obligations on the relevant economic operators (manufacturers, authorised representatives, importers and distributors).

It retains the provision according to which fittings do not bear the CE marking. However, the certificate accompanying fittings is from now on described as a 'Fitting conformity certificate', in order to better define and clarify its content.

2.10 Harmonisation, notification and conformity

2.10.1 Regulation (EU) No 1025/2012 sets out a horizontal legal framework for standardisation. In fact, the provisions of Directive 2009/142/EC which cover the same aspects have not been reintroduced for reasons of legal certainty. The proposal, following the NLF in this, tightens the notification criteria for notified bodies and introduces specific requirements for notifying authorities. The proposal retains the conformity assessment procedures. Let us not forget that conformity entails responsibility. In this way, public interests are afforded a high level of protection (safety, rational use of energy, consumer protection, etc.).

2.11 On manufacturers' obligations, the EESC calls for there to be:

- an obligation to keep a register of complaints about appliances and recalls, and not just for there to be the possibility of this being done;
- steps aimed at verifying the rational use of domestic energy. The appliances concerned must make a contribution to the policy on energy saving and energy efficiency to which the EESC is very committed.

2.12 The proposed Regulation will become applicable two years after its entry into force to allow manufacturers, notified bodies, Member States and European standardisation bodies the time needed to adopt these new rules.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

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 concerning the European Union Strategy for the Adriatic and Ionian Region

COM(2014) 357 final

and

The European Union Strategy for the Adriatic and Ionian Region: research, development and innovation in SMEs

(exploratory opinion requested by the Italian presidency of the EU)

(2014/C 458/06)

Rapporteur: **Stefano Palmieri**

On 14 March 2014, 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 concerning the European Union Strategy for the Adriatic and Ionian Region

COM(2014) 357 final.

On 3 June 2014, the Italian presidency asked the European Economic and Social Committee to draw up an exploratory opinion on

The European Union Strategy for the Adriatic and Ionian Region: research, development and innovation in SMEs.

On 25 February and 8 July 2014 respectively 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 Palmieri as rapporteur-general at its 501st plenary session, held on 10 and 11 September 2014 (meeting of 11 September), and adopted the following opinion by 163 votes to 5, with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the European Union Strategy for the Adriatic and Ionian Region (EUSAIR) ⁽¹⁾, believing that by promoting and supporting competitiveness and employment growth it will help secure the region's economic, social and territorial cohesion.

1.2 The EESC draws attention to the wide range of cultural, social and economic characteristics in the Adriatic and Ionian region, making implementation of the EUSAIR a particularly complex matter. It is therefore important to put in place a system of multilevel governance that can effectively incorporate both the vertical dimension (participation of national, regional and local government bodies) and the horizontal dimension (civil society participation). Bearing this in mind, the EESC believes that it would be worth considering the option of setting up a permanent forum.

⁽¹⁾ COM(2014) 357 final.

1.3 The EESC believes that the EUSAIR's marked orientation towards the Balkan and Danube areas should be flanked by an equally significant orientation towards the other areas of the Mediterranean, especially in view of the involvement of neighbouring regions in the strategy, including the Tyrrhenian and Aegean coastal regions. Their inclusion would increase the strategic value and scope of the development opportunities.

1.4 In the EESC's view, it is vital to add a further two strategies, covering the western and eastern Mediterranean, to the EUSAIR. It is the combination of all three strategies that would effectively guarantee economic and social development across the entire Mediterranean basin.

1.5 The EESC appreciates the strong political backing behind the EUSAIR and believes that this is crucial to sustaining effective integration between the Europe 2020 Strategy, European enlargement policy and the regional development strategies.

1.6 The EESC points out that the participatory process launched during the planning and preparatory stage of the EUSAIR has not unfolded uniformly across all the regions involved. Specific difficulties have been noticed in the Balkan countries, mainly with reference to the participation and involvement of SMEs, trade unions and associations that represent social interests.

1.7 The EESC maintains that during the different stages of the EUSAIR's implementation, public and private economic stakeholders, the social partners and the various components of organised civil society ought to be ensured adequate guidance through ad hoc training programmes and organisational and technical support.

1.8 The EESC welcomes the complementarity between the EUSAIR and the Maritime Strategy for the Adriatic and Ionian Seas. These strategies have been effectively integrated with the priorities and development opportunities for inland areas. This mainstreaming must be further supported since the added value it brings improves SME competitiveness, environmental protection and public welfare.

1.9 The EESC notes that civil society involvement in the EUSAIR requires more attention, especially with reference to capacity building and governance. It is vital to improve coordination between existing cooperation and financing mechanisms.

1.10 The EESC recognises the usefulness of the activities developed by the Commission during the preparation and presentation of the EUSAIR. It believes that its involvement will also be needed to support the implementation of the strategy, while fully respecting the institutional functions assigned to the States concerned.

1.11 The EESC considers the EUSAIR's structure and objectives to be suited to helping partners in the region to address challenges that cannot be dealt with effectively through the usual means, but thinks that they need to be upgraded and strengthened.

1.12 It is essential to provide more targeted assistance for SME support measures, paying particular attention to credit access, developing a methodology for promoting complementarity and synergies between the different funding programmes and defining a cross-cutting, mainstreaming approach for the four pillars to promote support measures concerning working conditions, gender issues, people with disabilities and immigrants.

1.13 The 'Blue Growth' pillar should promote specific measures that focus more on fostering the development of new business opportunities and jobs.

1.14 The 'Connecting the Region' pillar should provide more support in areas relating to safe maritime traffic, connecting maritime and coastal areas with inland areas, and the further development and interconnection of energy networks.

1.15 The measures set out under the 'Environmental Quality' pillar should provide scope for more interconnections between 'ecosystems' (marine and land) and 'objectives' (the protection of marine wildlife, human health and safety).

1.16 The 'Sustainable Tourism' pillar must support measures that enhance the tourism aspect of the region's assets (natural, cultural and artistic heritage).

1.17 The EESC notes that the opportunities provided under the EUSAIR for SMEs involved in research and innovation activities are not enough to ensure a return to competitiveness and job creation in the area. The region needs measures that promote easier access to credit for SMEs, private investment, participation in EU funding programmes and cooperation with research centres and universities.

1.17.1 The EESC believes that in order to harness the opportunities created by research and innovation, the following priorities should be promoted:

- setting up a transnational R&D&I (research, development and innovation) platform to secure the joint and active involvement of SMEs, universities, research centres, and technology and business incubators in improving SME competitiveness by transforming innovative ideas into market-ready products;
- developing transnational smart specialisation studies to identify innovation and business capacities;
- promoting more entrepreneurial involvement in deciding R&D&I policies;
- launching an 'Adriatic and Ionian matchmaking platform' to make it easier for SMEs and young entrepreneurs to obtain innovation funding.

1.18 The EESC criticises the fact that the EUSAIR does not include specific measures to enhance the region's social dimension. It is advisable to include priorities and measures to support the inclusion of people with disabilities, prevent discrimination on grounds of race, ethnicity, age, sexual orientation or gender and address the social issues associated with irregular migration, which mostly affect the southern part of the region.

1.18.1 The EESC believes that the EUSAIR's social dimension must be integrated and strengthened, in line with the Commission's proposal, by promoting social investment and the necessary modernisation of social protection systems in order to:

- ensure that social protection systems meet people's needs at critical times in their lives;
- provide adequate and sustainable social protection systems;
- implement active inclusion strategies in full.

1.19 The EESC advocates identifying ad hoc indicators to enable the monitoring, implementation and evaluation of the EUSAIR's programmes and measures.

2. The EU Strategy for the Adriatic and Ionian Region: general comments

2.1 The purpose of this opinion is to assess the EUSAIR and its action plan from the perspective of organised civil society. The opinion draws on and develops the conclusions of the hearing held on 27 May 2014 in Palermo ⁽²⁾ and other EESC opinions ⁽³⁾.

2.2 The EUSAIR is being launched at a historic moment defined by the negative effects of the financial crisis on the real economy and by structural economic, social and environmental change, which must be addressed in order to assist economic development and public welfare.

⁽²⁾ Hearing of the study group on the EU Strategy for the Adriatic and Ionian Region (EUSAIR), tasked with drafting this opinion, held in Palermo on 27 May 2014.

⁽³⁾ Opinions:

- Developing a macro-regional strategy in the Mediterranean — the benefits for island Member States, OJ C 44 of 15.2.2013, p. 1
- Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the added value of macro-regional strategies, OJ C 67 of 6.3.2014, p. 63;
- Towards an EU macro-regional strategy to develop economic, social and territorial cohesion in the Mediterranean, OJ C 170 of 5.6.2014, p. 1.
- EU Strategy for the Adriatic and Ionian region (EUSAIR), OJ C 177 of 11.6.2014, p. 32.

2.3 The EUSAIR is characterised by a marked orientation towards the Balkan and Danube areas. Despite the strategy's inclusion of neighbouring Tyrrhenian and Aegean coastal regions, these Mediterranean regions have not been included when it comes to development and cohesion policies. The absence of an effective orientation towards development policies to cover the entire Mediterranean region carries the risk that the Adriatic and Ionian region will gradually become marginalised.

2.4 The EUSAIR must not be perceived purely as an instrument for supporting the Balkan States' integration into the EU since there is a link between its strategic value and the possibility of improving consistency between the EU's macro-economic policy, enlargement policy and the regional development strategy.

2.5 Not all public, economic and social stakeholders have been able to participate adequately in the planning of the EUSAIR. This, for example, has been the case for SMEs, trade unions and associations that represent social interests in the Balkan coastal area.

2.6 In addition to firm political support, the challenges that the Adriatic and Ionian region will have to face during the coming months will also require greater civil society participation in the governance and implementation of the EUSAIR, as well as an entrepreneurial system bolstered by measures designed to improve SME competitiveness.

2.6.1 This is why public and private economic stakeholders, the social partners and the various components of organised civil society must be ensured adequate guidance during the different stages of the strategy's implementation, through ad hoc training programmes, organisational support and technical assistance.

3. EU Strategy for the Adriatic and Ionian Region: analysis and evaluation

3.1 The EUSAIR's approach is similar to the Baltic ⁽⁴⁾ and Danube ⁽⁵⁾ strategies. Its design is consistent with the Maritime Strategy for the Adriatic and Ionian Seas ⁽⁶⁾, adding land-based cooperation to maritime cooperation in order to create new development opportunities to boost the region's competitiveness and cohesion.

3.2 The challenges mentioned in the EUSAIR concern the region's socio-economic disparities; significant transport infrastructure deficits; maritime traffic congestion; inadequate interconnection of electricity grids; a lack of research-to-business networks to support SMEs; over-fishing; ecosystems threatened by pollution; the need to protect a very diverse marine environment; the adverse impacts of climate change and insufficient administrative and institutional capacities.

3.3 The Adriatic and Ionian region presents significant development opportunities which must be harnessed to support competitiveness and cohesion: the 'blue' economy, particularly sustainable seafood production and consumption, maritime and coastal tourism, 'blue' technologies, renewable energy, land-sea connectivity, intermodal transport, and natural, historical and cultural heritage.

3.4 Having studied the objectives under the four priority pillars and the two cross-cutting pillars, the EESC believes that the EUSAIR needs to be enhanced through specific forms of interaction that will transform it into a success factor that boosts the entire region's competitiveness and cohesion.

3.4.1 To transform the blue economy's potential into effective development opportunities, it is necessary to support measures to improve SME access to credit and public funding, promote workforce mobility and training and support sustainable and responsible fishing practices.

3.4.2 It is important to improve transport infrastructure and connections between the maritime and coastal area and inland areas for the movement of goods and people.

3.4.3 It is essential to step up support for the joint protection of the marine environment and the hinterland since the marine ecosystem can be compromised by unecological activities in the hinterland.

⁽⁴⁾ <http://www.balticsea-region-strategy.eu>

⁽⁵⁾ <http://www.danube-region.eu>

⁽⁶⁾ COM(2012) 713 final.

3.4.3.1 In view of the geological structure of the marine areas covered by the EUSAIR, any new schemes to prospect for and exploit hydrocarbon deposits must be carefully evaluated and agreed on by all the countries concerned. A strategic environmental assessment must be made.

3.4.4 Tourism must be better integrated with the natural, cultural and artistic heritage of the Adriatic and Ionian region, in order to use the region's assets to support competitiveness and create secure jobs.

3.4.5 Action is required to overcome the limits on the capacity of SMEs to engage in research and innovation activities by boosting their capacity to attract private investment.

3.4.6 It is essential to involve civil society representatives in capacity building activities, alongside the public authorities. This could be achieved by setting up a permanent forum to represent the social and economic partners, in line with what has already been done for universities ⁽⁷⁾, Chambers of Commerce ⁽⁸⁾ and cities ⁽⁹⁾.

3.4.7 In order to equip the EUSAIR with the necessary ability to stay abreast of emerging problems, difficulties and development trends, capacity building must be flanked by an efficient monitoring system that makes it possible to assess progress and the need to adapt the strategy through a quantitative and qualitative analysis of the outcomes. This is why it is vital to identify ad hoc indicators in order to be able to monitor, evaluate and adapt the EUSAIR's programmes and measures.

3.4.8 With reference to the communication on the governance of macro-regional strategies ⁽¹⁰⁾, the EUSAIR's multilevel governance needs an effective horizontal dimension (civil society participation) that integrates and reinforces the vertical dimension (participation of local and regional authorities), in full compliance with the principles of subsidiarity and proportionality ⁽¹¹⁾.

3.4.9 In the light of experience gained from the Baltic and the Danube strategies, it is crucial for the European Commission's technical assistance to extend beyond the planning stage and continue during the implementation of the strategy.

3.4.10 The EUSAIR must be given the financial resources it needs to achieve the objectives. In addition to the European Structural and Investment Funds (ESIF) ⁽¹²⁾ and the 2014-2020 Instrument for Pre-accession Assistance (IPA) ⁽¹³⁾, the following EU funds and programmes are also important:

- Blue Growth: European Maritime and Fisheries Fund ⁽¹⁴⁾ and Horizon 2020 ⁽¹⁵⁾;
- Connecting the Region: the Connecting Europe Facility (CEF) 2014-2020 ⁽¹⁶⁾;
- Environmental Quality: LIFE programme ⁽¹⁷⁾;
- Sustainable Tourism: COSME programme ⁽¹⁸⁾.

⁽⁷⁾ <http://www.uniadriion.net>

⁽⁸⁾ <http://www.forumaic.org>

⁽⁹⁾ http://www.faic.eu/index_en.asp

⁽¹⁰⁾ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the governance of macro-regional strategies, COM(2014) 284 final.

⁽¹¹⁾ European code of conduct on partnership in the framework of the European Structural and Investment Funds, C(2013) 9651 final.

⁽¹²⁾ Regulation (EU) No 1300/2013 of the European Parliament and of the Council on the Cohesion Fund, OJ L 347 of 20.12.2013, p. 281.

⁽¹³⁾ Commission Implementing Regulation (EU) No 447/2014 on the specific rules for implementing Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession assistance (IPA II), OJ L 132 of 3.5.2014, p. 32.

⁽¹⁴⁾ Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund, OJ L 149 of 20.5.2014, p. 1.

⁽¹⁵⁾ Regulation (EU) No 1290/2013 of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)', OJ L 347 of 20.12.2013, p. 81.

⁽¹⁶⁾ Regulation (EU) No 1315/2013/EU of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, OJ L 348 of 20.12.2013, p. 1.

⁽¹⁷⁾ Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate (LIFE), OJ L 347 of 20.12.2013, p. 185.

⁽¹⁸⁾ Regulation (EU) No 1287/2013 of the European Parliament and of the Council establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 — 2020), OJ L 347 of 20.12.2013, p. 33.

3.4.11 Other funding sources are also available, namely the Western Balkans Investment Framework (WBIF) ⁽¹⁹⁾, the European Investment Bank (EIB) ⁽²⁰⁾ and other international financial institutions. These funds and instruments can exert a strong leverage effect and attract additional funding from private investors.

3.4.12 It is also vital for national, regional and local authorities to actively pursue policies that will create the right climate for attracting private investment. These should include: developing marketing policies suited to local conditions, making administrative formalities smoother and more efficient and supporting initiatives to champion legality and combat corruption, organised crime and undeclared work.

3.5 The EESC welcomes the Action Plan, but believes that some of the measures envisaged under the four pillars need to be further supported and developed.

3.5.1 The 'Blue Growth' pillar should create new business opportunities and jobs by:

- facilitating SME access to credit and stepping up cooperation between science institutions and businesses;
- promoting existing clusters by supporting internationalisation processes;
- defining new governance models for the sustainable development of marine and land-based fisheries and aquaculture;
- enhancing and upgrading infrastructure for fishing ports and the marketing of seafood.

3.5.2 The 'Connecting the Region' pillar should, in the EESC's view, facilitate development, competitiveness, safe maritime traffic, better intermodal connections between coastal and inland areas and develop an interconnected macro-regional energy market by:

- adapting infrastructure in and between ports in the Adriatic-Ionian basin to market developments in the interests of competitiveness, sustainability and safety;
- promoting the development of interconnections between maritime and land transport, in line with the criteria for sustainable mobility;
- strengthening the intermodality and interoperability of transport services, not least by adapting strategic transnational infrastructure pertaining to the European TEN-T network ⁽²¹⁾;
- exploiting the potential of regional airports by making them more accessible and promoting their connectivity, also from an intermodal perspective;
- supporting the development of smart energy grids and storage systems, linked to renewable energy production plants;
- mapping the availability of renewable energy sources in each region to identify expertise, interconnections and interactions in order to optimise the use of resources.

3.5.3 The 'Environmental Quality' pillar should, in the EESC's view, alleviate pressure on marine and coastal ecosystems and reduce health and safety risks by:

- increasing efforts to protect marine biodiversity and experimentation with sustainable fisheries models;

⁽¹⁹⁾ <http://www.wbif.eu>

⁽²⁰⁾ <http://www.eib.org>

⁽²¹⁾ Regulation (EU) No 1315/2013 of the European Parliament and of the Council on Union guidelines for the development of the trans-European transport network, OJ L 348 of 20.12.2013, p. 1.

- supporting action to protect coasts, adapt to climate change and manage risks (hydraulic, hydrogeological, erosion);
- implementing measures to protect and enhance interconnections between natural areas of strategic importance (marine, coastal and upland), including the establishment and protection of habitat corridors.

3.5.4 The 'Sustainable Tourism' pillar should, in the EESC's view, enhance the tourism value of the region's natural, cultural and artistic heritage by:

- promoting the tourism value of the most representative agri-food, seafood and craft products of the area of origin;
- raising the profile of lesser known tourist destinations, including through support for the integration of inland areas with nautical and cruise tourism, and promoting history, cultural and religious tours;
- assisting the development of business aggregations and interaction, not least through Public Private Partnership models, in order to carry out tourism development projects;
- stepping up the use of ICT for tourism promotion;
- facilitating research, lifelong learning, education and awareness-raising about sustainable and responsible tourism.

3.5.5 It is necessary to define a reference framework for mainstreaming, to provide cross-cutting support for all four pillars by planning measures concerning working conditions, gender issues, people with disabilities and immigrants. As a result, measures should be adopted to:

- ensure respect for decent work and labour standards and the adaptability of the workforce to ongoing developments in technology and production systems through re-skilling and lifelong learning processes that make the most of locally available human resources;
- mainstream, respect and enhance the gender dimension, especially in the labour market;
- promote all possible measures that effectively secure equal conditions and opportunities for people with disabilities;
- support measures that exploit the positive side of immigration in order to boost economic growth and social cohesion in the area.

4. The EU Strategy for the Adriatic and Ionian Region: specific aspects

4.1 Although the EESC believes that the EUSAIR will help to address typically regional challenges, which due to their complexity cannot be adequately dealt with in the usual way by individual States or regions, it can see a number of specific difficulties relating to R&D&I in SMEs and the strategy's social dimension.

4.2 **R&D&I in SMEs** — Despite the broad commitments made as part of the implementation of the 2007-2013 programme and in the 2014-2020 programme, SME access to innovation-based growth opportunities has had little impact in terms of competitiveness and job creation.

4.2.1 The support framework for research and innovation in the Adriatic and Ionian region is still too complex, which discourages micro and small enterprises from participating in EU projects in particular. In addition to complicated and time-consuming administrative requirements, there are also significant disparities in procedures between programmes at the regional, national and European levels.

4.2.2 This situation is mainly due to difficulties in accessing credit, scant collaboration among SMEs and R&D&I providers, and the absence of the kind of development policies that can attract private investment.

4.2.3 Access to funding, especially for small innovative businesses, is still difficult owing to the lack of risk capital funds. Despite the considerable potential of 'innovation procurement', implementing instruments such as pre-commercial procurement, are still being used far too infrequently to deliver tangible benefits for SMEs.

4.2.4 In order to transform research and innovation opportunities into factors for competitiveness and economic development, it is necessary to foster a modern entrepreneurial culture and support SME development, in line with the Small Business Act⁽²²⁾ and the Entrepreneurship 2020 Action Plan⁽²³⁾.

4.2.5 The area covered by the EUSAIR also presents development opportunities in:

- **the public sector:** innovation can help to improve the efficiency of public authorities, with benefits in terms of cost-cutting, rebalancing budgets, and the quality of services to citizens and businesses;
- **social welfare:** innovation can help public and private stakeholders to develop measures to support entrepreneurship and the social economy.

4.2.6 It is essential to support cooperation between SMEs and R&D&I institutions, entrepreneurial start-ups based on the transfer of research and innovation, and coaching and fundraising activities. It is also important to contribute to upgrading specific skills to facilitate technology transfer to SMEs and to exploit the results of research and innovation.

4.2.7 With reference to weaknesses and difficulties that hamper SME access to the opportunities offered by innovation, the following actions are identified as priorities:

- setting up a transnational R&D&I (research, development and innovation) platform to secure the joint and active involvement of SMEs, universities, research centres, and technology and business incubators in improving SME competitiveness by transforming innovative ideas into market-ready products;
- developing transnational smart specialisation studies to identify innovation and business capacities;
- promoting more entrepreneurial involvement in deciding R&D&I policies;
- launching an 'Adriatic and Ionian matchmaking platform' to make it easier for SMEs and young entrepreneurs to obtain innovation funding by identifying transnational and international co-investment structures and new fundraising opportunities.

4.3 **The social dimension** — not only has the economic crisis had a negative impact on the real economy and on millions of lives, it has also clearly demonstrated the need for public measures to block factors that undermine economic development and to protect standards of living and welfare by stepping up action in the area of social and welfare policies.

4.3.1 The EESC believes that the EUSAIR's social dimension requires further support in order to ensure the development of a growth model that secures competitiveness and, at the same time, social inclusion and protection, especially for those who find themselves in the most vulnerable and disadvantaged situations.

⁽²²⁾ *Think Small First — A Small Business Act for Europe*, COM(2008) 394 final/2.

⁽²³⁾ *Entrepreneurship 2020 Action Plan — Reigniting the Entrepreneurial Spirit in Europe*, COM(2012) 795 final.

4.3.2 When incorporating and strengthening the EUSAIR's social dimension, attention must be paid to the Commission's communication on social investment for growth and cohesion ⁽²⁴⁾, which urges the Member States to prioritise social investment and the modernisation of their social protection systems by developing policies along three specific axes, namely:

- ensuring that social protection systems meet the needs of people at critical moments in their lives;
- simplifying social policies and concentrating on actual users in order to provide appropriate and sustainable social protection systems;
- implementing active inclusion strategies in full.

4.3.3 It is vital to promote measures to support the inclusion of people with disabilities and prevent discrimination on grounds of race, ethnicity, age, sexual orientation or gender. Disabled access to infrastructure, technologies and services must receive clear support since it is a fundamental prerequisite for inclusive growth.

4.3.4 The EUSAIR must also include measures to address the social issues associated with irregular migration, which for the most part affect the southern part of the region.

Brussels, 11 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽²⁴⁾ Towards Social Investment for Growth and Cohesion — including implementing the European Social Fund 2014-2020, COM(2013) 83 final.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008’

COM(2014) 163 final — 2014/0095 (COD)

and the ‘Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code)’

COM(2014) 164 final — 2014/0094 (COD)

(2014/C 458/07)

Rapporteur: **Antonello Pezzini**

Co-rapporteur: **Luis Miguel Pariza Castaños**

On 3 April and 21 May 2014 respectively, the European Parliament and the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008

COM(2014) 163 final — 2014/0095 (COD).

On 3 July and 21 May 2014 respectively, the European Parliament and the Council of the European Union decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code)

COM(2014) 164 final — 2014/0094 (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 27 August 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 175 votes in favour and 1 abstention.

1. Conclusions and recommendations

1.1 The EESC wholeheartedly supports these two proposals for a regulation, the first of which seeks to establish touring and multiple entry visas and to amend the Convention implementing the Schengen Agreement, and the second of which seeks to recast the Visa Code in order to improve it, thereby promoting growth and new jobs.

1.2 The EESC fully supports the recommendations made by the European Council on 23 June 2014 concerning the need for the common visa policy ‘to be modernised by facilitating legitimate travel and reinforced local Schengen consular cooperation while maintaining a high level of security and implementing the new Schengen governance system’.

1.3 The EESC is convinced of the need to support all measures — including visa policy — to simplify and facilitate the entry of people who, having the right and the means to do so, wish to come to the EU for whatever legitimate reasons.

1.4 Europe is part of a globalised, interconnected world where international mobility is set to increase: hence the need to ensure better synergies with other strategic sectors, such as trade, tourism and culture, and to promote legitimate and secure entry on the basis of full reciprocity.

1.5 The authorities should direct their attention to young people from non-European countries in particular, including through financial support and procedural facilitations, which would make it possible for the EU to influence new generations with its own values and enable a culture of respect and tolerance among nations and to stem extremism in any form.

1.6 A secure and informed entry policy requires the EU — building on the process of unification constructed and supported by the Member States following the traumatic events of the first half of the ‘Short Twentieth Century’ — to become the place that delivers the actual dream not only of peace, progress, democracy and respect for all citizens, but also of growth, employment and competitiveness.

1.7 A smart policy for entry into the European area of freedom and justice should follow from the Nobel Prize awarded to the EU as a tangible sign of its accomplishments in terms of human rights, gender equality, recognition of people as intelligent consumers, sustainable development, protection and respect for the different faiths and sexual orientations of all people and the security of EU citizens.

1.8 The EESC, in its capacity as the ‘forum’ of civil society, believes that the smart and secure simplification of procedures applied to various third-country nationals entering EU territory should be able to contribute to growth and economic and social welfare, but moreover to help to spread the values that enable EU citizens to live together.

1.9 The EESC is convinced that we are approaching the time when it will be possible to move beyond the cultural and political reasons which led European states to establish national embassies, and that a single EU representation in third countries would constitute a qualitative leap forward in the way the EU addresses the rest of the world, giving new impetus to Europe’s unification process, also with respect to entry policy, which would solve many problems associated with different visa procedures and boost esteem and respect for the Union’s full political integration.

1.10 As a result, the EESC has the following recommendations for the European Commission, the European Parliament and the Council.

- Supporting documents for visa applications should be harmonised.
- More accurate data should be collected for the purposes of appropriate statistical monitoring.
- Touring visas and multiple entry visas should be introduced to facilitate tourism, performance, culture and business.
- Straightforward and streamlined procedural guarantees should be strengthened and uniformly applied.
- A Schengen visa website should be created in order to make it possible to submit applications online.
- Binding rules to distinguish different categories of applicants should be established to enable applicants with a ‘visa history’ to enjoy flexibility in terms of supporting documents.
- Adequate flexibility should be allowed for granting visas at the border for seafarers and single entry short-stay tourist visas.
- A secure legal framework should be established to facilitate the granting of visas for family visits.
- Consular cooperation should be strengthened to improve flexibility and with a view to introducing the principle of mandatory representation by taking concrete steps towards a single EU representation.

2. Introduction

2.1 A common policy on visas is a basic ingredient in the creation of a common area without internal borders and is integral to Articles 77(2) a) and 79 of the TFEU, which confer upon the EU the power to act in the area of visas and residence permits in the context of legal short-term stays in an EU Member State, under Title V of the TFUE ‘Area of Freedom, Security and Justice’.

2.2 The Schengen *acquis* regarding policy on visas, built up through intergovernmental cooperation under Schengen, has thus been built into the EU's institutional and legal framework: the Visa Code and the common policy on visas currently cover only visas for short-term stays (Schengen visas for stays of up to 90 days in a 180-day period) and concern visas issued by 22 Member States and four associated states. They do not apply to Bulgaria, Croatia, Cyprus, Ireland, Romania or the United Kingdom ⁽¹⁾.

2.3 In 2013 the 26 current Schengen members issued over 16,1 million Schengen visas in response to 17 204 391 applications. The land borders of the Schengen area cover 7 702 km, the sea borders 41 915 km, and there are 644 air border points. According to recent studies ⁽²⁾, a total of 6.6 million potential travellers were 'lost' in 2012 as a result of the complexity of visa issuing procedures, with a lost increase in entries of between 30 and 60 % and lost revenue of up to EUR 130 billion.

2.4 The main measures adopted under Schengen include:

- the abolition of internal border controls for people;
- a common set of rules applying to people crossing the external borders;
- harmonisation of entry conditions and the rules on visas for short stays;
- enhanced police cooperation, including rights allowing cross-border surveillance and hot pursuit;
- stronger judicial cooperation with a faster extradition system and transfer of enforcement of criminal judgments; and
- the creation and development of the Schengen Information System (SIS).

2.5 The Visa Code ⁽³⁾, which establishes harmonised procedures and conditions for issuing visas for short stays, is the fruit of the recasting and consolidation of all the legal acts governing conditions and procedures for the issuing of such visas and has replaced the obsolete elements of the Schengen *acquis*.

2.6 The Visa Code's declared aim is to reinforce the coherence of the common visas policy, in order to boost transparency and legal certainty, strengthen the procedural guarantees and equality of treatment of visa applicants, securing a high quality service and establishing the principle of a one-stop shop for applications, so as to facilitate legitimate travel, stem irregular immigration and maintain public order and security.

2.7 The bolstering of the Schengen Area, the agreement on a common European asylum system, the improvement of the common policy on visas, and the reinforcement of European cooperation in the fight against organised crime and its most dangerous manifestations (terrorism, human trafficking, cybercrime, etc.) all represent important progress, but it is still not enough. Greater cooperation is necessary within the Schengen area and with third countries. The common policy on visas also aims to:

- lay down common rules on external border controls, and
- promote the removal of internal border controls.

2.8 More specifically, visa policy is connected with the EU's border policies, as third country citizens requiring visas are subject to an initial check intended to establish whether they meet the conditions for entry into the EU at the time that their visa application is considered.

2.9 Application of Visa Code procedures has revealed various shortcomings, including:

- the failure to waive the requirement to lodge visa applications in person by simply providing certain supporting documents, owing to the issue of entrusting the evaluation of 'integrity' and 'reliability' to external services;

⁽¹⁾ Despite already being a signatory to the Schengen Agreement, Denmark can choose whether or not to apply every new measure arising from Title V of the TFEU.

⁽²⁾ Impact assessment supporting revision of the European Union's visa policy in order to facilitate legitimate travel, 18 July 2013.

⁽³⁾ OJ L 243, 15.9.2009, p. 1.

- the absence of general measures to facilitate procedures for first-time applicants, while maintaining a high level of security;
- the absence of collection and processing points for visa applications in many third countries;
- the absence of measures to facilitate mobility in cases of family visits;
- the absence of measures to facilitate the issue of multiple entry visas of a longer duration.

2.10 Europe is part of a globalised, interconnected world where international mobility is set to increase: for that reason, better synergies need to be secured with other strategic sectors, such as trade, tourism and culture, and short trips for highly-qualified service providers should be promoted. The number of potential legitimate visitors, staying over 90 days in a 180 day period without the intention of taking up residence in one of the Schengen states for a longer period is set to increase.

2.10.1 Above all, young people should be given the legal and financial possibility to enter — without difficulty — a Europe that is no longer a fortress but a school for democracy and tolerance in the world.

2.11 The new governance system for Schengen must ensure that the public and the European economy continue to reap the full benefits of border-control-free movement within the Schengen area, promoting opportunities for legitimate travel by modernising the visa policy and implementing the 'intelligent borders' initiative, while also maintaining a high level of security and meeting visa applicants' legitimate expectations.

2.12 Faced with the forecast increase in visa applicants, the proper functioning of the Schengen Information System (SIS) and the Visa Information System (VIS) will play a decisive role in narrowing the possibilities for visa applicants to seek the easiest way into the Schengen area by heading for those states that are perceived as least strict or where the procedures are quicker and less cumbersome.

3. Proposals under the new Visa Package

3.1 The main elements of the package proposed by the Commission can be summed up as follows:

- a reduction in maximum decision-making time from 15 to 10 days from the time of lodging an application to a decision being taken;
- the possibility of lodging a visa application in the consulate of another EU Member State if the Member State responsible for processing the visa application is not present or represented in the applicant's country;
- the possibility for frequent travellers to benefit from a number of preferential measures, including the mandatory issue of a multiple entry visa valid for three years;
- the introduction of a simplified application form;
- the possibility for Member States to introduce specific systems for issuing visas at borders, valid for a maximum of 15 days and for a single Schengen state;
- the opportunity for Member States to facilitate the issue of visas to visitors taking part in major events;
- the introduction of a new type of visa — a touring visa — that allows legitimate visitors to move around within the Schengen area for a maximum period of one year (for a maximum of 90 days within a 180-day period within the same Member State);
- the introduction of multiple entry visas and the possibility of granting visas at the border;
- the waiver of visa fees for clearly defined categories and facilitation for seafarers and cruise workers.

4. General comments

4.1 The EESC considers a common visa policy to be fundamental to the establishment of a common area without internal borders: this builds the Schengen *acquis* regarding visa policy, established within the framework of Schengen intergovernmental cooperation, into the institutional and legal context of the EU, within the meaning of the Treaty.

4.2 The necessary increase in consular cooperation must be accompanied by greater interoperability and concrete steps towards a single EU representation in many countries around the world. This would send a clear signal of political growth and would allow considerable savings, in addition to simplifying and standardising procedures.

4.2.1 Furthermore, the European External Action Service (EEAS), which has been operational since 1 January 2011, has 140 delegations around the world in addition to its Brussels headquarters, 3 292 staff members and a budget of EUR 519 million for 2014.

4.3 Bringing all the legislation on the processing of visa applications for short stays into one instrument and changing the rules on the issuing of visas clearly contributes to simplifying legislation, improving transparency and boosting legal certainty.

4.4 The Committee endorses the Visa Code's general objective of ensuring that the common visa policy is genuinely common and that all the Member States apply it in the same way in all places, using a set of legal provisions and operational instructions.

4.5 The EESC would stress the economic benefits in terms of boosting growth and generating jobs that arise from facilitating legitimate travel, within a clear legal framework, not only for stays of up to 90 days in any 180-day period.

4.6 Third country applicants with legitimate reasons for staying longer, such as artists, entrepreneurs, teachers, researchers, students or pensioners wishing to stay in the Schengen area for a period greater than 90 days, without staying for more than 90 days in the same country should also be able to do so with assurances of high levels of security.

4.7 According to the EESC, once adopted, the provisions should not only contribute to economic growth in the EU, but also to promoting the common principles of European legislation, as enshrined in the Treaty and in the Charter of Fundamental Rights, to the cultures of the world:

- the representation of a social market economy;
- the promotion and respect for the role of the social partners and organised civil society;
- the promotion of consultation and the joint search for the common good;
- respect for the role of citizens as consumers;
- support for a cooperative culture;
- the promotion of gender equality;
- guarantees for free and individual choice in matters of faith and sexual orientation;
- the adaptation of social structures to the needs of the differently able.

4.8 The EESC supports the proposal for a multiple entry visa, in view of the potential it brings for making travellers' lives easier: issuing a higher number of multiple entry visas would cut red tape for applicants and consulates alike, generating considerable savings, not least by means of the Visa Information System (VIS).

4.9 For this reason, the EESC supports the Commission's proposals with regard to:

- the reduction of administrative burdens for applicants and consulates, making full use of the possibilities provided by the VIS for differentiated treatment for known or regular travellers and unknown applicants, in accordance with clear and objective criteria;
- the simplification and full harmonisation of procedures making compulsory provisions that have to date been left to consulates' discretion;

- the revision of the existing framework for consular cooperation to guarantee access to simpler procedures for applying for Schengen visas in as many places as possible;
- the inclusion in the Visa Code of an article allowing the issue of temporary visas at borders, subject to well-defined conditions;
- facilities for the issue of visas for family members, in particular for those benefiting from Directive 2004/38/EC;
- rules to bridge the gap between the legal provisions governing short stays and those governing the admission of third-country citizens to Member States.

5. Specific comments

5.1 The EESC supports the proposal for binding measures to harmonise supporting documents for visa applications in the context of local Schengen consular cooperation, and to prepare an annual report on the general situation to be shared with the legislators, in order to ensure consistency and transparency. These provisions should not allow any inequalities whatsoever between consulates with respect to the requirements.

5.2 The EESC believes that the assurance of more accurate data collection, to be achieved by revising the list of data gathered and presented by the Member States, is crucial to adequate statistical monitoring and an improved analysis of individual items, typologies and procedures for issuing visas to enable an appropriate evaluation of the achievement of objectives in the future.

5.3 The EESC supports the introduction of touring visas as legal instruments which, on the basis of rational criteria, authorise people with bona fide and legitimate reasons, who request to stay in the Schengen area for more than 90 days, visiting various Member States, in a 180-day period, without exceeding 90 days in a single Member State.

5.4 The EESC believes that a better definition of the 'competent' Member State and a simpler application form would strengthen procedural guarantees and avoid delays and complications.

5.5 The EESC welcomes the abolition of the principle of 'lodging in person' — except for the collection of fingerprints for first-time applicants — but without prejudice to the possibility of carrying out an interview as well as clarification regarding the online submission of applications up to six months ahead of the intended date of entry. This proposal is particularly convenient for frequent travellers with previous visa applications as all data relevant to their entry into the Schengen area would still be registered.

5.5.1 Without prejudice to maintaining high levels of security, the EESC recommends equally high levels of personal and biometric data protection, as well as the protection of 'sensitive' data already covered by the EESC⁽⁴⁾. The EESC therefore calls on the EU Agency for large-scale IT systems (eu-LISA) to ensure that VIS and SIS II data is fully protected.

5.6 The EESC welcomes the inclusion of elements that ensure legal certainty and shorten response times for applications thanks to a simplified exhaustive list of supporting documents that excludes travel medical insurance, especially for travellers of known reliability and integrity.

5.7 The proposal to establish mandatory rules on the basis of objective and clearly defined criteria, to enable a clear distinction between different categories of applicants, should enable applicants with a positive 'visa history' registered in the VIS during the 12 months prior to their application to enjoy greater flexibility in terms of supporting documents. The EESC believes that this will speed up the process and cut costs, including for multiple entry visas and visas that extend beyond the validity of the travel document.

⁽⁴⁾ OJ C 248, 25.8.2011, p. 123.

5.8 The mandatory waiver of visa fees — to be applied uniformly by all Member States irrespective of where the application was submitted — for clearly defined categories, especially minors and Erasmus Mundus students, corresponds to egalitarian and non-discriminatory criteria and principles of legal certainty.

5.9 The EESC recommends sufficient flexibility, while safeguarding a margin of security, in reviewing the criteria for granting visas at the border for seafarers and single entry short-stay tourist visas through a review of the Visa Code provisions on this issue.

5.10 The EESC is equally favourable to reviewing the rules on airport transit visas in order to increase their proportionality, which will put an end to the Member States' restrictive approach.

5.11 With regard to visas issued to third-country nationals visiting family members who are Union citizens residing in the EU, the EESC believes that they should — at the very least — benefit from the same provisions granted under Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, facilitating family ties by simplifying procedures and waiving visa fees.

5.12 With regard to reviewing the existing definitions of consular cooperation in order to make them more flexible and to introduce the principle of mandatory representation, the EESC believes that this review would cut costs and improve consular coverage and interoperability.

5.13 In this regard, the EESC is certain that a single representation would solve many problems associated with differences in procedures for granting visas and allow considerable savings, giving the EU a single voice in this area as well.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the 'Proposal of the European Parliament and of the Council on establishing an European platform to enhance cooperation in the prevention and deterrence of undeclared work'

COM(2014) 221 final — 2014/0124 (COD)

(2014/C 458/08)

Rapporteur: **Stefano Palmieri**

Co-rapporteur: **Ana Bontea**

On 16 April 2014 the European Parliament and on 29 April 2014 the Council decided to consult the European Economic and Social Committee, under Article 153(2)(a) and Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council on establishing an European platform to enhance cooperation in the prevention and deterrence of undeclared work

COM(2014) 221 final — 2014/0124 (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 27 August 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 172 votes to 88 with 22 abstentions.

1. Conclusions and recommendations

The EESC

1.1 believes that undeclared work, as a problem affecting all Member States — though to varying degrees — undermines the European ideals of legality, security, solidarity, social and tax justice, free market competition and free movement of workers in the EU;

1.2 considers that tackling undeclared work, using appropriate measures to prevent, control and combat it, is a fundamental strategic choice if we are to bring this phenomenon out of the shadows and enable the competitiveness of the European Union's economic and social system to recover, in line with the priorities and guidelines set out in the Europe 2020 strategy;

1.3 welcomes the proposal to establish an European platform to enhance cooperation in combating undeclared work; it chimes with the various statements made in recent years by the European Parliament, the Council and the EESC, reiterating the need to launch a coordinated strategy at European level to create jobs and smart, sustainable and socially inclusive growth and improve cooperation on combating undeclared work, thus filling a gap at EU level, as the approach to undeclared work has so far been patchy and inadequately coordinated;

1.4 endorses the proposal to set up an European platform with mandatory involvement of all Member States and believes that through joint and coordinated participation of all the EU countries it will be possible to address cross-border matters and issues connected with the presence of undocumented undeclared workers from third countries;

1.5 while acknowledging that undeclared work and falsely declared or bogus self-employment are two distinct notions, considers that it is right to include bogus self-employment among the forms of undeclared work that the platform will endeavour to prevent, deter and combat, given the negative consequences it entails: i) for workers' rights and safeguards; ii) for normal free market competition; and iii) for the free movement of workers in the EU;

1.5.1 hopes that the platform — while abiding by national laws and practice, and by assessing the experiences of individual Member States — will define bogus self-employment and thus pave the way to an effective strategy for combating this phenomenon;

1.6 while fully agreeing with the functions and tasks of the platform, believes that its remit could be expanded to include the possibility of making recommendations on legislation at EU or Member State level, so as to ensure a more effective strategy (for instance, proposing tighter cross-border cooperation on inspection work to monitor and combat the problem);

1.7 with regard to the national appointment of a single contact point, believes that the Member States should ensure the mandatory involvement of the social partners and invite those civil society organisations that — having built up specific knowledge of undeclared work — can deliver added value to the strategy to tackle this issue;

1.7.1 considers that European platform meetings should be properly prepared by means of preparatory and briefing meetings, making it possible to disseminate the results of the platform's work (ensuring its activities are entirely transparent);

1.8 believes that measures designed to prevent and deter undeclared work should combine a variety of tools, marrying controls and sanctions with smart regulatory measures, with a view to securing a stable and predictable legal framework, while reducing the cost of implementing rules, avoiding excessive taxation on labour, using efficient methods so as to encourage employers to declare work and comply with the law, including through tax incentives and simplified systems for the payment of tax and social security obligations and introducing tax incentives to coax undeclared work into the open.

1.9 Within the EU-defined strategy for combating undeclared work, the EESC has worked unceasingly over the years to promote and encourage the sharing of instruments, policies and best practice, addressing both economic factors and the cultural and social context. The EESC thus hopes that this role will be officially recognised in the implementation arrangements and that it will be made one of the platform's observers;

1.10 considers that when it comes to raising public awareness, more must be done to step up the capacity for civil society involvement, not least through joint action by the EESC and national economic and social councils as part of the work done by the Europe 2020 strategy steering committee and other bodies within the EESC;

1.11 hopes that recognition will be given within the platform to the role that could be played by:

- Eurostat, by carrying out assessments to ascertain the scale of, and trends in, the shadow economy and undeclared work in the EU;
- Eurofound, by setting up an interactive database of best practices in tackling undeclared work at EU level; and
- the OECD, in providing technical support for understanding the phenomenon;

1.12 maintains that it would be worth equipping the platform with a monitoring and evaluation mechanism using a system of ad hoc indicators and independent assessors.

2. The phenomenon of undeclared work in the European Union

2.1 Undeclared work is defined in the EU 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' ⁽¹⁾. It also includes falsely declared work, or bogus self-employment. This is when the worker is formally declared to be self-employed and working on the basis of a service contract, although the work performed fulfils all the criteria that are used by national law and practice to characterise that of an employee ⁽²⁾.

⁽¹⁾ COM(2007) 628.

⁽²⁾ COM(2014) 221 final.

2.2 Undeclared work and bogus self-employment are diverse aspects of a phenomenon that has negative consequences for workers' rights and safeguards, for normal competitive conditions on the single market and for the free movement of workers in the EU. It is perfectly logical to include bogus self-employment among types of undeclared work to be countered by the platform, since these are forms of illegality that are expanding as undeclared work spreads within the service sector and that deprive workers of rights and safeguards in a way similar to undeclared work ⁽³⁾.

2.2.1 As the EESC has already pointed out ⁽⁴⁾, there is as yet no single definition for the self-employment category at European level. Each competent authority thus refers to national legislation, making it difficult to implement an European-level strategy for countering bogus self-employment, especially when it comes to the cross-border context.

2.2.2 Against this background, the EESC has previously advocated assessing the various experiences gained in the individual Member States in order to draw conclusions and draw up recommendations for an effective strategy to counter falsely declared or bogus self-employment. In its opinion on the *Abuse of the status of self-employed* ⁽⁵⁾, the EESC stressed the need for reliable regulation based on a definition of bogus self-employment that could protect the genuinely self-employed and micro businesses from the risks of unfair competition.

2.2.2.1 This position is consistent with the case law of the European Court of Justice, which, with a view to ensuring normal market conditions and the free movement of workers, while reiterating the responsibility of the Member States for defining employed and self-employed workers, has provided guidelines for a general definition of these concepts — by means of standards — so as to ensure the uniform application of the provisions of the Treaties ⁽⁶⁾.

2.2.2.2 The EESC believes that, through this approach, the socio-economic role of self-employment would be further enhanced, with only genuinely self-employed people coming under this category. The legitimate status of self-employed would thus be respected for whoever freely chooses to provide their services independently. The EESC limits itself here to guiding the Member States by suggesting best practice models.

2.3 The variety and complexity of undeclared or falsely declared work means that it involves a very diverse range of people: employees not covered by social security, or without a contract or paid partly in cash; family helpers; workers who do not declare their second job; self-employed workers who choose not to follow the rules; the bogus self-employed; irregular immigrants involved in undeclared work, and workers from third countries who subcontract to Member States without minimum standards for decent work ⁽⁷⁾. Such heterogeneity makes undeclared work difficult to tackle and calls for targeted strategies.

2.4 Undeclared work affects all Member States and is a phenomenon that runs counter to European ideals of legality, security, solidarity, social and tax justice, free market competition and free movement of workers in the EU.

2.4.1 Undeclared work must be properly addressed because of its numerous effects on both companies and workers, not to mention on the public purse:

- it leads to unfair and distorted competition between companies that abide by the rules and those that do not, keeping companies in business that would otherwise probably not be in the market; it also creates a dynamic of inefficiency, with companies stunting their own growth so as to remain in the shadow economy, where they do not have access to credit and are not in a position to access the possibilities offered by public procurement;

⁽³⁾ European Parliament (2013) *Social protection rights of economically dependent self-employed workers*. Study; Floren, B. (2013), *Fake self-employment in the EU — A comparison between the Netherlands and the UK*, Tilburg University.

⁽⁴⁾ CES2063-2012_00_00_TRA_PA.

⁽⁵⁾ OJ C 161, 6.6.2013, p. 14-19.

⁽⁶⁾ As pointed out by Floren, B. (2013) op.cit., the judgment of the European Court of Justice (ECJ) C-66/85 of 3 July 1986, Lawrie-Blum/Land Baden-Württemberg, defined an employee as: 'a person who for a certain period of time performs services for and under the direction of another person in return for which he receives remuneration'. As this definition was adopted in recent ECJ judgments (Joined cases C-22/08 and C-23/08, Athanasios Vatsouras and Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg 900; C-268/99 Judgment of 20/11/2001, Jany and others) it has implicitly established the conditions for also defining — by exclusion — self-employment. This is illustrated by the aforementioned judgment C-268/99, where the ECJ explicitly affirms that: 'any activity which a person performs outside a relationship of subordination must be classified as an activity in a self-employed capacity'.

⁽⁷⁾ European Commission (2014), *Undeclared work in the EU*. Special Eurobarometer 402; A.T. Kearney, VISA, Schneider, F., (2013) *The Shadow Economy in Europe*.

- the workers concerned suffer poor conditions in terms of physical safety, and income, job and social security, with consequences not only from an ethical standpoint regarding their dignity, but also in terms of their career, 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).

2.4.2 Undeclared work exists within the EU to varying degrees across different sectors: agriculture, construction, craft manufacturing (textiles, clothing, footwear, etc.), retail, hospitality, catering, maintenance and repair services, care work and domestic services⁽⁸⁾.

2.5 Estimates of the scale of the phenomenon vary widely and quantifying it at EU level is very complex. The results we do have, including from the most recent surveys⁽⁹⁾, highlight the difficulties. Obviously, this opacity has a direct impact on the capacity to mount effective intervention, calling for action targeted specifically at different sectors.

2.5.1 In a recent Eurofound study, 18,6 % of the sample interviewed across 27 EU Member States said that they had carried out undeclared work in 2008⁽¹⁰⁾. Of those, 31,3 % were employees who were paid partly in cash, not declared by their employers (usually around one quarter of their salary); 14,4 % were employees whose pay was entirely undeclared; 14,4 % were undeclared self-employed people; and 39,7 % were people carrying out services on a cash basis for family members, friends, social contacts, etc. According to the latest Eurobarometer survey⁽¹¹⁾ of 2013⁽¹²⁾, only 4 % of respondents admitted that they performed undeclared work. However, 11 % admitted that they had purchased goods or services in the previous year where they had good reasons to believe it involved undeclared work. There are considerable variations across the EU⁽¹³⁾.

2.5.2 As things stand, there is uncertainty about the trends in undeclared work during the crisis. There is a risk that it will grow further in the areas of activity and occupation types where it already exists and that it will spread into other areas (for instance with the advance of information and communication technologies)⁽¹⁴⁾.

2.6 Globalisation and socio-demographic change also provide additional fertile ground for the shadow economy and undeclared work, so policies to counter them must evolve accordingly. There is no doubt that individual countries have limited capacity for action here. This is particularly clear when it comes to the transnational aspects of undeclared work.

2.7 The involvement of irregular immigrants in undeclared work is a serious problem that must be tackled as part of the overall strategy to counter irregular immigration. For many irregular immigrants undeclared work is an unavoidable survival strategy. The promise of undeclared work can also act as a 'pull' factor for irregular immigration.

3. General comments

3.1 The decision to put in place an European platform is the outcome of a long process of taking stock of the gravity of the phenomenon and of scrupulous preparation by the main EU institutions⁽¹⁵⁾.

3.2 The proposal to make Member State participation in the European platform mandatory is a logical EU initiative given that all Member States are now affected by the problem of undeclared work, to varying degrees but nevertheless in similar ways.

⁽⁸⁾ European Commission (2014), op.cit.; European Commission (2013), *Employment and social developments in Europe*; Hazans, Mihails (2011), *Informal workers across Europe: evidence from 30 European countries*, World Bank; Koettl, Johannes, Packard, Truman, Montenegro, Claudio E. (2012), *In from the shadow: integrating Europe's informal labor*, Washington, DC: World Bank.

⁽⁹⁾ See especially: Eurofound (2013), *Tackling undeclared work in 27 European Union Member States and Norway — Approaches and measures since 2008*; Eurofound (2013) [b], *Tackling undeclared work in Croatia and four EU candidate countries*; Special Eurobarometer 402, *Undeclared work in the European Union*, March 2014.

⁽¹⁰⁾ Eurofound (2013) [b].

⁽¹¹⁾ All figures result from direct surveys, which were based on face-to-face interviews with EU citizens. Meaning that awareness, national definitions, transparency of undeclared work and trust in the interviewer, are important factors for citizens to enable them to indicate that they have performed or benefitted from undeclared work.

⁽¹²⁾ Special Eurobarometer 402, *Undeclared work in the European Union*, 2013.
http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf

⁽¹³⁾ COM(2014) 221 final.

⁽¹⁴⁾ European Commission, 2013, op. cit.

⁽¹⁵⁾ See the following documents: COM(2010) 2020, COM(2012) 173, Council Decision 2010/707/EU of 21 October 2010, European Parliament Resolution 2013/2112(INI) of 14 January 2014.

3.2.1 Instigating this type of cooperation among the Member States is all the more important given the need to uphold and safeguard the European ideals of solidarity and social justice; free market competition; and the free movement of workers as one of the EU's fundamental freedoms, and also given the cross-border dimensions of undeclared work and the challenges posed by labour mobility.

3.2.2 The platform should ensure better coordination between the various committees and working groups that exist in the Member States, thus filling a gap at EU level, where the approach to undeclared work has so far been patchy and inadequately coordinated.

3.2.3 The shared and coordinated involvement of all the EU Member States is essential to stiffen the resolve to combat illegal work in its various guises (including bogus self-employment) and the cross-border aspects and problems that come from the presence of undeclared workers from outside the EU.

3.3 The fact that the wording of the proposal fully respects the EU's subsidiarity and proportionality principles, and should continue to do so, is to be welcomed.

3.3.1 Action to prevent and deter this kind of work remains a matter for the Member States. Non-criminal sanctions (administrative and non-administrative) and criminal sanctions are available based on the principle of legality and respect for procedure and for the provisions in force in each country.

3.4 Combating undeclared work is a fundamental strategic choice for the EU. It is a strategy that will bring the phenomenon out of the shadows and thus help to drive economic growth and relaunch the competitiveness of the EU's economic and social system in line with the Europe 2020 goals.

3.5 Action to prevent and deter undeclared work must be targeted at its real causes and the need to combine instruments to tackle it — in the form of inspections and sanctions designed to combat improper, unfair and undeclared commercial or business practices — with smart regulation measures that provide a stable and predictable legal framework.

3.5.1 It would be helpful to create a positive environment for businesses and workers in which the costs of implementing the rules are reduced, administrative and fiscal procedures are revised and simplified, and regulations on labour, safety in the workplace, seasonal and casual work and new forms of work are improved.

3.5.2 Tax incentive policies can play an important role in preventing and deterring undeclared work, with tax breaks rewarding behaviour that upholds the rules and helps to bring undeclared work into the open, including domestic and care work.

3.6 Care must be taken to ensure that the European platform avoids duplicating existing initiatives or forms of cooperation, as well as reporting obligations that are not helpful in tackling the problem and are therefore redundant.

4. Specific comments

4.1 Given that our picture of the extent of and trends in undeclared work often appears incomplete, it is quite clear that action by national authorities to tackle it would benefit greatly from the hands-on knowledge that can be offered by the social partners, as well as SME organisations, the professions, the social economy, and more generally civil society organisations. Ensuring such a flow of information is in fact the best way to guarantee that the work of the platform is steered most effectively.

4.2 With regard to the national appointment of a single contact point, it is important that the Member States ensure the mandatory involvement of the social partners and invite the civil society organisations that are playing a decisive role in national action to combat undeclared work.

4.2.1 It is crucial that preparatory meetings be held in each Member State, to lay firm foundations for meetings of the European platform, as well as national follow-up meetings at which the results of the platform's work can be disseminated.

4.3 The EESC has stressed the need to bolster action to combat undeclared work through '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' ⁽¹⁶⁾.

4.3.1 The EESC has worked unceasingly to promote and encourage the sharing of instruments, policies and best practices that bear upon economic factors and the cultural and social context. It therefore calls for its role to be officially recognised in the implementation arrangements and to be made one of the platform's observers.

4.4 The work to raise public awareness provided for in the platform provides an important opportunity for all the Member States to boost the prevention, reduction and combating of undeclared work. It is important here not to underestimate the potential of civil society involvement, activated by a joint initiative of the EESC and the national ESCs within the Europe 2020 strategy steering committee and other EESC bodies.

4.4.1 The part played by national authorities when it comes to prevention, information and consultation ⁽¹⁷⁾ has been inadequate and it is important that the platform discuss measures of this kind, including in the form of joint action such as European campaigns, which are, moreover, provided for in Article 4(1)(i).

4.5 The EESC is in complete agreement with the mission and tasks defined for the platform. There is no doubt that pooling information and sharing best practice, as well as developing analysis, research and competences (via joint training courses), are the first stage in launching coordinated transnational operations. In this respect, the EESC would be in favour of expanding the platform's remit to enable it to make recommendations on legislation, at EU or Member State level, so as to ensure the implementation of a more effective strategy (for instance, proposing tighter cross-border cooperation on inspection work to monitor and combat the problem).

4.6 As already stated in the earlier opinion, the platform should lay the groundwork for a quantitative and qualitative assessment: i) of the phenomenon of undeclared work (which differs enormously from one Member State to the next); ii) of the adverse economic and social effects, which also vary in the Member States as a result of differing structural and underlying conditions; and iii) of the effectiveness of action carried out within the Member States to combat it.

4.6.1 The establishment of the platform is important in this context and it is desirable that both Eurostat and Eurofound be able to play an important role within it.

- Eurostat could provide technical support to solve methodological problems regarding estimates of the scale and evolution of the shadow economy and undeclared work, which are so far incomplete and unshared.
- To support the platform's work, Eurofound, for its part, could transform its current database into an interactive knowledge bank of best practice in countering undeclared work.

4.7 The OECD has acquired special expertise over a number of years regarding undeclared work ⁽¹⁸⁾ and the EESC therefore believes that it would make sense to invite it to take part in the platform's work as an observer.

4.8 Rather than being limited to an audit every four years, the monitoring of the platform should be continuous, and it must be ensured that external assessors are truly involved in the choice of outcome and impact indicators and in the stage of assessing the platform's programme.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁶⁾ OJ C 177, 11.6.2014, p. 9-14.

⁽¹⁷⁾ In the 2014 Country Specific Recommendations, the following Member States received specific recommendations for action to fight the shadow economy: Bulgaria, Croatia, Hungary, Italy, Latvia, Romania and Spain.

⁽¹⁸⁾ OECD, 2002, *Measuring the Non-Observed Economy — A Handbook*; OECD, 2014, *The Non-Observed Economy in the System of National Accounts*, Gyomai, G.; van de Ven, P., Statistics Brief, No 18.

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments were rejected, although they did receive at least a quarter of the votes cast:

Point 1.5

Amend as follows:

~~'while acknowledging notes that undeclared work and falsely declared or bogus self-employment are two distinct notions, considers that it is right to include bogus self-employment among the forms of undeclared work that the platform will endeavour to prevent, deter and combat, given the negative consequences it entails: i) for workers' rights and safeguards; ii) for normal free market competition; and iii) for the free movement of workers in the EU The EESC has already pointed out ⁽¹⁾ that "there is a need for more reliable evidence" in this area, recommending that "tackling the specific problem of the self-employed be discussed in the social dialogue at both European and national level and that organisations representing their interests be allowed to take part in the social dialogue";'~~

Result of the vote:

For: 107

Against: 153

Abstentions: 12

Point 1.5.1

Amend as follows:

~~'hopes that the platform — while abiding by national laws and practice, and by assessing the experiences of individual Member States — will encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences define bogus self-employment and thus pave the way to an effective strategy for combating this phenomenon;'~~

Result of the vote:

For: 113

Against: 149

Abstentions: 10

Point 1.6

Amend as follows:

~~'while fully agreeing with the functions and tasks of the platform, believes that its remit could be expanded to include the possibility of making recommendations on legislation at EU or Member State level, so as to ensure a more effective strategy (for instance, proposing tighter cross border cooperation on inspection work to monitor and combat the problem) agrees with the functions and tasks of the platform, since they are merely indicative;'~~

⁽¹⁾ OJ C 161, 6.6.2013, p. 14-19.

Result of the vote:

For: 114

Against: 150

Abstentions: 9

Point 2.1

Amend as follows:

'Undeclared work is defined in the EU 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" ⁽¹⁾. ~~It also includes falsely declared work, or bogus self-employment. This is when the worker is formally declared to be self-employed and working on the basis of a service contract, although the work performed fulfils all the criteria that are used by national law and practice to characterise that of an employee ⁽²⁾.~~

Result of the vote:

For: 104

Against: 142

Abstentions: 6

Point 2.2

Amend as follows:

'Undeclared work and bogus self-employment are diverse aspects of a phenomenon that has negative consequences for workers' rights and safeguards, for normal competitive conditions on the single market and for the free movement of workers in the EU. Bogus self-employment is established by national legislation and by the legal definition drawing a line between paid employment and self-employment, and each Member State is responsible for adopting the provisions needed to comply with tax and social security obligations. Bogus self-employment cannot be dealt with at EU level without referring to the diversity of national definitions and status of self-employed. It is perfectly logical to includeCombating bogus self-employment ~~among types of undeclared work to be countered by the platform, is necessary,~~ since these are forms of illegality that are expanding as undeclared work spreads within the service sector and that deprive workers of rights and safeguards in a way similar to undeclared work⁶.

Result of the vote:

For: 112

Against: 142

Abstentions: 10

Point 2.2.1

Amend as follows:

'As the EESC has already pointed out⁴, there is as yet no single definition for the self-employment category at European level. and Each each competent authority thus refers to national legislation, ~~making it difficult to implement a European-level strategy for countering bogus self-employment, especially when it comes to the cross-border context. The EESC has stressed that ⁽³⁾:"self-employment differs from one Member State to another" and "different definitions exist not only in the various European countries, but also in EU law".~~

⁽¹⁾ COM(2007) 628.

⁽²⁾ COM(2014) 221 final.

⁽³⁾ OJ C 161, 6.6.2013, p. 14-19.

Result of the vote:

For: 115

Against: 151

Abstentions: 5

Point 2.2.2

Amend as follows:

~~'Against this background, the EESC has previously advocated assessing the various experiences gained in the individual Member States in order to draw conclusions and draw up recommendations for an effective strategy to counter falsely declared or bogus self-employment. In its opinion on the Abuse of the status of self-employed⁵, the EESC stressed the need for reliable regulation based on a definition of bogus self-employment that could protect the genuinely self-employed and micro-businesses from the risks of unfair competition that "there is a need for more reliable evidence to assess the number of affected workers and the most critical borders. Therefore more professional research is necessary." It further recommended that "tackling the specific problem of the self-employed be discussed in the social dialogue at both European and national level and that organisations representing their interests be allowed to take part in the social dialogue".'~~

Result of the vote:

For: 113

Against: 156

Abstentions: 9

Point 3.3

Amend as follows:

~~'The fact that the wording of The proposal must comply fully with the Community acquis and respects the EU's subsidiarity and proportionality principles, and should continue to do so, is to be welcomed.'~~

Result of the vote:

For: 105

Against: 152

Abstentions: 13

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and No 1967/2006 and repealing Council Regulation (EC) No 894/97’

COM(2014) 265 final — 2014/0138 (COD)

(2014/C 458/09)

Rapporteur: **Mr McDonogh**

On 22 May 2014 the Council decided to consult the European Economic and Social Committee, under Article 43 (2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004 and (EC) No 1967/2006 and repealing Council Regulation (EC) No 894/97

COM(2014) 265 final — 2014/0138 (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 18 July 2014.

At its 501st plenary session, held on 10 and 11 September 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 150 votes to one with two abstentions.

1. Conclusions and recommendations

1.1 The Commission should phase in a complete ban on driftnet fishing given the damage being done to the environment and the poor control over this sector by all Member States.

1.2 The Committee is aware of the fact that this ban adversely affects employment in certain Member States. As a civil society body, we would like to express our concern about any loss of income and encourage the Commission to find adequate measures for solving this problem.

1.3 The Committee proposes to use the European Maritime and Fisheries Fund to support the transition to other fishing methods.

2. Background

2.1 The Commission intends to amend Council Regulations (EC) No 850/98, (EC) No 812/2004, (EC) No 2187/2005 and (EC) No 1967/2006 and repeal Council Regulation (EC) No 894/97.

2.2 In the early 1990s, following specific United Nations General Assembly (UNGA) Resolutions, which called for a moratorium on large-scale pelagic driftnet fishing (i.e. gears longer than 2,5 km) on the High Seas, the EU developed legislation on driftnet fisheries.

2.3 The current EU legislative framework on driftnets has however shown weaknesses since existing rules are easy to circumvent. The absence of EU rules on gear characteristics (e.g. maximum mesh size, maximum twine thickness, hanging ratio, etc.) and gear use (e.g. maximum distance from the coast, soaking time, fishing season, etc.), combined with the possibility to keep on board other fishing gears, made it possible for fishermen to illegally use driftnets to catch species prohibited to be caught with this fishing gear, while declaring that they have been caught for example with another gear (e.g. longlines). Cooperation amongst fishermen jointly working together could easily bring to use fishing gears much longer than 2,5 km.

2.4 Incidental catches (or a high risk of interactions) with strictly protected species such as sturgeons, sea turtles, sea birds and cetaceans have been reported.

2.5 In addition, great lengths of drift nets are lost at sea every year, especially during severe storms. Because the nets are manufactured of synthetic materials that are highly resistant to degradation, they continue to snare fish, sharks, mammals, birds, turtles and other creatures for many years as so called ghost nets. Little is known about the magnitude of this problem but it is undoubtedly an important cause of mortality of marine animals such as wild Baltic salmon, tuna, squid, swordfish, etc.

2.6 Against this background, it is clear that serious environmental and conservation concerns linked to the use of these fishing gears still persist.

2.7 For most of the fishers, driftnetting represents only a few months per year of fishing activity, with several fishers using driftnets for less than half a month per year. Thus the total prohibition to use drift nets is not expected to result in a corresponding reduction of fishers which will continue to operate with other gears as already authorised in their fishing licence.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Green Paper on mobile health (“mHealth”)

COM(2014) 219 final

(2014/C 458/10)

Rapporteur: **Isabel Caño Aguilar**

On 10 April 2014, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green Paper on mobile health ('mHealth')

COM(2014) 219 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 1 September 2014.

At its 501st plenary session, held on 10 and 11 September, 2014 (meeting of 10 September), the European Economic and Social Committee adopted the following opinion by 180 votes to 1 with 1 abstention.

1. Conclusions and recommendations

1.1 The EESC wishes to emphasise the importance of mobile health (mHealth), which performs a number of healthcare-related functions and is a technology of the future that is being used by more and more people across the world.

1.2 The EESC welcomes the Green Paper, because of the contribution that mHealth can make to European healthcare systems, which are facing increasing challenges as a result of demographic change.

1.3 The EESC considers that the priority must be to improve healthcare, not to cut costs. The success of mHealth requires the participation of healthcare professionals, dialogue with patient organisations, the promotion of mutual trust between patients and professionals and the provision of incentives and training plans for the latter. Close dialogue also needs to be established with industry in this field.

1.4 The EESC recommends that information campaigns be conducted on all aspects of mobile health.

1.5 The new legal framework substantially improves the protection of personal data, as stipulated by the EU Charter of Fundamental rights, but there is currently no technological means of preventing improper access to mobile communications.

1.6 Macro data are essential to medical research. The EESC considers that: a) patient anonymity should always be upheld, b) data-mining programmes should be promoted, c) consideration should be given to prohibiting big data from being patented or sold and d) technologies and rules also need to be established for metadata.

1.7 There is a need to regulate, by means of a regulation: a) 'healthcare' within the meaning of Directive 2011/24/EU, b) safety and wellbeing apps and c) cross-border health care, which is not covered by current legislation.

1.8 Rules should be drawn up for the standardisation, certification and approval by the authorities of mobile health and wellbeing systems.

1.9 The Commission should consider putting in place binding national strategies to guarantee equal access to mobile healthcare.

1.10 Technical and semantic interoperability under the European Interoperability Strategy is hugely important to ensuring the widespread use of mHealth.

1.11 Adequate knowledge of the regulations and the use of approved equipment will help mitigate the liability of manufacturers and medical professionals.

1.12 International cooperation on mHealth, also involving the WHO, should prioritise establishing a list of medical devices, ethical principles, and data protection and interoperability provisions. Consideration should be given to placing mHealth on the agenda for the TTIP negotiations between the EU and the United States.

1.13 It is essential to look into removing the regulatory, economic, structural and technological barriers that damage European industry. SMEs have an important role to play in mHealth.

2. Gist of the Green Paper

2.1 According to the World Health Organization, mobile health (or mHealth): is ‘medical and public health practice supported by mobile devices, such as mobile phones, patient monitoring devices, personal digital assistants (PDAs), and other wireless devices’.

2.2 mHealth has considerable potential in the field of healthcare, with an approach based on improving prevention and the quality of life, healthcare that is more effective and sustainable and patients that are more empowered and active.

2.3 Given the exponential growth in mobile device users (totalling some 6 billion people worldwide), mHealth also has an estimated market potential of USD 23 billion by 2017.

2.4 In 2017 mHealth could potentially save a total of EUR 99 billion in healthcare costs in the EU.

3. General comments

3.1 The EESC wishes to emphasise the importance of mHealth, which fulfils a number of healthcare-related tasks and is a future technology that is being used by more and more people across the world.

3.2 The EESC welcomes the Green Paper, since mobile health can improve European healthcare systems, which are facing increasing challenges as a result of demographic change and the need to address the treatment of chronic diseases, obesity (a growing problem in the EU), smoking and many other problems.

3.3 The EESC would point out that although the EU will play a key coordinating and supporting role, responsibility for setting up and managing healthcare systems falls to the Member States, many of which are facing serious budget constraints.

3.4 In developed countries, mHealth is driven by the ‘imperative’ to cut healthcare costs. The EESC feels, however, that the priority should be to improve the healthcare that people receive.

3.5 Suggestions by the EESC for ensuring the success of mHealth:

- the involvement of healthcare professionals in setting it up;
- dialogue with patient organisations;
- dialogue with the app-producing industry;
- initial and ongoing training of healthcare staff in the use of mobile technologies and incentives to encourage them to do so;
- fostering trust between patients and professionals by avoiding the risk of ‘being impersonal’ and failing to pay attention to psychological and social factors⁽¹⁾.

3.6 The EESC recommends that public information campaigns on mHealth be run, also pointing out its limitations and the need for health or wellbeing devices to be used correctly. People should be aware that for all the new possibilities such devices offer, there are just as many risks.

3.7 The EESC is concerned to note the effects of austerity measures and staffing cuts to reduce hospital expenditures. It also emphasises the need not to undermine public welfare systems.

⁽¹⁾ Opinion on eHealth (TEN/509, 2013), OJ C 271, 19.9.2013, p. 122.

4. Specific comments. Replies to the questions

4.1 Data security

4.1.1 Which specific security safeguards in mHealth solutions could help to prevent unnecessary and unauthorised processing of health data in an mHealth context?

4.1.2 Poor security is a barrier to the wider use of mHealth.

4.1.3 There are no solutions that can 'prevent' improper access to healthcare data, although encryption and authentication mechanisms can reduce the risk to some extent. Data protection technologies are available on the market today, but there are no guarantees as to their reliability.

4.1.4 The EU's current legal framework for data protection⁽²⁾ is now under review⁽³⁾. The new regulation, which is likely to enter into force in 2015, represents a considerable improvement as regards the right to the protection of personal data enshrined in the EU Charter of Fundamental Rights (Article 8) and in the TFEU (Article 16(2))⁽⁴⁾.

4.1.5 In the EESC's opinion:

- Putting in place effective data protection technologies requires greater investment and research, both public and private. The third pillar of the digital agenda (trust and security) should lead to progress in this area.
- Although medical and wellbeing data are covered by the general rules, consideration should be given to including a specific chapter on this issue.
- The EU should try to ensure that the ISO 27001 standard is adopted at the international level.

4.1.6 How could app developers best implement the principles of 'data minimisation' and of 'data protection by design', and 'data protection by default' in mHealth apps?

4.1.7 The principles referred to above are adequately addressed in the future legislation, but what is essential is to ensure they are fully complied with. Where 'data minimisation' is concerned, apps developers must be transparent with regard to the products they offer.

4.2 Macro data

4.2.1 What measures are needed to fully realise the potential of mHealth generated 'Big Data' in the EU whilst complying with legal and ethical requirements?

4.2.2 Big data, which are constantly increasing in volume, play a crucial role in research and in medical practice.

4.2.3 In the EESC's opinion:

- Because patients' trust is absolutely essential, they must be provided with adequate information on how data is to be used.
- Patient anonymity should always be upheld.
- EU-funded research programmes should include the objective of developing technologies for mining medical data.

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

⁽³⁾ Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to processing of personal data and on the free movement of such data COM(2012) 11 final
http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf

⁽⁴⁾ EESC opinion SOC/455, of 23 May 2012, OJ C 229, 31.7.2012, p. 90.

- Consideration should be given to preventing big data from being patented or being used in commercial transactions.
- Big data should be made freely available to the scientific community, and
- Technologies and rules also need to be established for metadata.

4.3 *Legal framework*

4.3.1 Are safety and performance requirements of lifestyle and wellbeing apps adequately covered by the current EU legal framework?

4.3.2 The EU's current legal framework for 'medical devices' ⁽⁵⁾ is now under review. The Commission has drawn up a number of guidelines for software creators and manufacturers of devices on what can (and cannot) be included, under current legislation.

4.3.3 There is no definition of what a 'system' is, but there are specific requirements for products sold on the market that combine both devices covered by the law and those that are not.

4.3.4 Nor is a clear distinction made between 'wellbeing only' devices (Mobile Wellness Apps) and those that are purely medical (Mobile Medical Apps).

4.3.5 Accordingly, there is a need to:

- Regulate, by means of regulation, a) 'mHealth', in line with the established definition of 'healthcare' ⁽⁶⁾ and b) safety and wellbeing apps.
- Because it is not covered by current legislation, consideration should be given to the issue of cross-border healthcare.
- Aims: a) to give legal certainty to manufacturers; b) to provide guarantees for both professionals and users; c) prevent the marketing of ineffective or dangerous products.

4.3.6 Is there a need to strengthen the enforcement of EU legislation applicable to mHealth by competent authorities and courts; if so, why and how?

4.3.7 Yes, to ensure that mHealth is used effectively. Monitoring compliance with legislation is a complex task, given that there are more than 40 000 health and well-being devices available. It is therefore crucial for tasks to be coordinated and shared out between the Commission and the Member States.

4.4 *Patient safety and transparency of information*

4.4.1 What policy action should be taken, if any, to ensure/verify the efficacy of mHealth solutions?

4.4.2 Apps should be covered by mandatory rules on:

- standardisation,
- certification,
- and approval by the authorities.

4.4.3 How to ensure the safe use of mHealth solutions for citizens assessing their health and wellbeing?

4.4.4 Personal wellbeing apps should meet the same requirements as those for medical purposes, since they also contain information on an individual's health.

⁽⁵⁾ Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, (OJ L 17.7.93, L169/1). Also, Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices (OJ L 331, 7.12.1998, p. 1). Council Directive of 20 June 1990 on implantable medical devices (OJ L 189, 20.7.1990, p. 17).

⁽⁶⁾ See Article 3 a) of Directive 2011/24/EU on cross-border healthcare (OJ L 88, 4.4.2011, p. 45).

4.5 *The role of mHealth in healthcare systems and equal access*

4.5.1 Do you have evidence on the uptake of mHealth solutions within EU's healthcare systems? What good practices exist in the organisation of healthcare to maximise the use of mHealth for higher quality care (e.g. clinical guidelines for use of mHealth)? Do you have evidence of the contribution that mHealth could make to constrain or curb healthcare costs in the EU?

4.5.2 The PwC report cited by the Commission highlights the need for 'further evidence' of the long-term economic and clinical benefits of mHealth (p. 21).

4.5.3 What policy action could be appropriate at EU, as well as at national, level to support equal access and accessibility to healthcare via mHealth?

4.5.4 According to the Treaties and the common values of the EU, the Commission should prepare policy actions for equal access to mHealth and bind Member States to prepare national strategies on telehealth services also addressing equal access.

4.5.5 mHealth should form an integral part of healthcare systems, accessible to everyone and not only to those who are better educated or in a better financial position.

4.5.6 The EESC wishes to express its fears that the development of mHealth could increase inequality in access to healthcare, *inter alia* for the following reasons:

- the digital divide,
- the uneven availability of broadband across the regions,
- the lack of specific measures for people with different disabilities,
- the high price of equipment needed by patients (smartphones, tablets, etc.).

4.5.7 For mHealth to become widespread, measures must be put in place to support inclusion in the digital society and targeting people with greater healthcare needs, such as the elderly, the chronically sick and people with disabilities, at reasonable prices.

4.6 *Interoperability*

4.6.1 What, if anything, do you think should be done, in addition to the proposed actions of the eHealth Action Plan 2012-2020, in order to increase interoperability of mHealth solutions?

4.6.2 Establish reliable and secure mechanisms for transferring medical data by means of medical devices.

4.6.3 Do you think there is a need to work on ensuring interoperability of mHealth applications with Electronic Health Records?

4.6.4 Yes. Data volumes are doubling every 18 months, and growth at this pace means that standards are essential. Standards have different functions in different healthcare fields, but interoperability standards are the cornerstone of usable interfaces between disparate systems.

4.6.5 It is important to push ahead with the semantic issue under SNOMED CT (Systematized Nomenclature of Medicine — Clinical Terms).

4.6.6 And if yes by whom and how?

4.6.7 The European Interoperability Strategy, in which the Commission and the Member States take part (with some Member States already having established standards in this area), would appear to be the appropriate framework.

4.7 *Liability*

4.7.1 What recommendations should be made to mHealth manufacturers and healthcare professionals to help them mitigate the risks posed by the use and prescription of mHealth solutions?

4.7.2 Applicable law. Liability (whether contractual or non-contractual) for cross-border medical provision: the law of the Member State of treatment (Directive 2011/24/EU, Article 4(1)). Defective products: Directive 85/374/EEC, under the principle of liability without fault.

4.7.3 Healthcare professionals: to adhere to established protocols and use approved equipment and procedures; manufacturers: adequate knowledge of the legal requirements. In both cases, it needs to be established who will bear the insurance costs.

4.8 *Research and innovation in mHealth*

4.8.1 Could you provide specific topics for EU level research & innovation and deployment priorities for mHealth?

4.8.2 From the technical point of view, the existing Horizon 2020 programmes cover the main areas of research.

4.8.3 The EESC suggests that an assessment also be made of the social impact of mHealth, especially on the elderly, people with disabilities, immigrants and people on a low income.

4.8.4 How do you think satellite applications based on EU navigation systems (EGNOS and Galileo) can help the deployment of innovative mHealth solutions?

4.8.5 Advances in geo-positioning and better communications will undoubtedly improve the effectiveness of mHealth.

4.9 *International cooperation*

4.9.1 Which issues should be tackled (as a priority) in the context of international cooperation to increase mHealth deployment and how? Which good practice in other major markets (e.g. US and Asia) could be implemented in the EU to boost mHealth deployment?

4.9.2 M-health should be on the agenda for negotiations between the EU and the USA on the TTIP, which started in July 2013.

4.9.3 Priority issues for international cooperation, with the participation of the WHO:

- a regularly updated list of apps considered to be for medical purposes,
- ethical principles,
- data protection in accordance with the ISO 27001 standard,
- interoperability.

4.10 *Access of web entrepreneurs to the mHealth market The apps market*

4.10.1 Is it a problem for web entrepreneurs to access the mHealth market? If yes, what challenges do they face? How can these be tackled and by whom? If needed, how could the Commission stimulate industry and entrepreneurs involvement in mHealth, e.g. through initiatives such as 'Startup Europe' or the European Innovation Partnership on Active and Healthy Ageing?

4.10.2 Industry does indeed come up against a number of barriers:

- regulatory barriers (lack of clarity in legislation),

- economic barriers (further research is needed into the benefits to the healthcare system and the health incentives system needs to be remodelled),
- structural barriers (a lack of integration at the different tiers of healthcare administration), and
- technological barriers (quality standards, certification schemes, interoperability).

4.10.3 Problems should be addressed in line with the level of powers held:

- the Member States, for the organisation of the healthcare system within their borders;
- the EU for market fragmentation and the lack of legislative clarity.

4.10.4 The EESC emphasises the need to support European SMEs, as they could play a key role in the mHealth market.

4.10.5 Start-ups in Europe need better sources of funding, through both conventional channels (banks) and non-conventional ones (such as crowdfunding, among others). Risk finance (provided for in Horizon 2020) and public/private partnerships should help strengthen European industry.

Brussels, 10 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the 'EU Maritime Security Strategy'

(2014/C 458/11)

Rapporteur: **Dr Bredima**

On 20 November 2013 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on the Joint Communication

For an open and secure global maritime domain: elements for an European Union maritime security strategy

JOIN(2014) 9 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 July 2014.

At its 501st plenary session, held on 10–11 September 2014 (meeting of 11 September), the European Economic and Social Committee adopted the following opinion by 142 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the EU's demonstration of political will to place maritime security at the top of its political agenda. It supports the Joint Communication on elements of an European maritime security strategy (EMSS) and its holistic approach to coping with the multifaceted maritime threats. European civil society is directly concerned by the EMSS. The EESC endorses a strategic cross-sectoral approach to maritime security, building upon existing achievements without creating new structures. This approach will create jobs in line with the Europe 2020 growth strategy and make the maritime profession more attractive to seafarers.

1.2 The EESC endorses the proposed synergies between the European Commission, the European External Action Service (EEAS), the European Maritime Safety Agency (EMSA), Europol, FRONTEX, the European Defence Agency (EDA), the EU Military Staff, and the Crisis Management and Planning Directorate. It supports seeking transnational synergies between maritime activities whilst complying with the subsidiarity principle. A comprehensive EU approach, including a common understanding of the state of play, will ensure more efficient use of resources through better coordination of surveillance activities.

1.3 The EESC calls on the EU to do more to work with NATO's existing resources. It welcomes the positive results from co-location of their operational headquarters at Northwood, and proposes closer collaboration with the Chiefs of European Navies (CHENS), national coastguards and the EU Coast Guard Functions Forum based on the experience of FRONTEX and the European Patrol Network.

1.4 The EESC welcomes the 'pooling and sharing' initiative for the shared use of equipment capabilities and military/civilian engagement. This will require compatibility of maritime and naval capabilities standards. Cooperation and solidarity between Member States will help to optimise the use of available infrastructure and ensure cost efficiency.

1.5 Ratification and implementation of the 1982 UNCLOS Convention and of the 1988 Suppression of Unlawful Acts Convention (SUA) by EU Member States and other countries around the world will provide the legal basis for prosecution. The EESC reiterates the need for closer cooperation with the International Maritime Organisation (IMO) regarding implementation of its conventions dealing with maritime security.

1.6 Implementation of the International Ship and Port Facility Security (ISPS) Code should be stepped up in EU ports and in ports of third countries (in West Africa, for example), as a way of preventing piracy, armed robbery and cargo theft incidents. ISPS compliance is required for the scanning of containers which can act as Trojan horses in ports.

1.7 The EESC reiterates the need for more systematic tracking of the financial flows of piracy and of other illegal activities at sea in collaboration with the UN, NATO and the US.

1.8 There are concerns about the timely introduction and worldwide availability of approved courses for security training of seafarers, required as of 1 January 2014. The grace period from 1 January 2014 to 1 July 2015 provided by the IMO for state port control of compliance with certificates under STCW Regulation/VI/6 is welcome. The US Anti-Piracy Assessment Teams offer an example of best practice to be followed by the EU in terms of voluntary checks of anti-piracy preparedness on board ships.

1.9 The EESC notes that piracy prosecutions are failing to effectively deter due to the considerable variation in court sentences. A harmonised piracy law is required to face an international crime like piracy and put an end to impunity.

1.10 The Horn of Africa operation addressing the root causes ashore is a success story which, *mutatis mutandis*, can be used as a model in other areas. Decent living conditions ashore could make piracy less appealing. The EESC supports the extension of the Ocean Shield (NATO) and Atalanta operations when they come up for renewal.

1.11 The EESC urges the EU institutions to exert political and diplomatic pressure in response to the escalation of piracy in West Africa. The ECOWAS Economic Partnership Agreement (EPA) between the EU and 16 African States, the Cotonou Agreement and the EU-Africa Partnership can be a source of leverage. Facilitation of trade between the EU and ECOWAS requires safe trading and transport lanes. Nigeria should be offered assistance to upgrade its coastguard and be encouraged to allow other nations' armed guards to enter its waters.

1.12 The EESC welcomes the Council Conclusions on the Gulf of Guinea (17/03/2014), which must be translated into specific measures. Local civil societies should be involved to ensure better understanding of the local context, and supported to put pressure on their governments for solutions to the security challenges in the Gulf of Guinea.

1.13 A special EU representative for West Africa should be appointed, like for the Horn of Africa. The UN resolution (November 2013) on anti-piracy strategy in West Africa is to be commended. Cooperation of coastguards between East and West Africa should be stepped up.

1.14 Internationally agreed standards for maritime security companies should be introduced. The ISOPAS 28007 standard will ensure a level playing field for private armed guard companies globally.

1.15 The EESC commends intensification of maritime surveillance to provide timely awareness of illegal acts at sea through reinforced cooperation between EMSA, FRONTEX and the Joint Research Centre (JRC). Maritime security research and development should be expanded in cooperation with the JRC.

1.16 Regarding the great human tragedy of irregular immigration by sea, the EESC reiterates the need:

- to develop an European immigration policy taking into account its external and internal dimension;
- to reach agreements with immigrants' countries of origin and transit in order to combat criminal networks engaged in human trafficking and pursue criminal proceedings in cooperation with Europol/Interpol;
- to develop a list of trafficking kingpins (along the lines of the list of piracy financiers) in order to clamp down on money laundering;

- to reinforce and finance FRONTEX so that it can be a genuine European Border Agency;
- to cooperate with civil society in the countries of departure of irregular immigrants to dissuade them from life-threatening journeys;
- to develop coastguard activities to patrol and rescue migrants; and
- to reinforce effective control of maritime external borders through the European Border Surveillance System (EUROSUR).

1.17 The EESC believes that the fundamental human rights, principles and values enshrined in EU law should be taken into account when implementing the EMSS and promoted in countries outside the EU.

1.18 The EESC welcomes the proposal to forge partnerships between all maritime security stakeholders at EU level and within the Member States, including industry, the social partners and civil society. Implementation of existing legislation in cooperation with the social partners should make for a more cost-effective approach to maritime security.

2. Introduction

2.1 The importance of global maritime flows for the EU has increased as a result of globalisation. Illegal activities at sea have grown in number and complexity, putting pressure on the EU to adopt a holistic approach to address them. However, maritime monitoring is challenging given the vastness of the EU's coasts and oceans.

2.2 This is a shared international responsibility requiring strong partnerships with countries outside the EU and regional organisations. The European Security Strategy (ESS) did not refer to the maritime dimension, except by identifying piracy as a threat. The European Integrated Maritime Policy (IMP) addressed maritime issues but hardly touched upon the security dimension. The EMSS was adopted in response to the pressing need to revise the EU's approach to maritime security.

2.3 *Joint Communication*

2.3.1 The joint Communication 'For an open and secure global maritime domain: elements for an European maritime security strategy' (6/03/2014) from the European Commission and the European External Action Service is a first step towards an EMSS to be implemented by way of an Action Plan.

2.3.2 According to the Communication, maritime security depends on a strategic, cross-sectoral approach. Maritime security threats include territorial maritime disputes, proliferation of weapons of mass destruction, piracy, terrorism, cross-border and organised crime (trafficking of arms, drugs and human beings), unregulated and unreported fishing, and natural disasters.

3. General comments

3.1 The EESC welcomes the Joint Communication on elements for an EMSS to ensure an integrated and comprehensive approach to threats and opportunities at sea. The referral from the EEAS is welcomed as an opportunity to strengthen the relations between the EEAS and the EESC. The EMSS is centred on coordination between all European players and Member States with a stake in maritime security, and addresses the shortcomings of the IMP (2007).

3.2 An integrated approach should be taken at EU level combining civilian and military instruments and encompassing internal and external aspects of maritime security. Maritime nations should foster regional maritime integration leading to the pooling and sharing of critical naval assets in order to meet the EU's capacity needs.

3.3 The EESC has addressed the potential risks to maritime security (e.g. piracy, irregular immigration by sea, security in ports) in a number of opinions ⁽¹⁾. Maritime security threats concern civil society, encompassing seafarers, shipowners, fishermen, exporters and importers, tourists, consumers, and local communities on the EU's coasts and islands. The huge cost of maritime piracy for consumers has been assessed. However, the cost to consumers of the multifaceted threats to maritime security has yet to be estimated.

3.4 The EU and its Member States should promote the universality of the UNCLOS Convention and insist on its uniform implementation. It provides a legal framework for maritime activities and can serve as a guide to the peaceful resolution of maritime disputes.

3.5 The EU strategy for the Horn of Africa should be used as a model for a comprehensive approach involving political, diplomatic, social and economic tools, and coordination among different EU initiatives, agencies and instruments, with a view to addressing the root causes of piracy. The EESC supports the Strategic Framework for the Horn of Africa combining three ongoing CSDP missions in the region (EUNAVFOR Atalanta, the EU training mission in Somalia, and EUCAP Nestor).

3.5.1 Shipowners and seafarers organisations (ICS, ECSA, ITF/ETF, the SOS 'Save our seafarers' group) have joined forces to raise awareness of the human and economic cost of piracy. The joint ECSA/ETF paper (September 2013) on piracy in the Gulf of Guinea reiterated the concerns of social partners. The EESC identified piracy as one disincentive to pursuing the profession of seafarer and undermining campaigns to attract people to the profession.

3.5.2 The EESC reiterates that the aim of all efforts should be to avoid endangering the physical and mental health of seafarers who fall victim to pirate attacks. The International Chamber of Shipping (ICS) has compiled guidelines with examples of good practice for use by shipping companies in assisting affected seafarers and their families.

3.6 The EU should promote maritime security capacity building in the Gulf of Guinea. Secure trade lanes are a prerequisite for the development of economic capacity. Maritime security should be seen as part of the EU's agenda to support local development and trade.

3.7 Criminal activity — trafficking of drugs, human beings and weapons — is increasing along the West African coastline. The Gulf of Guinea countries account for 13 % of oil and 6 % of gas imports to the EU, with Nigeria producing 5,8 % of the EU's oil imports. Recent discoveries of offshore oil and gas reserves will only increase the region's importance. The training provided for coastguards by the Critical Maritime Routes in the Gulf of Guinea Programme (CRIMGO) is welcome. Synergies should be sought between EU agencies and non-EU players in the interpretation of satellite images of vessels. Maritime awareness is key and private operators should help governments to get a fuller picture of the maritime domain. A reliable reporting system for incidents should be established in the Gulf of Guinea.

3.8 The Mediterranean Sea presents maritime security challenges (such as terrorism, illicit trafficking and immigration). Investment in maritime regional cooperation must involve intelligence, surveillance, patrolling and coastguard activities.

⁽¹⁾ EESC opinion on *European immigration policy and the relationship with third countries* (not yet published in OJ).

OJ C 67, 6.3.2014, pp. 32-46.

OJ C 161, 6.6.2013, pp. 87-92.

OJ C 76, 14.3.2013, pp. 15-19.

OJ C 107, 6.4.2011, pp. 64-67.

OJ C 44, 11.2.2011, pp. 173-177.

OJ C 128, 18.5.2010, pp. 131-135.

OJ C 255, 22.9.2010, pp. 103-109.

OJ C 211, 19.8.2008, pp. 31-36.

OJ C 168, 20.7.2007, pp. 57-62.

OJ C 32, 5.2.2004, pp. 21-27.

OJ C 061, 14.3.2003, pp. 174-183.

Report and resolution of the European Parliament on the maritime dimension of the European Common Security Policy, 12 September 2013.

3.9 Delimitation of Exclusive Economic Zones in line with the UNCLOS Convention would help to ensure the peaceful resolution of territorial disputes, avoiding conflict over discoveries of offshore hydrocarbon reserves in the eastern Mediterranean Sea.

3.10 The EU has a strategic interest in deterring the escalation of regional conflicts in the Black Sea Region, so as to ensure energy security and diversification of its energy supplies.

3.11 Although overall security standards in EU ports are improving, security should be tightened through more rigorous implementation of the ISPS Code dealing with container security and port installations. The French report on 'arms trafficking by sea' (10 February 2014) highlights the illegal flows of conventional arms on container vessels. However, experience in the US has shown that it is not possible to scan 100 % of containers. Absolute security cannot be achieved in an insecure world.

3.12 EESC fully supports the view expressed in the Communication 'The opening of possible transport routes through the Arctic and the exploitation of its natural and mineral resources will pose particular environmental challenges which must be managed with the utmost care, and cooperation with partners will be paramount'.

4. Specific comments

4.1 The EESC fully supports the on-board protective measures (best management practices) introduced by shipping companies, as well as the internationally agreed standards regarding private armed guards on ships.

4.2 The 'Pooling and Sharing' initiative taking advantage of the LeaderSHIP 2020 programme will foster networking among operators in the shipbuilding and repair sector.

4.3 Member States and industry should harmonise standards to ensure European operational compatibility of maritime and naval capabilities, including communication systems and technology.

4.4 Maritime Surveillance Networking (MARSUR), the work developed by EMSA, and the Copernicus programme should be implemented. EMSA has hosted maritime surveillance applications through SafeSeaNet, LRIT, CleanSeaNet and THETIS. The work of the Common Information Sharing Environment (CISE) to achieve an effective European maritime surveillance capacity is to be commended.

4.5 People rescued at sea are a security issue because they need to be brought to shore and documented. Search and rescue (SAR) services depend on ships to assist them. Satellite communications provide crucial assistance to rescue operations. Member States should apply the relevant IMO conventions and Guidelines on the Treatment of Persons Rescued at Sea, which provide guidance to governments and captains on their obligations.

4.6 The EESC underlines the need for implementation of the existing legal rules on places of refuge for ships in distress, which are a hazard to navigation and a threat to human life and the environment. Several incidents of delay in the provision of a place of refuge illustrate the need for a swift response by coastal states. The IMO Guidelines (Resolution A.949 (23) on Places of Refuge as well as those on the Control of Ships in an Emergency (2007), and the EU Vessel Traffic Monitoring and Information System (VTM Directive 2002/59, as amended by Directive 2009/17) provide the legal framework. It is imperative that all coastal states ratify and implement these legal instruments.

4.7 The EESC welcomes the EU's commitment to sustainable exploitation of fisheries resources, since illegal, unregulated, unreported fishing is a global criminal activity wherever it occurs. The EESC commends the recent EU decision to blacklist from its market illegal fisheries products from three countries in violation of the UNCLOS.

4.8 The EESC stresses the need to preserve the EU's biodiversity and maritime resources, be they fisheries or mineral resources in its territorial waters, from potential threats. Moreover, the efficiency of telecommunications depends on safeguarding the security of underwater cables and the efficiency of energy depends on safeguarding the security of pipelines.

4.9 Maritime security also involves guarding against contamination of seawater caused by nuclear accidents, illegal dumping of chemicals or major accidents involving pollutants. The EU is urged to work to preserve the ecological integrity of the maritime domain.

Brussels, 11 September 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN