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508th EESC plenary session of 27 and 28 May 2015

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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

508TH EESC PLENARY SESSION OF 27 AND 28 MAY 2015

**Opinion of the European Economic and Social Committee on long-term social care and
deinstitutionalisation**

(exploratory opinion)

(2015/C 332/01)

Rapporteur: Gunta ANČA

Co-rapporteur: José Isaías RODRÍGUEZ GARCÍA-CARO

In a letter dated 25 September 2014, and in accordance with Article 304 of the TFEU, Mr Rihards Kozlovskis, Acting Minister for Foreign Affairs and Minister for the Interior of the Republic of Latvia, asked the European Economic and Social Committee, on behalf of the Latvian Presidency, to draw up an exploratory opinion on:

long-term social care and deinstitutionalisation.

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee's work on the subject, adopted its opinion on 7 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), the European Economic and Social Committee adopted the following opinion by 139 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

The EESC:

- 1.1. Calls for awareness of the Situation of people living in institutions to be raised, through consistent and disaggregated data, and for human rights indicators to be established;
- 1.2. calls on Member States to put anti-discrimination measures in place and to promote the right of people with disabilities to participate fully in society and the economy, as part of National Reform Programmes (NRPs);
- 1.3. concludes that austerity measures have reduced the budgets of local and regional authorities with direct consequences on the availability of social services. This has caused a trend towards institutionalisation in some Member States;
- 1.4. recommends that Member States use European Structural and Investment Funds to promote the transition from institutional to community-based care, to develop social and health services and to train support services staff;

- 1.5. recommends that Member States reform long-term care on the basis of cost-effectiveness analysis, adopting a long-term approach which includes investing in people and services instead of cutting financial resources;
- 1.6. highlights that 'deinstitutionalisation' is a process which requires a long-term political strategy and the allocation of adequate financial resources to develop alternative support services in the community;
- 1.7. urges the Member States to recognise the legal capacity of men and women with disabilities on an equal basis with others, in all aspects of life, and to provide supported decision making when needed ⁽¹⁾;
- 1.8. recommends that high quality, community-based services be developed as a key step in the deinstitutionalisation process ⁽²⁾. It is dangerous to close institutions without giving people alternative services;
- 1.9. considers that, when care is provided at home, the necessary development of professional services at affordable prices shall be ensured;
- 1.10. recommends that professionals throughout Europe be trained to work in community-based services and that they be informed about the deinstitutionalisation process;
- 1.11. recommends that community-based services be available locally and that they be affordable and accessible for all;
- 1.12. stresses the importance of access to employment in order for people leaving institutions to be able to fully participate in society. Specialised employment services and vocational education and training should be accessible for those who need them without discrimination;
- 1.13. recommends that partnerships be built between all stakeholders involved in the deinstitutionalisation process;
- 1.14. highlights that different user groups have different needs and that specific responses must be developed in cooperation with all the relevant stakeholders, including: users and their representative organisations, families, service providers, the economic sectors involved and public authorities;
- 1.15. urges the European Commission to adopt an European Quality Framework for community-based services and reiterates the urgent need for binding standards to ensure the highest levels of quality;
- 1.16. urges the Member States to establish independent and efficient inspection and monitoring services, to ensure compliance with regulatory and quality standards for care services;
- 1.17. recommends tackling negative stereotypes and raising awareness in schools and in society, through inclusive education and media campaigns.

2. Introduction

- 2.1. Deinstitutionalisation processes and the respect for human rights in Europe developed in different ways over most of the last century. It is therefore difficult to obtain comparable data from different countries.
- 2.2. The EESC believes that in our changing society, it is important to analyse the situation of people in need of social care and a high level of support across the EU, so as to develop appropriate responses and exchange good practices.

⁽¹⁾ As laid down in Article 12 of the UN Convention on the Rights of Persons with Disabilities.

⁽²⁾ This also applies to the closure of psychiatric detention institutions: real alternatives must be in place.

2.3. Therefore, the EESC:

2.3.1. notes that more than one million children and adults with disabilities live in institutions across Europe ⁽³⁾;

2.3.2. deems an 'institution' to mean any residential care centre where residents are isolated from the broader community and/or compelled to live together. Such residents do not have sufficient control over their lives or over decisions which affect them, and the requirements of the organisation itself tend to take precedence over residents' individual needs ⁽⁴⁾;

2.3.3. points out that high quality care services in the local community result in better outcomes in terms of quality of life than institutional care does, leading to social integration and reducing the risk of segregation ⁽⁵⁾;

2.3.4. bans any form of discrimination and abuse that men, women and children with and without disabilities; people in need of a high level of support or those with psychosocial disabilities may experience in institutions and when receiving care services;

2.3.5. refers to the recommendations set out in previous EESC opinions ⁽⁶⁾;

2.3.6. draws attention to the obligations incumbent on the EU and its Member States — deriving from the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ⁽⁷⁾ — to respect people's dignity, liberty and right to live independently, to choose where and with whom they do so and to have access to support services, including personal assistance, in the community;

2.3.7. points out that, in line with the UN Convention on the Rights of the Child (CRC), 'for the full and harmonious development of his or her personality' a child should 'grow up in a family environment, in an atmosphere of happiness, love and understanding'. Parents have the primary responsibility with regard to raising their children, and it is the responsibility of the State to support parents — especially the most deprived — with adequate social protection instruments. Children have the right to protection from harm and abuse. Where their family cannot provide the care they need, despite the provision of adequate support by the State, children have the right to substitute family care.

2.3.8. reaffirms that people with disabilities, and especially those with intellectual disabilities, have the right to recognition everywhere as people in the eyes of the law.

3. Transition from institutional to community-based care

The EESC:

3.1. welcomes the fact that many countries are reforming the way they provide care and support for children and adults, by replacing some or all long-stay residential institutions with family and community-based services ⁽⁸⁾;

3.2. asks for the deinstitutionalisation process to be carried out in a way that respects the rights of user groups, minimises the risk of harm and ensures positive outcomes for all individuals involved. New care and support systems must respect the rights, dignity, needs and wishes of each individual and their family;

⁽³⁾ Children and adults with disabilities (including people with mental health problems). This includes the EU and Turkey. Source: Mansell, J., Knapp, M., Beadle-Brown, J. and Beecham, J. (2007): Deinstitutionalisation and community living — outcomes and costs: report of a European Study. Volume 2: Main Report Canterbury: Tizard Centre, University of Kent (subsequently 'the DECLOC Report').

⁽⁴⁾ Report — Ad Hoc Expert Group on the Transition from Institutional to Community-based Care <http://ec.europa.eu/social/BlobServlet?docId=4017&langId=en>

⁽⁵⁾ The Common European Guidelines on the transition from institutional to community-based care (www.deinstitutionalisationguide.eu).

⁽⁶⁾ OJ C 204, 9.8.2008, p. 103; OJ C 181, 21.6.2012, p. 2; OJ C 44, 15.2.2013, p. 28.

⁽⁷⁾ see <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁽⁸⁾ Some examples of long-term care can be found in an Eurobarometer on health and long-term care (http://ec.europa.eu/public_opinion/archives/ebs/ebs_283_en.pdf). Additional good deinstitutionalisation practices can be found in 'The Common European Guidelines on the transition from institutional to community-based care' (www.deinstitutionalisationguide.eu).

3.3. believes that every individual has the right to choose the place and way in which they wish to live.

4. Deinstitutionalisation for different interest groups

4.1. The EESC recognises that the care needs of children, people with disabilities — including people with psychosocial disabilities — and the elderly are very different. Therefore, the process of deinstitutionalising long-term care should take account of the specific needs of each group of users.

4.2. Community-based care, including professional care and the care received within the family and social environment, offers added value that is missing in residential institutions.

4.3. The institutional system should therefore be adapted to supplement community-based social and healthcare services when these are not available, and during the transition period.

4.4. Independent living does not mean people have to live in isolation. Instead it means that they have a choice of specialised services and accessible mainstream services in the community that they have chosen to live in.

4.5. Deinstitutionalisation is about creating the right services, but also about creating the right environment in the community. It is necessary to prepare the general public for this transition, to raise awareness and to fight stigma. Otherwise, rather than deinstitutionalisation, the result will be reinstitutionalisation, by creating 'ghettos' of people with psychosocial disabilities who live within society, but still in isolation due to negative attitudes. The media play a key role in this respect.

4.6. The EESC notes the differences between EU Member States, not least with regard to the definition of long-term care. These differences may also concern the types of care provided and the services involved. Similarly, significant differences exist within Member States between regions and municipalities, particularly between urban and rural settings⁽⁹⁾. The EESC believes that this should not justify the lack of progress made by a Member State, which has its own particular characteristics, and promotes a gradual shift towards community-based services.

4.7. In a previous exploratory opinion⁽¹⁰⁾, the EESC recommended evaluating telecare and ambient assisted living, and creating a comprehensive, decentralised structure near to where people live, in direct contact with older people. We would reiterate this recommendation, and support an appropriate process of deinstitutionalisation for the elderly, children, people with disabilities of any age and people with psychosocial disabilities⁽¹¹⁾.

4.8. These user groups include individuals whose ability to take decisions may be reduced or lacking due to their age, disability or dependency. The EESC therefore urges Member States to provide maximum protection for such people, within a gradual and controlled process of deinstitutionalisation, so that their rights are respected at all times and they are provided with the best possible care in the community, including supported decision making.

4.9. The EESC is attentive to the impact that a transition from institutions to community-based care may have on the workers involved. All authorities and stakeholders involved in the process must work together to ensure that the deinstitutionalisation process has a beneficial and gradual effect on carers. Decent working conditions should always be respected.

4.10. The alternative to institutionalisation is not service delivered at home but service in the community, and therefore investment in service infrastructure must be guaranteed.

⁽⁹⁾ Long-term care in the European Union. ISBN 978-92-79-09573-3. Luxembourg: Publications Office of the European Union.

⁽¹⁰⁾ OJ C 44, 11.2.2011, p. 10.

⁽¹¹⁾ Idem.

4.11. The EESC welcomes good examples, e.g. care leave, part-time care leave and the recognition of insurance for informal caregivers⁽¹²⁾. It calls on the Commission and Member States to encourage the exchange of good practice.

4.12. The EESC recognises the importance of caregivers. Informal carers, acting on a voluntary basis, strive to combine care responsibilities with their lives. This can lead to 'carer's syndrome', whereby the main carer becomes physically and psychologically exhausted. The EU must ensure that: reconciliation policies and responsibility for care are based on equality for all and that informal care duties are equally and fairly shared⁽¹³⁾; that the fundamental rights of caregivers are upheld; that informal and family care is recognised and supported; and that the role that volunteers play in providing formal and informal care is recognised and supported⁽¹⁴⁾.

4.13. The EESC recognises that many of the vulnerable groups that tend to experience institutional care are over-represented in the homeless population. The EESC therefore urges Member States to develop deinstitutionalisation strategies and programmes that take full account of homelessness and the need to provide community-based services in order to both prevent and respond to homelessness.

4.14. Developing and professionalising domestic work is strategically important for achieving equality in the workplace, because it is mainly women who carry out such work and who need childcare services, care for the elderly services and home-cleaning services, in order to reach an equal footing with men in their career. These services benefit not only individuals, but also society as a whole. They create new jobs, meet the needs of an ageing society and help people balance their private and professional lives. They improve quality of life and social inclusion and make it easier for the elderly to remain in their own homes⁽¹⁵⁾.

4.15. The EESC recognises the need for training on deinstitutionalisation for professionals throughout Europe. For example, the new generation of psychiatrists will need to be trained to ensure that they will practice in compliance with the UN CRPD.

4.16. The EESC is concerned that people are, in some cases, sent to institutions without a consultation process or clear procedures being followed. It recognises the importance of a formal assessment of people's needs for long-term care. This process must respect people's dignity and result in the development of individualised services;

5. Impact of the financial crisis on social services

5.1. The EESC is aware that the provision of long-term care to those user groups who require it is one of the greatest social and economic challenges facing the European Union, especially in a time of economic crisis as is currently the case.

5.2. The Communication on Social Investment⁽¹⁶⁾ makes it clear that the economic crisis has threatened our social protection systems as unemployment has risen, tax revenues have fallen and the number of people in need of benefits has grown. Against this backdrop, the EESC agrees with the Commission on the need to support Member States in devising long-term care strategies that minimise the impact of the economic crisis.

⁽¹²⁾ Appropriate legislation exists in Austria. Examples:

Care leave and part-time care leave: In order to ensure a better balance between work and care, since 1 January 2014, workers have had the opportunity to agree care leave (with the total elimination of their salary) or part-time care leave (with a partial elimination of their salary) for a period of one to three months. During this time, they have the legal right to a care allowance, to protection against motivated dismissal and to social insurance cover (non-contributory health and pension insurance). The care leave allowance is equal to potential unemployment benefit. The aim of this care leave or part-time care leave is to allow the affected workers to (re-)organise their care arrangements, particularly in the event of a sudden need to care for a close relative or to relieve a caregiver for a certain period of time.

Pension insurance for relatives working as caregivers: For caregivers who care for a close family member using all or a considerable part of their working hours, the following options are available to acquire non-contributory pension insurance rights: continuing insurance as part of the pension insurance; personal insurance as part of the pension insurance; Continuing or personal insurance as part of the health insurance. The contributions to the insurance are taken over by the federal government, which means that there are therefore no costs for the relatives working as caregivers.

⁽¹³⁾ Between men and women and between generations.

⁽¹⁴⁾ Social Platform recommendations on care:

http://www.socialplatform.org/wp-content/uploads/2013/03/20121217_SocialPlatform_Recommendations_on_CARE_EN1.pdf

⁽¹⁵⁾ OJ C 12, 15.1.2015, p. 16.

⁽¹⁶⁾ COM(2013) 83 final.

5.3. In its opinion⁽¹⁷⁾ on that communication, the EESC argued that social investment for growth and cohesion should also be put towards reinforcing social services. This could also support the creation of jobs in the services sector and the development of new services in the community.

5.4. The economic crisis had negative effects on the ability of people with disabilities to live independently, and on families and vulnerable groups who were already at higher risk of poverty and social exclusion.

5.5. The Social Investment Package (SIP) will tackle challenges relating to the economic crisis and demographic changes⁽¹⁸⁾.

5.6. The EESC is convinced that the crisis has led to a major retreat in the recognition of social rights, as the budgets for these policies have been cut. The Committee therefore urges the Council, the Commission and the Member States to ensure that social investment is channelled toward social protection policies, to — at least — restore the levels that were in place prior to the economic crisis⁽¹⁹⁾.

5.7. The EESC underlines that facing up to the needs resulting from the increase in life expectancy requires tackling difficult questions of intergenerational justice and solidarity. The ultimate objective must be to make it possible for old and very old people in Europe to live their lives safely and with dignity, even if they are dependent on care, while at the same time ensuring that this does not impose unbearable burdens on the younger generations⁽²⁰⁾.

5.8. While the differences across the EU in terms of long-term institutional or community care were already apparent, the crisis has aggravated the already wide economic and social disparities within the EU. It has highlighted differences in competitiveness and social cohesion, increasing the trend towards polarisation of growth and development, with obvious constraints in terms of fair distribution of income, wealth and well-being, between Member States and regions⁽²¹⁾.

6. Use of EU funds for long-term social services and deinstitutionalisation

The EESC:

6.1. regrets the fact that European Structural Funds in the last programming period were used for segregating institutions instead of on community-based care;

6.2. welcomes the new 2014-2020 European Structural and Investment Funds (ESIF) regulations that promote a transition from institutional to community-based care funding, counting on the European Regional Development Fund to improve social and health infrastructures;

6.3. suggests that a multi-fund approach could accelerate the transition towards community-based care, including using the European Social Fund for soft measures such as the training of support services staff and the creation of new social services;

6.4. welcomes the *ex ante* thematic conditionality contained in the Common Provisions Regulation governing the ESIF, relating to the fight against poverty and social exclusion, which makes putting in place a deinstitutionalisation strategy a requirement for Member States;

6.5. recommends that Member States use European Structural and Investment Funds for the promotion of the transition from institutional to community-based care, to develop social and health services and to train staff in the support services;

6.6. finds that the Instrument for Pre-accession Assistance and the European development Fund should be used to support the right to live in the community and to grow up in a family environment;

6.7. understands that the transition from institutional to community-based services is complex. It therefore calls on the Commission and the Member States to develop a communication and political guidance to promote deinstitutionalisation even and especially in times of economic crisis.

⁽¹⁷⁾ OJ C 271, 19.9.2013, p. 91.

⁽¹⁸⁾ It is intended to benefit children and young people, people with disabilities, homeless people and older people, among others. The SIP objectives are to: ensure that social protection systems respond to people's needs; achieve simplified and better targeted social policies and upgrade active inclusion strategies in Member States. (Toolkit on the Use of European Union Funds for the Transition from Institutional to Community-Based Care — <https://deinstitutionalisationdotcom.files.wordpress.com/2015/03/annex-1-en-orig.pdf>).

⁽¹⁹⁾ OJ C 170, 5.6.2014, p. 23 and OJ C 226, 16.7.2014, p. 21.

⁽²⁰⁾ OJ C 204, 9.8.2008, p. 103.

⁽²¹⁾ OJ C 12, 15.1.2015, p. 105.

7. Quality community-based services

The EESC:

- 7.1. urges the European Commission to adopt an European Quality Framework for community-based services and reiterates the urgent need for strict, binding standards to ensure the highest levels of quality;
- 7.2. concludes that services must be available in the community, including in remote and rural areas, and that individuals must receive adequate individual budgets to freely choose the service they need;
- 7.3. believes that community-based services should be developed in close cooperation with users and their representative organisations and that quality should be defined by them in cooperation with other relevant stakeholders, including service providers, public authorities and trade unions;
- 7.4. urges the Member States to establish independent and efficient inspection and monitoring services to ensure compliance with regulatory and quality standards for both community-based and institutional services;
- 7.5. recommends that community-based services be available locally and that they be affordable and accessible for all;
- 7.6. considers that these services must be subject to authorisation from the appropriate authorities, and be accredited by certification bodies;
- 7.7. assistive technologies and technical aids are central to community living for people with disabilities, including children and older people. These technologies are most effective when they are in accordance with the preferences of the user and respect privacy.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

**Opinion of the European Economic and Social Committee on Completing EMU: The political pillar
(own-initiative opinion)**

(2015/C 332/02)

Rapporteurs: Mr Carmelo CEDRONE and Mr Joost VAN IERSEL

On 22 January 2015 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

Completing EMU: The political pillar.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May 2015), the European Economic and Social Committee adopted the following opinion by 183 votes to 16, with 16 abstentions.

Preamble

With a view to the next term of office of the European Parliament and the European Commission, the EESC adopted an opinion in July 2014 on 'Completing EMU — the next European legislature'. In November 2014 an update by the rapporteurs was issued. The goal was to formulate a coherent set of policies to strengthen the architecture and effectiveness of EMU.

The EESC distinguishes four pillars: a monetary and financial pillar, a macro and microeconomic pillar, a social pillar, and a political pillar. All four are interrelated. With regard to the monetary and financial, the economic, and the social pillars, the EESC has adopted a number of opinions. Now the EESC more specifically examines issues related to the overarching political and institutional dimension of EMU that is entirely in the hands of the Member States and the European Council. This dimension begins with a core group of EMU countries, but is also open to other potential candidate euro countries that wish to go down the same road.

1. Conclusions and recommendations

1.1. Following 6 years of financial and economic crisis it looks more difficult than ever to predict the economic and social future. Given the geopolitical and economic challenges, only a solid EMU will ensure future-oriented stability.

1.2. The EMU still remains fragile — see hereafter the diagnosis and the SWOT analysis. The EESC is of the opinion that persisting imbalances as well as creation of trust and confidence across Europe require more effective and democratic economic governance, notably in the euro area.

1.3. The EESC realises that decisive steps cannot be taken overnight, but two elements have to be duly taken into account: (a) Europe cannot afford to put decisions off for years; and (b) a first prerequisite is an agreement across the euro area about the principles of necessary economic policies to be carried out by effective governance.

1.4. In parallel to economic convergence, democratic legitimacy, a solid political framework, and a shared sense of common destiny are needed. To that end concrete steps can be undertaken within the framework of the current Treaty and rules. In the medium-long term a revision of the Treaty should bring the institutional provisions in line with the indispensable requirements of a real economic and political Union.

1.5. We need a coherent system of the European Council, national governments, the European Parliament, national parliaments and the European Commission that reflects democratic legitimacy, accountability and transparency, and that is able to act effectively in the interest of citizens and economic actors.

1.6. It has become clear that the current system of rules underpinning the EU, and particularly the euro area, has created confusion on the legal, institutional and democratic fronts. A new approach is therefore needed. Given the political and economic dynamic, the EU can no longer maintain its current institutional architecture. For this reason, the Committee deems it essential to deepen the process of integrating the euro area.

1.7. With this in mind, the Committee would like to present a roadmap comprising the following steps:

1.7.1. 1st step

1. stable Eurogroup president;
2. making the Interparliamentary Conference operational;
3. 'parliamentarisation' of the euro area (EP Grand Committee with all members from EMU countries).

1.7.2. 2nd step

4. EMU Legislative Affairs Council;
5. voting by euro area parliamentarians on matters of EMU competence;
6. an EMU executive (government) (currently Eurogroup and Commission);
7. strengthening the powers and remit of the Interparliamentary Conference (EP and national parliaments).

1.7.3. 3rd step

8. strengthening the powers of the EP with regard to EMU (democratic legitimacy) and the creation of real European political parties;
9. Chamber of the States (EMU) (governments);
10. separation between legislative and executive powers;
11. abolition of unanimous voting.

1.8. In addition, the following initiatives should be taken to prepare for and implement the steps set out above:

- civil society conference jointly organised by the EESC/CoR and the EU presidency and the Commission;

- interparliamentary conference;
- EP proposals for action without Treaty change and for a revision of the Lisbon Treaty;
- constitutional convention;
- potential evaluation of option of pan-European referendum.

2. Diagnosis

2.1. The EMU already has an extensive 'acquis'. It has a shared currency and a central bank; to a certain extent, it ensures coordination of fiscal and economic policies; it issues binding decisions on countries, which, in principle, limits their economic and fiscal autonomy, imposes conditions on any expansionary measure in the Member States, and obliges them to undertake economic and social reforms.

2.2. This means that EMU is a federation 'in itinere' that for the moment acts as a 'guardian', but does not yet act jointly. Its sense of purpose is stronger than elsewhere and has fostered a 'public area' of debate. EMU involves a greater ceding of sovereignty on the part of the Member States, although its management remains primarily under the control of a technocratic structure.

2.3. This Union needs to be completed by creating the necessary conditions to ensure that countries that are part of it, or that wish to enter, can achieve not only stability, but also development and prosperity. It ought to be more advantageous for them to join the euro area than to stay out.

2.4. The outbreak of the financial crisis in 2008 and its subsequent developments, together with the disastrous consequences for the real economy and European society, have provided a wake-up call for all those who believed up to that point that the architecture of EMU would continue to function more or less satisfactorily and that spill-over effects would harmoniously promote convergence between the Member States.

2.5. Soon after the initial shocks, the European institutions began to find short-term solutions for the most urgent problems. The fact that mechanisms were installed to keep the EMU, the euro and the euro area intact has been a great achievement, while there were also delays and serious omissions, such as the lack of a common plan to foster growth and employment.

2.6. It is also a great achievement that, under extremely difficult circumstances, productive steps forward have been made — at least partially — to establish firmer ground for the EMU. The EESC welcomed each of these steps, but also criticised their limitations and presented other ideas more suited to tackling the crisis.

2.7. The financial and economic crisis turned into a continuing economic downturn with striking economic imbalances between national economies. Large parts of the EU are in a far from enviable situation of low growth and faltering employment 6 years later. The economic and social consequences speak for themselves.

2.8. Notwithstanding all progress the EMU remains incomplete. The situation is very complex. Despite hopeful signs of recovery, economic stagnation and lack of jobs creation and poverty are prevailing in a number of countries, most of which is due to various deep-seated causes that have become more visible and accentuated during the crisis: history, traditions in governance (or the lack of it), diverging growth paths, different economic and social structures and different external policies.

2.9. In the euro area a discord persists between protagonists of a stability union, driven by economic convergence and reforms in Member States, and protagonists of a straightaway fiscal union. This discord also leads to diverging views on which economic policies should be leading at national and EU level, both in politics and between social partners.

2.10. Divergent views and practices have exacerbated a climate of distrust not only politically, but also among the general public in the various countries, however superficial mutual criticism may be. This development has become a self-fulfilling prophecy — it strips away potential manoeuvring room from policy-makers, and causes waves of EU-phobia among citizens.

2.11. With the EMU primarily dominated by intergovernmental decision-making and technocratic management, lack of democratic legitimacy and credibility has a serious impact that also heightens contrasts between the partner countries.

2.12. The EU is not an exception. Other large entities such as the US, China, Russia, India, and Brazil and a large number of smaller countries, also suffer from comparable difficult circumstances. But undeniably, the EU, and notably the euro area, has great trouble in overcoming obstacles in comparison to the US and the Asian continent ('the Asian factory').

2.13. As a matter of principle the EESC believes that, although many different and intricate aspects shape the actual state of the European economy, more effective political management of the EMU should help significantly to create more stability in addressing current and future difficulties. In any event, a stronger EMU will be indispensable for safeguarding certain European key interests in the world.

2.14. The EESC realises that definitive solutions are not within reach at the moment. It also realises that current dynamics, complexities and dilemmas are obstacles to a robust roadmap. On the other hand, current institutional and governance shortcomings cannot continue for another long period of time without lasting damaging effects to confidence and economic output. The EESC thus considers unacceptable delays, resignation and the absence of a plan for the future.

2.15. Therefore the EESC believes that a serious debate on a well-founded architecture of the EMU, implying a consensus concerning economic and social objectives as well as agreed governance, is unavoidable.

2.16. Since the inception of the EMU the debate on more or less European integration is about national sovereignty. The EESC underlines that this is a false paradigm, as national sovereignty is gradually fading away. In the current paradigm of globalisation and corresponding challenges it sees no feasible alternative to better anchoring of common or pooled sovereignty in the EU, and notably in the euro area. This will require solidly pooled economic governance or an economic government. In the same vein, the future of the EMU is thus closely related to other vital 'sovereign' policies such as the development of the Common Security and Defence policy and of an Energy Union.

3. SWOT analysis of the current situation in EU and euro area

Strengths	Weaknesses
<ul style="list-style-type: none"> — Increased awareness that Europeans are facing a common future together — Outstanding, though restricted, role of the ECB (as supranational institution) — The ESM and recent acknowledgement of flexibility rules — Improved budgetary discipline by the Member States — Increasing political acceptance by governments of the agreed rules at EU-level, notably concerning the need of structural reforms in all Member States — Increasing EU focus on improvement of governance and better administration in all Member States — The start of the Banking Union, and the decision-making process on the Single Resolution Mechanism — Quantitative easing by the ECB — More active, but still limited, role of the EIB and the proposed Investment Plan for Europe — The Semester and country-specific recommendations, implying a greater involvement of the EU in identifying weak spots in national budgets and governance — More transparency in the public debate on developments in the partner countries — Increased acceptance in all Member States of the need to promote growth and competitiveness as well as to improve conditions for internal and foreign investment — Despite differences across the continent, European social market models are ensuring best stable developments in society. 	<ul style="list-style-type: none"> — Lasting economic imbalances in the euro area which is tending to increase — Lack of solidarity among — and within — Member States — Persistent unanimity voting on essential matters — Very lengthy discussions needed to make progress, even on issues that are already agreed upon — Despite the euro there is no ‘community of destiny’ while economic and fiscal policies remain, to a large extent, within the Member States’ remit ⁽¹⁾ — Lack of democratic legitimacy — Weak position of the EC in implementing European rules and the Semester — Weak implementation of agreed rules in Member States: excessive deficits, country-specific recommendations — Negative effects of exclusive austerity policies — Historically-based national prejudices also leading to continuing suspicion between Member States — to a lesser degree between the Ministries of Finance — Low level of inclusion of national parliaments and civil society in the decision-making process and/or awareness-building in most Member States — Unsatisfactory communication, notably by the leadership in Member States — Discord in public opinion and political parties across Europe and in the euro area — Focus on resolving short-term approaches, no long-term view, let alone engagement — Incomplete Banking Union, no decision as yet about deposit framework — A deep pan-European capital market is a distant dream for as long as banks remain nationally-based — Incomplete and fragmented internal market — Lack of a long-term political vision for the future of EMU/EU.

⁽¹⁾ ‘Preparing for next steps on better economic governance in the euro area’ — Analytical note presented by Jean-Claude Juncker on 12.2.2015, p. 1.

Opportunities	Threats
<ul style="list-style-type: none"> — Strengthening of the governance of the euro area — Strengthening democratic legitimacy — Correct implementation of the agreed rules — Confidence building measures leading to a stable investment climate — Attracting investments within the EU and from abroad, also through the Investment Plan for Europe — Success of the ECB's QE programme — Convergence of budgetary and fiscal policies, based on agreed principles: continuing national policies within an accepted common framework — Contractual arrangements between the Member States and the EU — Tackling economic imbalances in a common framework — Agreement on national reforms as well as on growth and job-creation initiatives — A tenable solution for Greek — and others — worries in promoting convergence — Keeping Britain in on reasonable grounds which do not compromise progress been made by others — A successful interaction between the ECB, the EC and the Council, particularly in the euro area — A solid governance of the euro area — Acknowledgment of a pro-active role for the Commission, including a firm application of the 'community method' — Completing the Banking Union and a pan-European capital market — Establishment of conditions to introduce Eurobonds for investments — A common base corporation tax — Planning a tax basis for the EU budget, and extending it in parallel — A single European voice in international forums. 	<ul style="list-style-type: none"> — EU/euro area: too little, too late — Negative public feeling/euro-scepticism — Lack of confidence among investors, internally and abroad — Deflation — Continuing low growth, compared to major global competitors — On-going international (military) conflicts, notably on the EU's doorstep — Insufficient preparation in the event of a new economic crisis — Increasing economic heterogeneity within the Union/euro area — Grexit (or something approaching it) — Brexit (or a stagnating status quo in the UK—euro area balance) — Stagnation of the Banking Union — Continuing link between national banks and Member States, lack of a pan-European capital market — Failing implementation in the financial sector — Failing implementation in the Internal market at large, resulting in growing fragmentation — Stagnating progress in other key areas, such as an Energy Union, a Digital Union and CSDP — Lack of success of the ECB's QE programme.

4. Proposals regarding EMU policies and the EU institutions

4.1. Democracy, transparency and legitimacy

4.1.1. The fundamental challenges of economic and monetary union, involving a substantial transfer of national powers to the EU, are linked to its democratic dimension and in particular its parliamentary dimension, to the effectiveness of its decision-making system, to compliance with the principles of accountability and sincere cooperation, and to the transparency (visibility) of its way of working. In the EESC's view, these challenges require a political union that restores and ensures public participation and the involvement of all stakeholders in European integration.

4.1.2. Achieving political union is a process that should take place in stages. Certain conditions and measures could be put in place without the need for Treaty change. There are others that necessarily require a revision of the Treaties.

4.1.3. The EESC recommends that, for reasons of accountability and cooperation, the means of participation that exist at national level, be duly applied also at EU level, including:

- fully fledged European political parties;
- the creation of political majorities and minorities on the basis of electoral programmes;
- harmonising the dates of European elections.

4.1.4. In each State and across the EU, the issue of democracy constitutes a serious weakness (we need only consider the role of the Troika in the new system of economic governance). The relationship between representatives and those they represent continues to evaporate: a reality that has been highlighted by the crisis. Hence the urgent need to address this issue as part of the process of completing economic and monetary union across its four means or pillars of integration: banking union, fiscal union, economic union (which, in the Committee's view, should include social union) and, finally, political union.

4.1.5. In order to achieve that political union, starting with the countries that want it and applying the principle of differentiated integration, the EESC would suggest, in due course, taking the approach of the Convention, which would be tasked with finding solutions beyond the Lisbon Treaty. The EESC will undertake to draw up proposals for the effective participation of civil society in the work of such a Convention.

4.2. The legislative branch:

Representative democracy: the European Parliament and national parliaments

4.2.1. The primary arena for representative democracy within economic and monetary union is the European Parliament, which includes members from the countries that have joined the single currency or are preparing to do so.

Proposal A

To ensure the profile, consistency and effectiveness of the work of those MEPs, the EESC suggests creating a permanent body within the EP that would bring them together. Its purposes would be to underpin the accountability of the single currency's governance institutions and, at the same time, establish a public space for dialogue and consultation, drafting and voting on texts on economic and monetary matters to be submitted to the Assembly for decision and ensuring that the principles of solidarity and sincere cooperation are equally taken into account in implementing EMU policies.

4.2.2. The consolidation of representative democracy within EMU would not be complete if the method of decision-making were not to take account of the dual legitimacy — national and European — that is essential in the *sui generis* system that is the European model.

Proposal B

The EESC suggests harnessing and simultaneously expanding the remit of the Interparliamentary Conference (Article 13 of the Fiscal Compact), giving it the powers to discuss and issue binding opinions on growth, competitiveness, employment, tax and social policy. In addition, the European Parliament should open up its internal body on EMU to the involvement of national MPs from the 'in' and 'pre-in' countries of the euro area, as observers. The Interparliamentary Conference could be made up of the chairs of the budget and industry committees of the EMU countries and of the chairs of the EP committees on budgets; economic and monetary affairs; industry, research, and energy; and cohesion. Deepening the co-decision procedure must sustain the legitimacy of new legislative proposals.

Proposal C

For their part, national parliaments should be seen to engage in EU policy debates. This is already underway in some countries, for instance through the Commission's participation in parliamentary debates. Good practices here could be disseminated. The aim would be that national political players would engage more visibly at their level in EU policies that affect them directly.

The Council

4.2.3. In this political context, there will be a more favourable basis for closer cooperation and consultation between the Eurosummit and/or the Eurogroup — and, in this case, also the 'pre-in' countries — the EP and national parliaments. In line with the logic of the previous point, the ministers from the euro area countries and from those countries seeking to join the euro area could exercise legislative functions jointly with the EP, on matters relating to EMU.

4.2.4. The Council action should be enhanced through the efforts of national administrations which must go hand-in-hand with this development, notably through the exchange of officials between them and by stepping up bilateral relations.

4.2.5. The Committee points out that expanding qualified majority voting and, in time, abolishing unanimous voting, will facilitate the deepening of integration within political union.

4.2.6. Thus, better structured cooperation and consultation within political union will enhance the effectiveness of policies in the key areas of EMU. The EU as a whole will duly benefit from this.

4.2.7. As set out in the table in point 5, there are many things that could be done without Treaty change. For the majority of EMU policies, enhanced cooperation could operate directly between the countries; it would be better to assign to EMU a kind of permanent enhanced cooperation that would also enable action to be taken, more effectively, by the MEPs from the euro area countries and euro area candidate countries.

4.2.8. The Committee suggests that it would be useful to revive the 'Jumbo' Councils within the Eurogroup, thereby opening up the possibility of regular dialogue between the finance, economy and social affairs ministers on the one side and the social partners and civil society on the other.

4.3. The executive branch

An executive for EMU, the Commission

4.3.1. After a transitional period, leading eventually to a Treaty change, an EMU governing body will take shape. Its president should to all intents and purposes operate as minister for the economy and finance for the euro area, with a role as vice-president of the Commission — similar to the position of the High Representative for Foreign Affairs and Security Policy.

4.3.2. In the European model *sui generis* the European Commission (smaller and effective) will continue to play an essential role. The 'community method' and the current right of initiative of the EC also have a very special significance in deepening the EMU. This role should be assured in the political Union.

4.3.3. The European Commission should maintain a 'dual' role, liaising between the EU and EMU until such time as an EMU Executive has been set up in its own right. Without prejudice to the current right of initiative of the EC, ways and means should be found to duly involve the EP in the process, in order to sustain the legitimacy of new legislative proposal.

4.3.4. The EESC proposes appointing a permanent Eurogroup president, who could work best, directly in Brussels, with the Commission, EP, and national governments and parliaments. Following the method used by the Commission president Mr Juncker, a Commission vice-president could chair the Eurogroup meetings. He/she could thus represent EMU in international bodies.

4.4. The EESC

4.4.1. All this should make us more determined than ever to build up stronger, more constructive relations with the people of Europe and find ways of involving them in public life. Solid forms of consultation on specific matters involving social partners and civil society should be guaranteed, notably in the euro area, as these organisations play an important role in policy areas that are directly affected by EMU. They often also affect the outcome of policies at national level. At European level, the EESC can act as a civil society facilitator, responsible for organised civil society's participation in the EU decision-making process, without any prejudice to the role of the social partners in the social dialogue, through:

- (a) a forum of organised civil society on specific issues, including that for assessing the limits to the process of European integration and searching for new forms of participation;
- (b) a specific forum for the euro area to assess the sense of purpose and feeling of belonging, as a means of overcoming prejudices and increasing mutual trust;
- (c) opinions in the form of pre-legislative initiatives on certain issues of particular sensitivity for the public, and on which the EP and the Council are required to legislate.

5. Legal instruments and subject matters

5.1. To achieve the four unions, in line with the report of the four presidents, and equivalent to the EESC's four pillars ⁽²⁾, measures or policies in a range of areas could be carried out without Treaty change (1st column in the table below). Others would have to be decided on together at EU level (euro area), using a new decision-making method and new instruments, and using the enhanced cooperation provided for in the current Treaty (second column of the table) or by means of amendments to the Treaty or, if necessary, a new EMU Treaty (third column). Finally, the table summarises these stages and puts forward institutional proposals and preparatory initiatives regarding the political pillar of EMU (fourth column).

⁽²⁾ Also on the basis of EESC opinion 'Completing EMU — The next European legislature' (OJ C 451, 16.12.2014, p. 10).

5.2. Analytical framework of options for completing EMU ⁽³⁾

(I) Policies under the existing Treaty	(II) Enhanced/ structured cooperation passerelle clauses (Article 136 TFEU)	(III) Beyond the Lisbon Treaty	Institutional steps for achieving the political pillar: for the euro area and the countries that want it
<p>Financial, fiscal and monetary pillar</p> <ul style="list-style-type: none"> — Taxation with a common consolidated corporate tax base (CCCTB) — Completion of Banking Union, capital market, European surveillance — Financial assistance for a Member State in the event of crisis (Article 122 TFEU) — Implementation of national reform programmes 	<p>Financial, fiscal and monetary pillar</p> <ul style="list-style-type: none"> — Strengthening of the ESM — Completing the ECB's mandate — EMU common fiscal policy — Fiscal and Budget Union — Debt mutualisation (or with Article 125 TFEU?) — Solidarity and competitiveness mechanism to counter asymmetric shocks and imbalances (fiscal Union) — EMU balance of payments 	<p>Financial, fiscal and monetary pillar</p> <ul style="list-style-type: none"> — Own resources — Establishment of an European Monetary Fund as debt agency — Eurobonds for new debt — Fiscal harmonisation 	<p>1st step</p> <ol style="list-style-type: none"> 1. <i>Stable Eurogroup president</i> 2. <i>Making the Interparliamentary Conference operational</i> 3. <i>'Parliamentarisation' of the euro area (EP Grand Committee with all members from EMU countries)</i>

⁽³⁾ Idem.

(I) Policies under the existing Treaty	(II) Enhanced/ structured cooperation passerelle clauses <i>(Article 136 TFEU)</i>	(III) Beyond the Lisbon Treaty	Institutional steps for achieving the political pillar: for the euro area and the countries that want it
<p style="text-align: center;"><u>Economic pillar</u></p> <ul style="list-style-type: none"> — Strengthening and implementation of the Juncker plan — Policies for investment, growth and employment — EIB Eurobonds — Strategies to disseminate knowledge (Digital Agenda) — Completion of the internal market (single energy/digital/research market) — Flexibility in Stability and Growth Pact rules — Improved implementation of European Semester and contractual agreements (CCI) 	<p style="text-align: center;"><u>Economic pillar</u></p> <ul style="list-style-type: none"> — EMU macro- and microeconomic government — Research and innovation — Close coordination of meetings at the Summits of Heads of State and Government of the euro area, Eurogroup and Euro Working Group — New legislation for the euro area — Investment in social infrastructure — Participatory democracy in the economic sector 	<p style="text-align: center;"><u>Economic pillar</u></p> <p>(in the event that EMU enhanced cooperation is not authorised)</p> <ul style="list-style-type: none"> — EU high representative for economic/fiscal policy — Mandatory coordination of economic policies (amending Article 5 TFEU) — Majority voting on macro- and microeconomic policy in co-decision with the Parliament (EMU parliament representatives) — Transferring competences, starting with industry and energy 	<p style="text-align: center;"><u>2nd step</u></p> <ol style="list-style-type: none"> 4. EMU Legislative Affairs Council 5. Voting by euro area parliament representatives on matters of EMU competence 6. An EMU executive (government) (currently Eurogroup and Commission) 7. Strengthening the powers and remit of the Interparliamentary Conference (EP and national parliaments)
<p style="text-align: center;"><u>Social and rights pillar</u></p> <ul style="list-style-type: none"> — Accession to the European Convention on Human Rights — Training and education — Framework directive on services of general interest — Gender mainstreaming — Development indicators — Accession to the Council of Europe's Social Charter — Respect for 'rights' standards — Horizontal social clause (Article 9 TFEU) 	<p style="text-align: center;"><u>Social pillar</u></p> <ul style="list-style-type: none"> — Social policy coordination — Harmonisation of social protection systems — Immigration policy — Individual and transnational pension right — Minimum income for citizens — European public goods — Employment support — Labour market, mobility, recognition of qualifications — Quality of public services 	<p style="text-align: center;"><u>Social pillar</u></p> <ul style="list-style-type: none"> — Majority voting for social, employment, education and health policy — Amendment of the Charter of Rights regarding limits on property rights — Transfer of a number of areas from support to shared competence (education and training in particular) 	<p style="text-align: center;"><u>3rd step</u></p> <ol style="list-style-type: none"> 8. Strengthening the powers of the EP with regard to EMU (democratic legitimacy) and the creation of real European political parties 9. Chamber of the States (EMU) (governments) 10. Separation between legislative and executive powers 11. Abolition of unanimous voting

(I) Policies under the existing Treaty	(II) Enhanced/ structured cooperation passerelle clauses (Article 136 TFEU)	(III) Beyond the Lisbon Treaty	Institutional steps for achieving the political pillar: for the euro area and the countries that want it
<p style="text-align: center;"><u>Political pillar</u></p> <ul style="list-style-type: none"> — EMU parliamentarisation — Grand Committee (GC) (euro area parliament representatives) — Stable Eurogroup president — Legislative Affairs Council — Interinstitutional agreements — Neighbourhood policy implementation — Bilateral and multilateral EU trade agreements 	<p style="text-align: center;"><u>Political pillar</u></p> <ul style="list-style-type: none"> — Voting by EMU parliament representatives on matters of EMU competence — Strengthening of the Interparliamentary Conference (Article 13 of the Fiscal Compact) — European defence — Foreign policy — One voice at the UN Security Council — EMU external representation — European Public Prosecutor — European Voluntary Humanitarian Aid Corps 	<p style="text-align: center;"><u>Political pillar</u></p> <ul style="list-style-type: none"> — New EMU Treaty — Euro parliament (EMU parliamentarians) with permanent enhanced cooperation (new Article 136 TFEU) — Strengthening of EP (ordinary legislation, right of initiative where the Commission does not act) — Chamber of the States (national governments +) — Abolition of unanimous voting — Super qualified majority, amendment of the Treaties — European executive (for EMU) — European parties and electoral programmes and transnational lists — Separation of powers — Foreign policy 	<p style="text-align: center;"><u>Initiatives</u></p> <ul style="list-style-type: none"> — <i>Civil society conference organised by the EESC/CoR in cooperation with the EU presidency and the Commission</i> — <i>Interparliamentary conference</i> — <i>EP proposals for action without Treaty change and for a revision of the Lisbon Treaty</i> — <i>Constitutional convention</i> — <i>Potential evaluation of option of pan-European referendum</i>

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on Fostering creativity, entrepreneurship and mobility in education and training

(own-initiative opinion)

(2015/C 332/03)

Rapporteur: Vladimíra DRBALOVÁ

On 16 October 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

Fostering creativity, entrepreneurship and mobility in education and training.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), the European Economic and Social Committee adopted the following opinion by 88 votes to 8 with 21 abstentions.

1. Conclusions and recommendations

1.1. The EESC supports a joint initiative of the European Commission and European Council presidency trio to focus on entrepreneurship education ⁽¹⁾ and to foster an entrepreneurial mindset in Europe.

1.2. The EESC recommends that Member States return to the strategic framework for European cooperation in Education and Training (ET 2020) based on the 2006 Oslo Agenda, which is still highly valid.

1.3. The EESC recommends that Member States develop their own entrepreneurship education strategies or incorporate the entrepreneurship concept in their national lifelong learning strategies.

1.4. The EESC calls for gradual development of key competences as defined in the EP and Council recommendation (2006) ⁽²⁾ with the aim of contributing to better adaptability, employability, social inclusion and mobility.

1.5. High quality traineeships, internships, apprenticeships, dual or other work-based systems, start-ups and incubator programmes, volunteering and sports activities can ease the transition from school to work or self-employment.

1.6. The procedures for the recognition of knowledge acquired outside school need to be improved and learners, educators and employers must be involved in the design of recognition processes and be motivated by them ⁽³⁾.

1.7. Entrepreneurship education needs to be considered, however, in the context of the overall social — and not just business — environment. Entrepreneurship skills should be addressed at all levels of education and training, starting appropriately from an early age, in a manner that enables their continuous development across the curriculum.

⁽¹⁾ See the definition in point 5.3.

⁽²⁾ Recommendation of 18 December 2006, OJ L 394, 30.12.2006, p. 10.

⁽³⁾ OJ C 214, 8.7.2014, p. 31.

1.8. The EESC supports the EC proposal addressed to the Member States to develop a competence reference framework for entrepreneurship within the context of the Key Competences Framework. This would help to ensure a coordinated approach across different levels of education and consideration for non-formal and informal learning.

1.9. The EESC calls on Member States to introduce a programme for teachers, trainers and educational leaders focused on developing entrepreneurial skills and attitudes. Educational establishments, meanwhile, should offer learning environments that promote entrepreneurial mindsets and are open to the wider community.

1.10. The EESC would emphasise the importance of partnership among different stakeholders — state administrations, schools, companies, employment services and families, highlighting in particular the role of social partners in developing professional and transversal competences that are geared to reality.

1.11. The EESC calls upon Member States to use all available programmes and tools supporting entrepreneurship in education and training, creativity, innovation and mobility. The EESC urges the Commission to provide the Member States with support and appropriate assistance in implementing Erasmus+, ensuring that all its instruments function properly.

2. The European policy framework

2.1. One of the priorities of the European Council conclusions of 26 and 27 June 2014, as set out in Annex I, *Strategic agenda for the Union in times of change* ⁽⁴⁾, was to help develop skills, and unlock talent and life changes for all by promoting the right skills for the modern economy and lifelong learning.

2.2. In order to contribute to the review of the Europe 2020 strategy, the Italian Presidency ⁽⁵⁾ launched a political discussion on the future role of education and training in the national and EU growth agendas. The Latvian Presidency is also continuing to promote digital opportunities and to foster entrepreneurship education, particularly at regional level ⁽⁶⁾.

2.3. The Council for Youth, Education, Culture and Sport stressed in its conclusions of 12 December 2014 ⁽⁷⁾ that both entrepreneurship and education are priorities of the Europe 2020 strategy for smart, sustainable and inclusive growth. Developing an entrepreneurial mindset can have considerable benefits for citizens in their professional career and career of life.

3. General comments

3.1. The focus on entrepreneurship education represents a return to the **Oslo Agenda for Entrepreneurship Education in Europe** ⁽⁸⁾ stepping up the promotion of an entrepreneurial mindset in society, and the **Strategic framework for European cooperation in Education and Training (ET 2020)** ⁽⁹⁾.

3.2. Creativity and innovation are crucial for the development of enterprises and for Europe's ability to compete internationally. Investment in education and training for skills development is essential if we are to boost growth and competitiveness. The first challenge is to promote the acquisition by all citizens of transversal key competences such as digital competences, learning to learn, a sense of initiative and entrepreneurship and cultural awareness ⁽¹⁰⁾.

⁽⁴⁾ EUCO 79/14, p. 15.

⁽⁵⁾ Programme of the Italian Presidency 'Europe — A fresh start' p. 72.

⁽⁶⁾ Conference of the Latvian Presidency, Riga 11 and 12 February 2015 'Entrepreneurship in regions to strengthen the European Union's competitiveness'.

⁽⁷⁾ Council conclusions on entrepreneurship in education and training of 12 December 2014, OJ C 17, 20.1.2015, p. 2.

⁽⁸⁾ Oslo Agenda for Entrepreneurship Education in Europe, 2006 (http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/education-training-entrepreneurship/policy-framework/2006-conference/index_en.htm).

⁽⁹⁾ The Council conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training (ET 2020) OJ C 119, 28.5.2009, p. 2.

⁽¹⁰⁾ In accordance with Strategic objective 4 (ET 2020): Enhancing creativity and innovation, including entrepreneurship, at all levels of education and training, in the Council conclusions of 12 May 2009.

3.3. The LMO conference on 'Supporting start-ups to create growth and employment' ⁽¹¹⁾ also clearly showed that entrepreneurship education should be considered in the context of the wider social environment. The business environment should nevertheless be geared to facilitating businesses start-ups, cutting red tape, and creating job opportunities. Pre-start, start-up and development incentives can be effectively linked to a range of other active labour market policies (ALMP) and also need to be seen in the context of a wider framework of business support and enterprise development.

3.4. The revision of the Small Business Act ⁽¹²⁾ represents a unique opportunity to strengthen the links between measures focused on SMEs and entrepreneurial education using all available instruments, such as COSME. Promoting the upgrading of skills in SMEs and all forms of innovation is one of the 10 guiding principles for creating a level playing field for SMEs in the EU.

4. Key competences

4.1. The integration of the elements of entrepreneurship education in education and training should aim to give all learners, irrespective of their gender, socioeconomic background or special needs, the opportunity to develop the skills and competences needed for entrepreneurship.

4.2. In addition to basic skills such as reading, writing and arithmetic, entrepreneurship requires the gradual development of a range of key competences as defined in the EP and Council Recommendation from 2006 including a sense of initiative and entrepreneurship and the ability to turn ideas into action. It involves creativity, innovation and risk-taking, as well as the ability to plan and manage projects in order to achieve objectives.

4.3. Communication in foreign languages is particularly essential for ensuring that European citizens are able to move, work, and learn freely throughout Europe and are becoming increasingly important for young people ⁽¹³⁾.

4.4. Digital entrepreneurship is critical in the Digital Single Market era for creating new jobs, for innovative ideas and for clusters that accelerate the pace of innovation. The EU needs to develop a policy framework that will promote ICT skills and encourage Member States to learn from each other about how they can increase the number and improve the quality of ICT-skilled graduates in accordance with companies' needs.

4.5. We need to unleash the huge potential of women and to explore their unique approach to leadership and running businesses. Member States, in close cooperation with the relevant stakeholders, should implement programmes that focus on business and entrepreneurship skills development, and the involvement of women-led business in global supply chains ⁽¹⁴⁾.

5. How to promote an 'entrepreneurial mindset'

5.1. Entrepreneurial skills are important for life in general and for giving people more control of their futures. Entrepreneurship skills should be addressed at all levels of education and training, starting appropriately from an early age, in a way that enables their continuous development across the curriculum.

⁽¹¹⁾ 35th Meeting of the EESC Labour Market Observatory, 13 November 2014.

⁽¹²⁾ COM(2008) 394.

⁽¹³⁾ EC Strategic framework: (1) Barcelona objective agreed in 2002 by the Heads of States or Governments and (2) State and government. The 2008 Communication 'Multilingualism — an asset and a commitment' outlines the Commission's activities in this area.

⁽¹⁴⁾ Research Report 2013, Entrepreneurs: What can we learn from them? Part. 2/3 — Inspiring female entrepreneurs, CIPD (Chartered Institute of Personnel and Development).

5.2. All school pupils should have the opportunity to take part in work-experience programmes to help develop these skills, and the tools developed to assess progress and demonstrate the acquisition of entrepreneurial skills should focus on improving the quality of future work experiences. A good example is a Finnish work programme which provides business-related training to different levels of education, 'Yrittäjyyskasvatus'⁽¹⁵⁾.

5.3. Entrepreneurship education is defined as 'a collection of formalised teachings that informs, trains, and educates anyone interested in participating in socioeconomic development through a project to promote entrepreneurship awareness, business creation, or small business development'⁽¹⁶⁾.

5.3.1. Europe is today pinning all its hopes on the promotion and development of dual systems and similar forms of work-based learning. The Member States that are operating such systems obtain good results over the long term and their youth unemployment levels are below the EU average.

5.3.2. Traineeships are an important means of tackling unemployment and the skills mismatch and securing the transition from education to the labour market. There should be more support for including traineeships in study curricula⁽¹⁷⁾.

5.3.3. Internships, which are about fostering the entrepreneurial attitudes of employees, and employee-driven/social entrepreneurship, can be successful examples of employee participation schemes aimed at achieving the economic and social goals of the organisations they work for.

5.3.4. Volunteering can constitute a valuable experience for skills development. The key non-formal education providers are youth organisations. Through their educational programmes they contribute to developing a number of transversal competences, such as teamwork, interpersonal skills, sense of initiative and risk-taking. Young people can learn from their mistakes in a safe environment (contrary to the real business world).

5.4. In 2012, the European Commission published a report entitled *Entrepreneurship education at school in Europe*⁽¹⁸⁾ focusing on national strategies, curricula and learning outcomes. Entrepreneurship education is currently promoted in most European countries and a number of different approaches have been adopted: 1) specific strategies/action plans focused exclusively on entrepreneurship education, 2) broader educational or economic strategies that incorporate objectives for entrepreneurship education, 3) individual or multiple initiatives relating to entrepreneurship education.

5.5. Not all people are born to be businessmen or businesswomen. An entrepreneurial spirit only generates more options for them to succeed in their professional career and career of life. But those who have talent for doing business and the courage to turn their entrepreneurial spirit into action should be promoted.

5.5.1. Business incubators are centres for innovation and entrepreneurship activities. They can be found at many universities and provide a safe environment where students can receive professional guidance for turning business ideas into reality and take risks without negative impact and a culture of failure. Students at business schools with incubators can have a more direct route to joining a start-up or launching their own business.

5.5.2. Entrepreneurial skills can also be acquired through skills development programmes organised outside general education systems. These programmes may include coaching and mentoring activities supplied by experienced trainers, entrepreneurs and business experts. Not only do these help to provide potential entrepreneurs with valuable business know-how, they also allow them to develop network of contacts with existing enterprises and entrepreneurs.

⁽¹⁵⁾ Finnish Ministry of Education (2009), Guidelines of entrepreneurship education, Helsinki.
Finnish Ministry of Employment and the Economy (2012), Entrepreneurship review 2012.

⁽¹⁶⁾ See Unesco and UNEVOC definition.

⁽¹⁷⁾ OJ C 214, 8.7.2014, p. 36.

⁽¹⁸⁾ Eurydice, April 2012, Entrepreneurship education at school in Europe.

5.5.3. Entrepreneurial skills training provided by chambers of commerce and industry across Europe demonstrates a variety of forms of teaching and practice that support people in the process of identifying and starting business ventures, identifying and organising the required resources and taking the risks associated with the venture: Entrepreneurial Skills Pass (Austria) ⁽¹⁹⁾, Startup@Campus (Belgium) ⁽²⁰⁾, Incuba' school (France), Long night of Start-ups (Germany) ⁽²¹⁾, New Entrepreneurs Day (Spain) and Bright and Young (Belgium) ⁽²²⁾.

5.6. Stakeholders and civil society organisations can play a key role in contributing effectively to the implementation and delivery of initiatives aimed at promoting entrepreneurship and fostering the entrepreneurial mindset. An example is the Finnish Startup Sauna Foundation ⁽²³⁾, which was founded by Finnish entrepreneurs in cooperation with several public stakeholders.

6. How to recognise entrepreneurial skills and make them more transparent

6.1. The continuing difficulties surrounding the recognition and transparency of skills and qualifications are hindering the development of the right mix of skills and qualifications as well as the mobility needed to achieve a closer match between skills and jobs to help boost competitiveness and prosperity.

6.2. A number of tools have been established at European level with the aim of facilitating cooperation through the transparency and recognition of skills and competences acquired through vocational education and training (VET) and higher education (HE) across the EU ⁽²⁴⁾.

6.3. In addition to these tools, a number of initiatives aim to overcome skills mismatches, namely the European Skills, Competencies and Occupations Taxonomy (ESCO) and the Skills Panorama. To foster mobility, we also have the Europass framework, including the Europass CV and the European Skills Passport, and the recent revision of the Professional Qualifications Directive ⁽²⁵⁾.

6.4. Ensuring greater coherence between the European qualifications framework (EQF), European credit transfer systems (ECTS and ECVET) and the multilingual classification of European skills, qualifications and occupations (ESCO) would help ensure the recognition of qualifications, the validation of non-formal and informal learning and provision for lifelong guidance. This process must remain comprehensive and should be accompanied by an evaluation of the various instruments involved to ensure their effectiveness.

6.5. The communication on Rethinking Education ⁽²⁶⁾ also outlines the need to recognise, assess and validate the skills that people gather outside school, thereby providing a skills profile for potential employers. The recognition of skills developed outside the classroom is relevant when considering someone for a job; however, the onus should not be placed only on employers to assess and validate such skills.

6.6. Furthermore policies and frameworks supporting the portability of qualifications are generally related to existing EU legislation, and several are national initiatives for the validation of prior learning at Member State level. A systematic review and monitoring of such national initiatives should be geared towards identifying good practice and promoting mutual learning and common principles ⁽²⁷⁾.

⁽¹⁹⁾ Entrepreneurial Skills Pass (Austria).

⁽²⁰⁾ Startup@Campus (Belgium).

⁽²¹⁾ Long night of Start-ups (Germany).

⁽²²⁾ Bright and Young (Belgium).

⁽²³⁾ Teknologiaeollisuus (2012), Uusi Startup-säätiö vauhdittamaan suomalaisia kasvuyrityksiä (Helsinki).

⁽²⁴⁾ A central tool is the European Qualifications Framework (EQF) which relates to all types and levels of qualifications; VET tools include the European Credit System for Vocational Education and Training (ECVET) and the European Quality Assurance in Vocational Education and Training (EQAVET). HE instruments, include the European Standards and Guidelines for Quality Assurance in Higher Education (ESG) and the European Credit Transfer and Accumulation System (ECTS).

⁽²⁵⁾ Directive 2013/55/EU.

⁽²⁶⁾ COM(2012) 669 final.

⁽²⁷⁾ Based on forthcoming Eurofound (2015) report 'Youth Entrepreneurship in Europe', EF 1507.

6.7. The EESC supports the EC's proposal to develop a competence reference framework for entrepreneurship within the context of the Key Competence Framework, breaking down competences into their constituent parts, based on the EQF learning outcome descriptors and levels. This will help ensure a coordinated approach between the different levels of education and the process of taking account of non-formal and informal learning.

6.8. The EESC appreciates the following two collaborative initiatives of the EC and OECD:

1. **Entrepreneurship360** ⁽²⁸⁾, which aims to enhance entrepreneurship at schools and within technical and vocational institutions and provides a freely available self-assessment instrument that will support institutions and individual teachers by helping them to advance their strategies and practices to promote entrepreneurship, and the
2. **HEInnovate** online tool, which helps higher education institutions to promote a more entrepreneurial and innovative mindset in an international context ⁽²⁹⁾.

7. The role of teachers, trainers and educational leaders

7.1. Teachers and educators have a crucial role in facilitating learning and multiplying ideas. Integrating new educational processes and teaching technologies into the classrooms is no simple task and will require qualified teachers to spearhead the process ⁽³⁰⁾. They have to promote alternative and non-formal approaches to learning and apply an individual attitude.

7.1.1. The quality of teachers and mentors is essential for ensuring the success and effectiveness of entrepreneurial training programmes. In this regard, potential entrepreneurs who are in the early stages of their business life particularly value the experience and know-how of experienced teachers, more senior entrepreneurs, for instance who can share their own experiences ⁽³¹⁾.

7.1.2. One example of the effectiveness of entrepreneurial training programmes is the programme organised by the Irish National Foundation for Teaching Entrepreneurship ⁽³²⁾ which provides intensive train-the-trainer training to equip secondary level teachers and youth workers with the necessary skills and resources to successfully deliver entrepreneurship training to young people. Participants who successfully complete this programme receive a Certified Entrepreneurship Trainers (CETs) qualification.

7.1.3. Another example is the Dutch Action Programme Entrepreneurship and Education ⁽³³⁾, which aims at enhancing entrepreneurial spirit and attitudes among students by anchoring entrepreneurial skills and knowledge within the Dutch education system. The programme is composed of different schemes whose aims are to offer a wide range of activities to develop students' entrepreneurial skills throughout the various stages of their educational careers as well as to provide training courses that facilitate entrepreneurship education for teachers.

7.2. Teachers, trainers and educational leaders should seek to develop their own creativity and innovative attitudes, while schools should offer a learning environment that promotes entrepreneurial mindsets and that is open to the wider community.

7.3. In June 2013, the Commission published *A guide for Educators* ⁽³⁴⁾ setting out a list of basic principles for entrepreneurial teachers, assessing qualitative learning outcomes, cross-curricular learning, pre-service and in-service teacher training, mentoring, innovation in entrepreneurial pedagogy, and putting forward key messages from practical examples.

⁽²⁸⁾ The OECD Entrepreneurship360 project.

⁽²⁹⁾ HEInnovate.

⁽³⁰⁾ OJ C 214, 8.7.2014, p. 31.

⁽³¹⁾ Based on forthcoming Eurofound (2015) report 'Youth Entrepreneurship in Europe', EF 1507.

⁽³²⁾ NFTE programme.

⁽³³⁾ Programmes: Voortgangsrapportage Programma onderwijs en ondernemerschap and Landbouw en Innovatie, Brief Onderwijs en Ondernemerschap.

⁽³⁴⁾ The guide prepared by ICF GHK for EC, DG Enterprises and Industry 'Entrepreneurship education — A guide for educators'.

7.3.1. Entrepreneurial teacher training institutions should develop a clear educational concept, to equip teachers with the ability to also teach for the labour market. Education supporting the entrepreneurial mindset needs to be integrated as a horizontal approach and a cross-curricular subject in the study programme.

7.3.2. Entrepreneurial teacher training programmes should motivate student teachers to develop their own entrepreneurial knowledge, skills and attitudes.

7.3.3. Support should be given to develop free and open digital and online tools that teach entrepreneurial skills and explore forms of cooperation with the open source community to promote free business tools as well as training for such tools.

7.3.4. The mobility of educators across Europe is important, particularly in higher education, through the EU Lifelong Learning Programme and/or other instruments specially designed for this purpose. Greater mobility and exchange of experience is needed in Europe, not only between universities, but also between academia, where appropriate, and the business world. Programmes need to be developed that allow educators to spend time at other institutions and/or in the private sector to allow them to truly engage, learn and develop.

8. The partnership principle

8.1. Business should be consulted regarding the formulation of education activities for entrepreneurship. This is necessary to ensure that graduates are equipped with the skills they need to succeed. Business should be invited to become more involved in training managers and workers in the fields of entrepreneurship, cooperation and participation in management of their organisations. Businesses should also train their workers in the necessary skills and new knowledge as well as in decision-making under working conditions enabling them to access these training programmes. In addition, they should work with the education community so that young people can learn about the labour market and find a place for themselves within it.

8.2. The link between trade unions and young people in the field of training is particularly important. Trade unions can take part in training young people in work environments other than schools or educational centres. The most experienced and professional workers can work with young workers, trainees and volunteers as mentors and tutors or become teachers at special apprenticeship facilities. These links with companies are important for teaching young people about the labour market process and industrial relations. Teacher trade unions are a critical resource with which to work for effective policy building in education and training, but the interface with business is vital.

8.3. Above all, in the context of social partnership, employers and employees' organisations have to be involved in designing national lifelong learning strategies and action plans for implementing Youth Guarantees. The EESC supports the Framework of Action on Youth Employment ⁽³⁵⁾, developed by the European social partners.

8.4. It is crucial to ensure the involvement of civil society organisations. This could allow the various CSOs (focused on women, young people, families, disabled people, migrants, minorities and other groups) to focus more effectively on the needs and priorities of specific groups of citizens in the education system and on the labour market.

8.5. The family continues to play an important role as was already mentioned in the Committee's opinion ⁽³⁶⁾.

⁽³⁵⁾ Framework of Action on Youth Employment.

⁽³⁶⁾ OJ C 68, 6.3.2012, p. 1.

9. Effective use of both existing and new programmes

9.1. **Erasmus+** ⁽³⁷⁾, a new Commission programme for education, training, youth and sport 2014-2020 aims to boost skills and employability, as well as to modernise Education, Training and Youth work. The seven-year programme will have a budget of EUR 14,7 billion, which represents a 40 % increase on current spending levels reflecting the EU's commitment to investing in these areas. Erasmus+ will provide opportunities for over four million Europeans to study, gain work experience and volunteer abroad. This is an important step forward with significant potential in terms of supporting entrepreneurial education, for example by encouraging the mainstreaming of education-business cooperation in Knowledge Alliance for higher education and in Sectoral Skills Alliances for VET.

9.2. There are other programmes and instruments supporting entrepreneurship education in the EU: **ESF** ⁽³⁸⁾, **ESCO — European Skills, Competences and Occupations Taxonomy** ⁽³⁹⁾, **COSME** ⁽⁴⁰⁾, **HORIZON 2020** ⁽⁴¹⁾, **the Youth employment initiative** ⁽⁴²⁾ and **Creative Europe** ⁽⁴³⁾.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽³⁷⁾ Erasmus+, OJ L 347, 20.12.2013, p. 50.

⁽³⁸⁾ ESF.

⁽³⁹⁾ ESCO.

⁽⁴⁰⁾ http://ec.europa.eu/cip/cosme/index_en.htm

⁽⁴¹⁾ http://ec.europa.eu/research/horizon2020/index_en.cfm?pg=home&video=none

⁽⁴²⁾ COM(2013)0144 final.

⁽⁴³⁾ Creative Europe.

Opinion of the European Economic and Social Committee on 'An EU Industrial Policy for the Food and Drinks Sector'

(2015/C 332/04)

Rapporteur: Mr Ludvík JÍROVEC

Co-rapporteur: Mr Edwin CALLEJA

On 10 July 2014 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the:

Food and Drinks Sector.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), the European Economic and Social Committee adopted the following opinion by 151 votes to 1 with 5 abstentions.

1. Conclusions and recommendations

1.1. Conclusions

1.1.1. Trends

Between now and 2050 key demographic trends will include a growing and ageing population, urbanisation and growing inequality. By 2050 the world's population will reach 9,1 billion, 34 % higher than today. Nearly all of this population increase will occur in developing countries. Urbanisation will continue at an accelerated pace, and about 70 % of the world's population will be urban (compared to 49 % today). But to cope with the resultant increase in demand, food production (net of food used for biofuels) must increase by 70 %⁽¹⁾.

1.1.2. The role of the European food and drink industry

The European food and drink industry will have to develop its strategy for development in an environment of modest economic growth, less natural resources, structurally high commodity and energy prices and difficult access to capital. Innovation will be at the centre of its competitiveness.

In this context, the sector has to be geared to meet the challenges ahead. This EESC opinion targets key policy areas that need to be addressed to create a more business-friendly environment. These should enable the food and drink industry to achieve a sustainable growth, innovate and create jobs whilst continuing to provide consumers with safe, nutritious, high quality and affordable food.

1.1.3. The call for a sector-specific industrial policy for the European food and drink industry

The EESC strongly favours a sector-specific industrial policy for the European food and drink industry tailored to its specific needs. It believes that this can be achieved through a renewed mandate of the High Level Forum for a better functioning supply chain for the period 2015-2019 whose mandate came to an end on 31 December 2014.

⁽¹⁾ http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdf

1.2. Recommendations

The EESC draws the attention of the European Commission, the European Parliament, the European Council and Member States' governments, to the priority areas listed below for the further progress of the European Food and Drinks Industry. It also draws the attention of companies operating in this sector to the initiatives and action needed on their part.

1.2.1. Progress on completion of Internal Market

The EU Commission and Member States should work towards completing a Single Market ensuring the free movement of food and drink products. This is a precondition to improve the competitive performance of food and drink companies in the EU, which does not necessarily mean adopting additional legislation but taking steps for better implementation of existing rules.

The Commission should map and monitor progress regarding:

- the ongoing REFIT exercise led by the Commission. This should contribute to the completion of the Single Market for food without losing sight of existing standards in the conditions of employment of workers;
- the recent CAP reform that needs to be implemented without creating distortions of competition among Member States and in a way that stimulates sustainable production;
- the EU Apprentice Pledge. This requires the full support of Member States in its implementation.

1.2.2. International facilitation of trade in foods and drinks

In line with its 4 January 2010 opinion Trade and Food Security⁽²⁾, the EESC recalls that food security must remain a key objective in any ongoing global trade negotiations.

EU negotiating strategies at international level should seek to eliminate tariffs for EU exports and facilitate trade through the implementation of internationally recognised standards in the countries with the highest trade expansion potential. The Commission should:

- seek a favourable conclusion of significant EU trade deals still pending (notably USA, Japan and South Asian partners) as these can bring considerable advantages to EU food and drink producers;
- monitor the implementation of trade agreements in force;
- strive for a better coordination between bilateral and plurilateral agreements;
- ensure reciprocity of treatment both in the lowering of tariff barriers and in the elimination of Non-Tariff Barriers (NTBs) and ensure that existing EU standards of consumer, environment and health protection are maintained.

The EU Commission should increase its support for SMEs to become more internationalised. Public support remains essential in order to:

- create favourable export conditions by eliminating barriers to trade;
- facilitate access to trade finance (export credit and insurance);

⁽²⁾ OJ C 255, 22.9.2010, p. 1.

- support export promotion based on public-private collaboration;
- collect information about import requirements in third countries and convey it to the representative association of SMEs.

1.2.3. **Initiatives by the food and drink sector itself aimed at strengthening human resources and consolidating employment**

There is a crying need for the industry itself to improve its image especially with young people. The need to recruit a higher quality of human resources should be backed by:

- more high quality sector-based labour market information available across Member States to help address the problem of asymmetric information between employers and potential employees; and to identify and correct any skills mismatches;
- validation of the courses of study in higher education institutions on a regular basis with the inclusion of food and drink industry representatives to maintain relevance of vocational education sector;
- apprenticeship programmes to be opened to all new recruits to the food and drink sector not exclusively to young people. This is especially important in unlocking the potential of women returners and older workers seeking to change career;
- means and resources for training and life-long learning to have a qualified workforce. In this regards, social dialogue is a fundamental element.

The EESC encourages the establishment of a food KIC (Knowledge and Innovation Community) in the food and drink sector as it not only represents an essential commitment of increasing R & D investment by 2020 but it also is a strong contributor for increasing jobs and growth.

Finally, the EESC highlights the importance of:

- the protection of European workers and consumers rights;
- full and effective ratification, implementation and enforcement of ILO fundamental standards;
- European quality standards in the food and drink sector.

1.2.4. **Ensuring a sustainable food supply chain**

The EESC would like to reiterate that it is advantageous to promote sustainable consumption and production closely with the implementation of the Roadmap to a resource Efficient Europe⁽³⁾ and encourages the Member States to implement these policies via the Roadmap and the European Semester⁽⁴⁾. The EESC would therefore like to see a holistic plan towards the achievement of sustainability of the food chain. The EESC calls on the Commission to adopt a Communication on 'Sustainability of Food Systems'.

The EESC should give full publicity at the EXPO Milan fair of the recommendations of this and other opinions concluded in recent months on food.

⁽³⁾ COM(2011) 571 final.

⁽⁴⁾ OJ C 191, 29.6.2012, p. 6.

1.2.5. Food waste

The EESC reiterates its opinion ⁽⁵⁾ affirming the need for a definition, a common and globally aligned EU methodology to quantify food losses and food waste, including recycling and recovery of unsold food. However, it considers that steps need to be taken without waiting to see the results of EU and global research projects currently underway. Such steps include raising awareness on food wastage along the food chain and contribution to the development and dissemination of best practices.

Any future industrial policy for the food and drink sector should reflect a balanced approach and address food wastage prevention: Food wastage prevention policies should take a food chain approach from pre-harvest stage to the consumers.

There should also be a good look at taxation policy (VAT) and coordination of action in Member States to facilitate donations to food banks as one of the tools to curb food wastage.

1.2.6. Supply chain fair practice

The EESC continues to promote cultural change in business relations in order to have fair trading practices along the agri-food chain as in its opinion on 9 May 2013 ⁽⁶⁾ and therefore welcomes the efforts that have been undertaken by both distributors and food and drink manufacturers for developing a voluntary initiative to promote fair business relations along the food supply chain (SCI — Supply Chain Initiative ⁽⁷⁾).

1.2.7. R & D and innovation

The food sector is facing key challenges with limited R & D funding. The EESC believes there is a need for R & D to be clearly targeted and for industry to be a key partner in identifying how this should be done. Moreover, to be successful and accepted, the EESC believes that innovation should be based in particular on consumer expectations.

1.2.8. SMEs in the food and drink sector

The costs of compliance with EU legislation for SMEs are particularly burdensome. Frequent changes and lack of harmonisation, for example concerning labelling requirements, create burdens and obstacles to growth. The EESC believes that special attention should be given to the specific needs of SMEs, in particular to reduce the administrative burden but calls for caution regarding exemptions especially those concerning food safety for SMEs since that could have a negative effect and drive them out of the market.

1.2.9. The EESC urges the Commission to produce a report, evaluating whether to provide information on ingredients and nutritional content of alcoholic beverages.

⁽⁵⁾ OJ C 161, 6.6.2013, p. 46.

⁽⁶⁾ EESC opinion on *the current state of commercial relations between food suppliers and the large retail sector* published in OJ C 133, 9.5.2013, p. 16.

⁽⁷⁾ <http://www.supplychaininitiative.eu/>

2. The present situation of the european food and drink industry

2.1. The European food and drink industry is the largest manufacturing sector in the EU economy generating an annual turnover of over EUR 1 trillion and employing directly 4,25 million workers in the EU. It is also part of a value chain which employs altogether 32 million people and generates 7 % of EU GDP. SMEs account for 99,1 % of companies in the food and drink industry⁽⁸⁾.

2.2. The share of private R & D investment is 0,27 % of the industry's turnover. The 2012 Joint Research Centre (JRC) Scoreboard confirmed trends observed in previous years, in particular that the EU has sustained levels of private R & D but is still lagging behind its international peers⁽⁹⁾.

2.3. The Food and Drink Industry processes 70 % of EU agricultural produce and provides safe, quality and nutritious food to European consumers.

2.4. In 2012 worldwide exports from Europe of processed food and drink products were worth EUR 86,2 billion⁽¹⁰⁾ making it the largest global exporter in the sector. Moreover, the EU trade balance registered a record surplus of EUR 23 billion on 2012. Over the past 20 years trade in food and drink products between Member States has increased threefold to approximately EUR 450 billion⁽¹¹⁾.

2.5. The sector is a non-cyclical and resilient pillar of the economy with a strong presence in all Member States, and is undoubtedly an important contributor in the effort by European manufacturing industry to expand its share of GDP to 20 % set by the European Commission in the context of the EU 2020 Strategy⁽¹²⁾. The EESC confirms its support and reiterates its recommendation that this target be complemented with an emphasis on the qualitative aspect⁽¹³⁾.

2.6. Key competitiveness indicators show, however, that the sector is losing its competitive edge. In the context of increased global demand, export market share decreased year on year (export value 2012: 16,1 % compared to 20,5 % in 2002⁽¹⁴⁾).

2.7. This EESC own-initiative opinion strives at putting special focus on the food and drink sector by indicating those measures necessary to reverse this negative trend and to enhance the sector's competitiveness both in the Internal Market and worldwide.

2.8. Consumers are entitled to receive truthful and balanced information about alcoholic drinks, to help them make informed decisions about their consumption. All alcoholic beverages, irrespective of their alcohol content, should be covered by the same rules. The EESC urges the Commission to produce without delay the report required in Regulation (EU) No 1169/2011 by December 2014, evaluating whether alcoholic beverages should in future be covered by the requirement to provide information on ingredients and nutritional content.

3. Efforts for increased industrial activity in europe

3.1. Initiatives by European Institutions

The Competitiveness Council acknowledged the contribution that all industrial sectors can make to the European economy and encouraged sectoral initiatives by the Commission⁽¹⁵⁾.

⁽⁸⁾ Source: Data and Trends of the European Food and Drink Industry 2013-14.
http://www.fooddrinkurope.eu/uploads/publications_documents/Data__Trends_of_the_European_Food_and_Drink_Industry_2013-20141.pdf

⁽⁹⁾ Source: 2012 EU Industrial R & D Investment Scoreboard, JRC and DG RTD.

⁽¹⁰⁾ http://www.fooddrinkurope.eu/uploads/publications_documents/Data__Trends_of_the_European_Food_and_Drink_Industry_2013-20141.pdf

⁽¹¹⁾ http://ec.europa.eu/internal_market/publications/docs/20years/achievements-web_en.pdf

⁽¹²⁾ http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf

⁽¹³⁾ EESC opinion on Industrial Renaissance (OJ C 311, 12.9.2014, p. 47).

⁽¹⁴⁾ Source UN Comtrade 2012.

⁽¹⁵⁾ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017202%202013%20INIT>

This was closely followed by an EU Commission communication '**For an European Industrial Renaissance**' (COM(2014) 14) ⁽¹⁶⁾. Two months later in March 2014 the Summit of EU Heads of State and Government also emphasised 'the need for Europe to develop its industrial base, stressed the importance of a stable, simple and predictable regulatory environment and agreed that industrial competitiveness concerns should be mainstreamed across all policy areas' ⁽¹⁷⁾.

In the meantime the **High Level Forum (HLF)** ⁽¹⁸⁾ for a **Better Functioning Food Supply Chain** set up in 2009 by the EU Commissioner for Industry and entrepreneurship issued its final report. Its recommendations for the development of an industrial policy in the agro-food sector were adopted unanimously ⁽¹⁹⁾ at its last meeting on 15 October 2014. These were taken into consideration in this EESC opinion.

The EESC is now looking forward to giving its contribution to additional initiatives taken by the EU Commission, including its presence at the Milan Expo this year with food security as a central theme of its pavilion. There is also a study that should be published by October 2015 concerning the **competitive position of the EU food and drink industry**.

The EESC also notes that the EXPO Milan Fair, that has just opened its doors, has as its theme 'Feeding the Planet, Energy for Life'. The European Commission is encouraging debate on how Science and Innovation can contribute to global food Security and Sustainability. This presents a great opportunity for the EESC to present to the public for debate its views emerging from this and other opinions finalised in recent months on food. The stand of the EU Commission at EXPO presents the ideal venue where this debate could be held at one or more information seminars organised for the purpose.

3.2. Food producers take joint decisions with Trade Unions

In March 2014 FoodDrinkEurope and EFFAT (**European Federation of Food, Agriculture and Tourism Trade Unions**) signed a joint statement on the need for sectoral action at European level in respect of the food and drink sector

4. Key pillars for action: shaping an industrial policy for the european food and drink sector

4.1. Working towards a better functioning food supply chain in the Single Market for food and drinks

4.1.1. EU food legislation is highly harmonised and the sector benefits significantly from the opportunities offered by the Internal Market. Trade between Member States has grown significantly over the last decade and currently accounts for about 20% of EU food and beverage production. However, businesses still report different interpretation and implementation of EU food standards legislation. Further integration would open up new opportunities for growth ⁽²⁰⁾.

Improving relations in the food supply chain is also essential to ensure a competitive food and drink sector ⁽²¹⁾.

4.1.2. The work of the EU Commission, to monitor the effectiveness of the European Supply Chain Initiative ⁽²²⁾ (SCI) as well as the enforcement of rules at national level, is paramount ⁽²³⁾. The SCI is an important joint voluntary initiative established by stakeholder organisations across the food supply chain. It provides a system for improving business relationships between them and to find solutions to any disagreements arising in their commercial relations.

⁽¹⁶⁾ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014DC0014>

⁽¹⁷⁾ <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%207%202014%20INIT>

⁽¹⁸⁾ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:210:0004:0005:EN:PDF>

⁽¹⁹⁾ http://europa.eu/rapid/press-release_IP-14-1139_en.htm

⁽²⁰⁾ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014SC0014>

⁽²¹⁾ EESC opinion published in OJ C 133, 9.5.2013, p. 16.

⁽²²⁾ <http://www.supplychaininitiative.eu/>

⁽²³⁾ COM(2014) 472.

4.2. Promoting sustainable employment and labour productivity

4.2.1. In an effort to improve workforce skills in the sector EFFAT and FoodDrinkEurope adopted a joint report in 2013 outlining the training and skill policies required in order to meet the labour market challenges⁽²⁴⁾.

4.2.2. They also launched of the 'Youth Apprenticeship Pledge for the food and drink industry'⁽²⁵⁾ aimed to facilitate the uptake of high quality apprenticeships in food and drink companies across the EU, especially by SMEs.

4.3. Reinforcing international trade

4.3.1. With a positive trade balance of EUR 23 billion in 2012, the EU remains the leading exporter of food and drink products despite its shrinking market share in the global food and drink trade. In turn, countries such as China and Brazil have been continuously increasing their export market share in recent years⁽²⁶⁾.

4.3.2. Notwithstanding a general recognition that food security is paramount⁽²⁷⁾, export expansion is one of the key sources of growth for any industry. With the percentage of wealthy populations in emerging countries growing, the industry should be equipped to respond to the expansion of world demand.

4.3.3. A meaningful multilateral agreement in the WTO would have been the most efficient solution for opening markets, but successive rounds of talks failed to reach comprehensive agreement.

4.3.4. Bilateral trade deals have therefore gained significant importance and achieved results for European Industry in general and the food and drink sector in particular. In the ongoing TTIP negotiations both tariff and non-tariff barriers (NTBs) should be tackled with an emphasis on reciprocity of treatment for food and drink products from Europe; but should not in any way jeopardise European Consumers interest. The outcome should lead to significant gains for the European agri-food sector⁽²⁸⁾.

4.3.5. The EU's Promotion policy is a good tool to help capitalise on the positive image of European agri-food products worldwide and communicate the key attributes of European foodstuffs.

4.4. Contributing to sustainable production and consumption

4.4.1. As stated in its 2012 opinion⁽²⁹⁾ 'Sustainable consumption and production, offering products and services of better value and using fewer natural resources, is at the heart of strategies for increasing resource efficiency and promoting a green economy'.

4.4.2. European food and drink industries depend on access to adequate quantities of agricultural raw materials that follow specific quality criteria and that are competitively priced.

4.4.3. One of the major challenges is food waste: about 90 million tonnes of food is wasted annually along the European food chain. Whenever food is wasted, resources used to produce food such as raw materials, water, fertilisers and fuel are also wasted. Some key initiatives gave rise to a number of partnerships with relevant stakeholders like the 'Every Crumb Counts' campaign and the publishing of a Tool Kit for the industry. An EESC opinion approved in 2013 on the prevention and reduction of Food Waste had provided an insight into the problems and the possible solutions in this regards (NAT/570).

⁽²⁴⁾ <http://www.effat.org/en/node/10599>

⁽²⁵⁾ http://ec.europa.eu/education/policy/vocational-policy/doc/alliance/fooddrinkurope-effat-pledge_en.pdf

⁽²⁶⁾ http://www.fooddrinkurope.eu/uploads/publications_documents/Data_Trends_of_the_European_Food_and_Drink_Industry_2013-20141.pdf

⁽²⁷⁾ OJ C 255, 22.9.2010, p. 1.

⁽²⁸⁾ See Copa-Cogeca and FoodDrinkEurope joint position

<http://www.fooddrinkurope.eu/news/statement/agri-food-chain-reps-call-on-negotiators-to-resolve-non-tariff-measures-in/>

⁽²⁹⁾ OJ C 191, 29.6.2012, p. 6.

4.4.4. The European Commission recommended that the food sector be considered a priority area for more resource efficiency and has performed an in-depth consultation on the sustainability of the European food system⁽³⁰⁾.

4.4.5. Sustainability should be looked at from a broader perspective not focusing only on environmental sustainability, but also including social and economic pillars of sustainability. This has been the case in a joint declaration adopted by 11 organisations representing the food chain in the context of the HLF⁽³¹⁾.

4.5. Building an Innovative Union

4.5.1. Levels of investment in R & D in the food and drink sector in the EU are low compared to other manufacturing subsectors and to other food and drink industries worldwide⁽³²⁾.

4.5.2. KICs in the food and drink sector need to be encouraged and supported. KICs address a long-term horizon of 7-15 years while also meeting certain short and mid-term objectives such as the essential commitment of increasing R & D investment by 2020 and contributing towards increasing jobs and growth.

Food and drink companies face endless problems when introducing innovative products and processes. SMEs suffer most because of limited organisation and resource capacities, and through lack of the necessary managerial competencies, experience and strategic vision. Authorisation procedures for placing new products on the market need to be speeded up, whilst respecting the precautionary principle of always putting on the market only those products that are safe for consumers' health.

4.6. Reducing administrative burdens especially for SMEs

4.6.1. SMEs in particular suffer from a proliferation of structures that result in unnecessary administrative burdens. These play a key part in the sector's competitiveness and therefore need special attention without prejudice to food safety or workers' and consumers' rights.

4.6.2. In the context of REFIT, the Commission has undertaken an important step in ensuring that EU legislation is suitable for business and enhances competitiveness⁽³³⁾.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽³⁰⁾ <http://ec.europa.eu/environment/eussd/food.htm>

⁽³¹⁾ Joint 7 March 2014 declaration 'Actions towards a more sustainable European food chain'
<http://www.fooddrinkeurope.eu/news/press-release/europes-food-chain-partners-working-towards-more-sustainable-food-systems/>

⁽³²⁾ See footnote 15.

⁽³³⁾ http://europa.eu/rapid/press-release_IP-14-682_en.htm

Opinion of the European Economic and Social Committee on 'Living tomorrow. 3D printing — a tool to empower the European economy'

(own-initiative opinion)

(2015/C 332/05)

Rapporteur: Dumitru FORNEA

Co-rapporteur: Hilde VAN LAERE

On 10 July 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

Living tomorrow. 3D printing — a tool to empower the European economy.

The Consultative Commission on Industrial Change (CCMI), which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 28 May), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 Additive Manufacturing (AM) is one of the key enabling technologies that will shape new approaching to manufacturing and the Products and Factories of the Future. The digital revolution, together with this fabrication revolution, will enable Europe to re-shore production from lower wage regions in order to spur on innovation and create sustainable growth at home;

1.2 The EESC believes that the EU can keep up its current position as a major global player in additive manufacturing, but in order to achieve this the following measures must be taken at European and national level;

1.3 Investments in ICT infrastructure should be given priority so that all members of the public and businesses have access to high speed internet networks, at the highest available standards of quality and security;

1.4 The European capacity for storage and transmission of large amounts of digital data must be strengthened and updated and the protection of these data guaranteed in accordance with the legitimate interests of EU citizens and businesses;

1.5 The EU institutions and national governments should prepare people for the challenges of the digital society and related disruptive technologies such as Additive Manufacturing, through investments in cultural, educational and training programmes that are in line with the dynamics and requirements of new job profiles associated with a new generation of production systems;

1.6 In order to reach the full potential of AM, research and creativity need to be encouraged (via financial and fiscal incentives) in companies and relevant educational and scientific institutions;

1.7 Additional research is needed to expand the range of materials and the number of applications, and to improve the robustness, speed, productivity and maturity of this technology. The steps towards a mature production process should be carried out in Europe, in order to secure our competitive position in the global markets and retain the economic benefits and high quality jobs involved inside the EU;

1.8 The European Innovation Partnerships must streamline efforts to develop new materials for AM. An extended range of materials and increased number of suppliers will promote more competitive pricing, open up new industrial sectors and create higher volumes of AM materials and more competitive supply markets;

1.9 The EU must facilitate investments in new AM equipment and should encourage the development of additive manufacturing technology in open production systems that are flexible and easy to integrate with other production and finishing technologies, in order to enhance the number of applications and increase the turnover;

1.10 The European and national regulatory framework was unable to keep up with the fast pace of change in additive manufacturing, which is why a specific regulation is needed to deal primarily with standards and certification, intellectual property, consumer protection, health and safety at work, and the environment;

1.11 The regulatory process concerning AM needs to be based on interdisciplinary and scientific research into the impact of this technology, with the full involvement of all stakeholders.

2. General comments

2.1 Manufacturing makes a significant contribution to the economy, particularly in terms of innovation, productivity and high quality jobs. However, Europe's industry has lost ground in the past two decades resulting in a **decline in industrial employment and added value** ⁽¹⁾. After decades of thinning out the manufacturing sector (due to outsourcing towards inexpensive labour), the focus is back on production in high-wage countries and the critical role that domestic manufacturing capabilities play in bringing the innovation to life and the ability to rapidly 'scale up' production of new products based on advanced technologies. Innovation, automation and sophisticated processes are at the root of industrial success strategies and have proven to be critical in maintaining a leading position ⁽²⁾. Using the right advanced manufacturing technology, Europe could **re-shore production** from lower wage regions **to spur on innovation and create sustainable growth at home**. Only in this way could Europe position itself as a leader in the new industrial revolution.

2.2 Additive Manufacturing (AM) is the process of joining materials to make objects from 3D model data, usually layer upon layer, as opposed to subtractive manufacturing methodologies. 'Additive manufacturing' is the official industry standard term (ASTM F2792), while '3D printing' is a commonly used synonym.

2.3 Additive Manufacturing is an umbrella term for a set of technologies and processes for different materials (metals, polymers, ceramics and others). These technologies have reached a level of maturity that increasingly allows for the existence of value-added commercial applications. Additive Manufacturing is regarded worldwide as one of the key enabling technologies that will shape new approaches to manufacturing and the Products and Factories of the Future. The so called FABLABs — laboratories for 3D-printing services and products — already exist.

⁽¹⁾ *Industry 4.0 — The new industrial revolution: How Europe will succeed*, Roland Berger Strategy Consultants 2014.

⁽²⁾ *Production in the Innovation Economy (PIE Study)*, MIT, 2013.

2.4 Additive Manufacturing is a **fast-growing sector**. Growth has accelerated over the past 4 years as an increasing number of organisations adopt Additive Manufacturing products and services. The compound annual growth rate (CAGR) of worldwide revenues produced by all products and services over the past 25 years is an impressive 27 %. The CAGR for the past 3 years (2011-2013) was 32,2 %, reaching a market of EUR 2,43 billion in 2013 ⁽³⁾. Wohlers Associates anticipates that the market will exceed EUR 5,5 billion by 2016 and EUR 10 billion by 2018. However, as an emerging technology, AM industry experts estimate that the current market penetration covers only a fraction of the potential applications identified. In 2011, experts estimated market penetration at less than 8 % (meaning a total market of approximately EUR 17 billion) ⁽⁴⁾. If AM grows to capture just 2 % of the global manufacturing market, the potential is 10 times bigger (approximately EUR 170 billion) ⁽⁵⁾.

2.5 The application domain evolved from prototyping in the early nineties to the production of functional parts. The expected growth is mainly driven by the fast, cost-efficient and larger scale serial **manufacturing of final, complex functional products** in various materials (plastic, metal or ceramic), rather than in design products and prototyping. AM is mature for prototyping, but is still in the 'innovator' phase for the production of final, functional products. Innovative AM-produced products are emerging but not viable, since there is a lack of robust AM machines and high-volume production systems.

2.6 Innovative additive processes will have a disruptive effect on the way things are designed and made. AM can improve the value delivery for current products within existing supply chains or can have a radical impact on products, supply chains and business models ⁽⁶⁾. Europe needs to be in pole position when the industrialisation of AM kicks off. Within European ecosystems for Additive Manufacturing, future growth is expected to be achieved by extending current activities (when the existing players move from prototyping to manufacturing) and by opening up new activities along the value chain.

2.7 Worldwide, AM is regarded as the key enabling technology for innovation in products and the supply chain. It is going mainstream and receiving substantial government funding to increase the maturity level (i.e. in the US, China and Singapore). Historically, the EU is in a good position, but if no action is taken it will lose this position and fall behind in the race for new markets.

3. Specific comments

3.1 Disruptive impact of Additive Manufacturing

3.1.1 At factory level, AM will shape new approaches to manufacturing and the Factory of the Future:

— AM allows for the production of multiple different end-products using the same equipment, materials and processes, and facilitates production approaches that are impractical or impossible using traditional manufacturing methods.

— One of AM's greatest assets will be its ability to combine with other high-value manufacturing solutions in the factory.

⁽³⁾ Wohlers Associates, *3D Printing and Additive Manufacturing: State of the Industry, Annual Worldwide Progress Report*, 2014.

⁽⁴⁾ Special Interest Group Additive Manufacturing for the Technology Strategy Board of the UK (2012), *Shaping our national competency in Additive Manufacturing, A technology innovation needs analysis*.

⁽⁵⁾ Wohlers Associates, *3D Printing and Additive Manufacturing: State of the Industry, Annual Worldwide Progress Report*, 2014.

⁽⁶⁾ *3D Opportunity Additive manufacturing paths to performance, innovation, and growth*, Deloitte Review 2014.

- AM is a key technology for digital fabrication in dynamic, decentralised supply chains. Global distribution of digital design (or engineering solutions) and specification files form the basis of local personalisation and production and replace the shipping of products from centralised factories. Digital fabrication leads to a distributed and diverse production base, with manufacturing closer to the customer (including small-scale production at home or in printshops for some products). Supply chains might combine capital-intensive factories producing complex products with customisation of components in a distributed and small-scale method (design-make workshops close to the customer/point of consumption).

3.1.2 At product level, AM will become the cornerstone for product innovation:

- Greater freedom of engineering leads to new generations of products: the almost **unlimited freedom in design** can yield a broad range of benefits in different sectors (i.e. automotive, aerospace, medical, machines and equipment, sport equipment and life-style): miniaturisation, function integration, lightweight, customised and personalised properties and geometry, etc.
- **Ultra short lead-times** will open up new windows of opportunities for functional prototypes or novel customised/personalised B2C and B2B products in all industrial sectors.
- **Application development is a huge economic opportunity for Europe.** The technological and market **development of advanced applications** kicks off by bringing an ecosystem together and digitising all steps. This leads to a centralised business concept. Scaling up market volume (within the region or abroad) involves a segmented decentralisation of blocks within the value chain. Franchising of product, design and production solutions makes it possible to capture value in Europe from global distribution of applications.

3.1.3 At business level, AM will lead to disruptive business models:

- **Digital production leads to disruptive** 'digital driven' business models — fast-changing with high levels of customisation. The internet enables user-generated content to be brought to the manufacturer of physical goods. Reconsidering the way companies produce and move products through their supply chains will lead to novel production chains and business models, i.e.: just-in-time, on-demand manufacturing near to the customer, repair of components, e-manufacturing, digital warehouses for long tail ⁽⁷⁾ spare parts or mass customisation. The current value chain can be replaced with a simpler and shorter value chain.
- Traditional AM service providers move into contract manufacturing and specialised services to serve OEM ⁽⁸⁾ customers. Supply chains are supported by engineering tools and digital e-manufacturing processes, 'democratising' design so that everyone can do it, with all the advantages and problems arising from such a business model.

⁽⁷⁾ Spare parts whose availability is scarce and so their price is high.

⁽⁸⁾ Original equipment manufacturer.

- AM enables the economic production of series by AM service providers, manufacturing companies or even at home based on a 3D model ('desktop factories'). New types of service providers are emerging: 3D print shops have opened their doors in European cities, 3D content and on-demand services link creators of 3D content, consumers who order parts from libraries and AM producers.

3.2 Technological impact of Additive Manufacturing

3.2.1 Need for a new generation of production systems

- International AM roadmaps ⁽⁹⁾, ⁽¹⁰⁾, ⁽¹¹⁾, ⁽¹²⁾, ⁽¹³⁾ highlight the need for significant technological steps in AM as a key factor in pushing forward the proposed added value and adoption of AM. Today's AM technology has been developed to make AM prototypes; machines are not yet ready for high volume production. AM companies face technological barriers in transforming AM into a serial production technology. AM machine architecture concepts still date back to the prototyping stage and too few innovations have been introduced (internally, today's machines look almost the same as their predecessors of 10-15 years ago). Disruptive 'machine' innovations are needed to bring this industry to the next level ⁽¹⁴⁾.
- To speed up development, AM companies and researchers need access to open platforms (in terms of both hardware and software) to overcome the limitations of commercial 'black box' machines.
- An increase in capabilities (cost efficiency, robustness and reliability) would extend the current potential of Additive Manufacturing towards larger-scale production for a wide range of applications. A shift in the technological limits and integration with other processes (hybrid production) will enable breakthrough applications ⁽¹⁵⁾. Take-up within the manufacturing industry requires an integration of AM in the factory environment and control systems.
- Alongside this strategic research, new disruptive production system concepts need to be invented, fundamentally re-thinking the way that products are built based on current AM technologies and the way these systems are integrated within the factory environment. This means that tomorrow's AM production will no longer be based on batch type AM machines placed one next to the other in a production hall; application needs demand the concept of continuous AM production systems, based on a chain of different production steps. These concepts are already known as the 'AM machine 2.0'; and they will drive future AM machine development.

3.2.2 Need for new processes, enabling certification of AM:

In order to be technically implemented in industry, AM technologies need to be certified. Certification will drive the industrialisation of the technology. Today, processes to enable certification of AM need to be developed, such as advanced in-process inspection and quality control techniques to ensure that standards are being maintained. At the very least, these processes need to detect when the product does not meet standards, and really a methodology should be developed to prevent non-conformity and correct defects.

⁽⁹⁾ European AM Platform initiated by Manufacture (2013), *Additive Manufacturing: Strategic Research Agenda (consultation document)*.

⁽¹⁰⁾ DMRC (Direct Manufacturing Research Centre, Paderborn Germany) (2012), *Thinking ahead the Future of Additive Manufacturing — Analysis of Promising Industries*.

⁽¹¹⁾ Innovatie Zuid (2013), *Hightech Systemen en materialen: Roadmap 3D-Printen*.

⁽¹²⁾ EFFRA (2013), *Factories of the Future 2020: Factories of the Future Public-Private Partnership roadmap*.

⁽¹³⁾ Flanders MAKE, *Additive Manufacturing for Serial Production: Research Roadmap, 2014*.

⁽¹⁴⁾ Flanders MAKE, *Additive Manufacturing for Serial Production: Research Roadmap, 2014*.

⁽¹⁵⁾ EPSRC Centre for Innovative Manufacturing in Additive Manufacturing, <http://www.3dp-research.com/Home>

3.2.3 Need for development and accessibility to new materials:

- Those controlling distribution channels maintain a dominant position; e.g. machine manufacturers include in their maintenance and warranty contracts the obligation to use specific expensive raw materials, often only distributed by them, or they use the ‘razor-razorblade’ business model where a lock-in is created for consumables. The control of distribution channels, combined with what is still a limited volume ⁽¹⁶⁾, made it less attractive for material providers to invest large budgets in the development of new materials.
- The limited number of material supply sources leads to excessively high prices for raw materials and increases the supply guarantee risks for end customers. This market mechanism is curbing the potential of AM technology.
- Currently, the double-digit growth market creates economic opportunities and attracts more material providers. Materials development needs to be supported and encouraged. It is important to extend the range of materials and improve the properties of materials. Increasing the number of suppliers will promote more competitive pricing, making it more attractive to ignore machine warranties, and will create higher volumes and more competitive material markets.
- An extended range of materials will open up new industrial sectors and generate the demand for higher volumes of AM materials.

3.2.4 Main technical barriers — The main barriers to a large-scale breakthrough in industries such as aerospace, automotive, medical or consumer goods are mainly linked to boosting productivity and can be summarised as:

- process insufficiently robust and production speed inadequate (leading to excessive production costs),
- the need for next-generation AM production technology that can be integrated in a factory environment and hybrid production systems,
- insufficient and inconsistent material and product properties, an overly limited range of AM materials and slow material development,
- absence of technology for multi-disciplinary development of breakthrough novel applications.

3.2.5 Strategic research is required to:

- transform AM into a **serial production technology** with next-generation machines,
- **integrate AM** as a real production tool in the factory environment and systems,
- extend the **range of AM materials**,
- develop **novel applications** (and their development tools).

⁽¹⁶⁾ Wohlers Associates, *3D Printing and Additive Manufacturing: State of the Industry, Annual Worldwide Progress Report*, 2014.

3.2.6 Risk of technology drain from Europe:

- The AM technology and AM market has reached a certain level of maturity, resulting in the first consolidations within the field. Large US-based companies invest and acquire small (often EU-based) SMEs possessing knowledge, IP and patents for AM technology. The acquired knowledge is often put to use outside Europe as the EU's markets are diverse and difficult to access. It is in the interests of European SMEs to be acquired by large non-EU companies, as they open up large new markets for their applications. Both of these reasons represent a danger that European-based AM developments will leave the region.

- For EU-based AM companies, scaling up is not easy within Europe. Its high number of small and very different markets leads to high investment costs before reaching a certain level of viable market volume. Furthermore, switching to new markets is often slowed down by the lack of certain components of the value chain. Therefore, EU-based AM companies are eager to look for large non-EU-based markets to put their knowledge to use at an early stage.

3.3 The impact of Additive Manufacturing on legal issues ⁽¹⁷⁾:

- AM today is widely understood (by the media, press, public and politicians) to be a low-end 3D printing technology for smart 'home printing', rather than a future production technology. Although both will hold true in future, trends, barriers and research priorities differ fundamentally. Topics such as standardisation, intellectual property rights and liability must be considered completely differently depending on what technology and applications you look at.

- **Standards and certification:** It is generally recognised that a lack of standards has limited the uptake of AM in key industrial sectors e.g. aerospace and medical/dental. The availability of standards will help to increase the adoption of the technologies and open up extensive research and development opportunities. Professional markets are often demanding and require certification, which makes adoption of new technologies very difficult. The barriers to the widespread adoption of AM are both technical and legislative. Therefore, engaging the industry further in the ASTM F42, BSI and ISO working groups is essential for the future development of these technologies.

- **Intellectual Property (IP):** Experts raise concerns about the inevitable intellectual property issues that the increasing adoption of AM technologies will create ⁽¹⁸⁾.

- AM could have a major impact on intellectual property, as objects described in a digital file could be much easier to copy, distribute and pirate. The very same scenario that occurs with the music and film industry could play out, with the development of new non-commercial models and increasing tension between hampering innovation and encouraging piracy ⁽¹⁹⁾.

- Protecting IP of developers is a huge problem which is very similar with the protecting of rights in the music and film industry. AM industry should look for solution regarding IP protection that should be developed by the industry itself. A broadly shared IP protection technology will even overcome the concern that AM technology is controlled by just a few organisations through the protection of relevant Intellectual Property, thus restricting competition and the identification of new applications. This is slowing innovation and keeping system costs high.

⁽¹⁷⁾ European AM Platform initiated by Manufature (2013), *Additive Manufacturing: Strategic Research Agenda (consultation document)*.

⁽¹⁸⁾ *The National Law Journal*, 'Is intellectual property law ready for 3D printers? The distributed nature of Additive Manufacturing is likely to present a host of practical challenges for IP owners', February 4, 2013.

⁽¹⁹⁾ Scapolo, F., Churchill, P., Castillo, H. C. G. & Viaud, V., December 2012. Draft foresight study on: 'How will standards facilitate innovation and competitiveness in the European Union in the year 2025?', s.l.: European Commission.

- **Liability:** There are a number of implications concerning liability, especially for amateur or unknowledgeable designers, part manufacturers or distributors. Should a part fail, who is responsible? This is an area of increasing concern for the AM industry especially where flexibility, individuality and self-designing can introduce unfamiliar territory. New business models for the supply of parts made using AM technology and the associated business risks need to be developed.
- **AM qualification and certification**⁽²⁰⁾: Each element of Additive Manufacturing technology (i.e. materials, equipment, processes) must be qualified and certified to reproducibly manufacture high-quality parts. Non-standardisation makes the manufacturing of a high-quality part difficult on the first run. The development of AM standards for qualification and certification is complicated by the numerous permutations of machines, materials and processes and the absence of a central repository of AM data or authority on AM methodologies. Further deployment of AM technology will require standards development to facilitate quicker and more cost-effective certification of all materials, processes and products.

3.4 The impact of Additive Manufacturing on employment, training and education

- The deployment of AM technologies will have a direct impact on traditional production models, and especially internal workshop organisation. AM will ease the installation of mini-mills very close to customers, wherever there is demand. This will generate new jobs which cannot yet be measured because industrial deployment is too recent.
- The real impact on employment figures is very hard to identify because no studies have been carried out, and because it is very likely that there will be a substitution between actual jobs and future AM operators.
- Jobs in AM technologies will need new skills, such as machine operators able to deal with the process-specific software or engineers able to design parts with new systems: topological optimisation, re-engineering, etc.
- With the deployment of AM technologies, training and educational establishments will be needed to preserve and develop the employability of workers. Currently, European school curricula largely disregard AM, and the same applies in after-school training. Most training courses simply describe the technologies and their potential performances, and are not intended to help students acquire a real skill. Local governments should integrate AM in their learning plans, at least for vocational training. The attractiveness of 3D-printing, covering the whole innovation process (concept, design, computing, robotics and producing a final physical product) in a short period of time, could be used as an effective training method in school education focusing children's attention on technology and manufacturing.
- It is desirable that any training offer be designed following the cooperation between industry, local authorities, education institutions and workers' organisations, and is based on the real needs of the companies operating in this sector.

3.5 Health and safety at work

There are very few studies about AM from the perspective of health and safety at work, and there is a real need for them owing to:

- chemical risks, arising from volatile resins used in AM of polymer parts, and volatile metallic or non-metallic additives in metallic powders;

⁽²⁰⁾ *Measurement Science: Roadmap for metal-based Additive Manufacturing*, National Institute of Standards and Technology, May 2013.

- chemo-physical risks arising from the use of powders, especially when those powders contain nano-particles;
- risk of explosion, arising from the use of powders;
- specific risks, arising from the use of laser sources, electron beams, etc.

With the deployment of industrial AM applications, there is an urgent need for specific studies on risk assessment for workers, in order to develop protection systems and standards. Safety training also needs to be developed for workers dealing with AM machines. This could be part of the educational programme to be improved or set up.

Brussels, 28 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on investor protection and investor to state dispute settlement in EU trade and investment agreements with third countries

(2015/C 332/06)

Rapporteur: Sandy BOYLE

At the plenary session on 10 July 2014, the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on:

Investor protection and investor to state dispute settlement in EU trade and investment agreements with third countries.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 April 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), the European Economic and Social Committee adopted the following opinion by 199 votes to 55 with 30 abstentions.

Glossary of abbreviations used in this opinion

BIT — Bilateral Investment Treaty

CETA — Comprehensive Economic Trade Agreement (Canada)

CFR — Charter of Fundamental Rights

CS — Civil Society

CSO — Civil Society Organisation

EC — European Commission

ECHR — European Convention on Human Rights

ECT — Energy Charter Treaty

ECJ — European Court of Justice

EP — European Parliament

EU — European Union

FDI — Foreign Direct Investment

FTA — Free Trade Agreement

ICSID — International Centre for Settlement of Investment Disputes

IIA — International Investment Agreement

INTA — European Parliament International Trade Committee

IP — Investor Protection

ISDS — Investor State Dispute Settlement

LSE — London School of Economics

MS — EU Member States

NAFTA — North American Free Trade Agreement

OECD — Organisation of Economic Cooperation and Development

SME — Small and Medium-sized Enterprise

TBC — Transatlantic Business Council

TEU — Treaty of the European Union

TFEU — Treaty on the Functioning of the European Union

TTIP — Transatlantic Trade and Investment Partnership

UNCITRAL — United Nations Commission on International Trade Law

UNCTAD — United Nations Conference on Trade and Development

WTO-DSP — World Trade Organization — Dispute Settlement Procedure

1. Conclusions and recommendations

Conclusions

1.1 FDI is an important contributor to economic growth and foreign investors must have global protection against direct expropriation, be free from discrimination and enjoy equivalent rights as domestic investors.

1.2 A state's right to regulate in the public interest is paramount and must not be undermined by the provisions of any IIA. An unambiguous clause which horizontally asserts this right is essential.

1.3 ISDS must not elevate the trans-national capital status to that of a sovereign state or enable foreign investors to challenge the right of governments to regulate and determine their own affairs.

1.4 Over time a number of abuses have arisen through the use of ISDS and these now need to be addressed. The systematic shortcomings arising from the working of ISDS include opacity, lack of clear rules of arbitration, the lack of right of appeal, discrimination against domestic investors who cannot use the system, the fear that purely speculative investments are protected, which, inter alia, do not have the effect of creating jobs, and the fear of exploitation by specialist legal firms. The objective now is to propose an alternative dispute settlement procedure in the interest of reconciling the legitimate demands of investors with the concerns of other civil society resulting from such negative perceptions with ISDS.

The EC consultation on ISDS in TTIP highlighted a marked division between the views of the broad business community and those in the vast majority of responses from the rest of CS.

1.5 Concerns exist over the powers invested in a panel of three private lawyers, to adjudicate and make binding decisions on areas of fundamental public interest. Despite the fact that UNCITRAL has recently adopted new rules on transparency concerns still exist that much of the current system lacks transparency and has no right of appeal.

1.6 The original concept behind ISDS has long since departed. It has now become a hugely profitable outlet for a small number of specialist investment law firms who dominate the business.

1.7 Certain specialist legal firms are now promoting ISDS an important up front risk mitigation tool when entering into investments. In some prominent cases it has become a lobbying tool where the very threat of litigation creates a regulatory chill which inhibits legislators pursuing legitimate public interest policies. There is also concern that it has attracted speculative investment by hedge funds, etc.

1.8 A number of liberal interpretations made on what constitutes expropriation have led to growing concern that taxpayers are obliged to pay compensation for public interest policies that allegedly limit profits.

1.9 The EU Agreement with Canada (CETA), signed in late 2014, together with the separate investment chapter added to the EU-Singapore FTA, contain the first ever investment chapters negotiated by the EU in any agreement since the EU gained competence for investment under the Lisbon Treaty in 2009. Although these chapters look to provide improvements to the current ISDS system, as well as setting out what has claimed by the EC to be, a new 'state of the art' EU ISDS model, they fall well short of what is required to assuage public fears. The models in Singapore and CETA are not identical and, in the opinion of many, ISDS remains an imbalanced, highly expensive process which reins in democracy, has no right of appeal and puts at risk a government's right to regulate by providing foreign investors with rights beyond those enshrined in national constitutions and above those enjoyed by domestic investors. The EESC is concerned to note that the CETA text on ISDS is currently the basis for negotiation in the EU Japan FTA.

1.10 Role swapping between arbiters and counsel is a clear conflict of interest which CETA fails to tackle. This reaffirms the view that ISDS is not a fair, independent or balanced method for the resolution of investment disputes.

1.11 The EESC welcomes the public consultation exercise on ISDS in TTIP. In contrast to CETA, it has helped make TTIP negotiations more transparent and sets an important precedent which the Committee firmly believes must now be followed in all future trade negotiations. The EC response has been to identify four particular areas for further more detailed reflection and whilst the EESC does not see this as an all-inclusive list, it has provided detailed input on these specific issues in Chapters 7 to 10 of this opinion.

1.12 The Committee also welcomes the objective of eliminating '*frivolous claims*' from any future Investor Protection mechanism. It is important that the parties to any IIA have the protection of a general political filter which allows them by agreement to block a claim on justifiable grounds from proceeding to arbitration.

1.13 Investors should be encouraged to see Treaty based dispute resolution as a last resort and to seek alternative methods such as conciliation and mediation. Private insurance and contract based protection are appropriate means whereby foreign investors can minimise their risk.

1.14 The need for FDI protection varies from country to country. In countries with a democratically functioning mature legal system free from corruption, investment disputes should be dealt with by mediation, domestic courts and State to state resolution. These components are present in EU, US and Canada and the current high levels of transatlantic investment flows show conclusively that the lack of ISDS provision does not impede investment. The EESC therefore concludes that an ISDS provision is not necessary in TTIP or CETA and is opposed to its inclusion.

1.15 ISDS has the potential to derail both TTIP and CETA. The EC needs to consider if continuing to pursue this politically sensitive and publicly unpopular objective is a sensible and correct way forward.

1.16 There is a clear message emerging from developing countries that ISDS is an unacceptable mechanism which will be strongly resisted by an increasing number of important global players. If an alternative system is not found, it will become more difficult to incorporate IP into future agreements with countries where it is most needed.

1.17 There are considerable EU treaty-related and constitutional law concerns regarding the relations of ISDS ruling with the EU legal order. Private arbitration courts have the capacity to make rulings which do not comply with EU law or infringe the CFR. For this reason, the EESC feels that it is absolutely vital for compliance of ISDS with EU law to be checked by the ECJ in a formal procedure for requesting an opinion, before the competent institutions reach a decision and before the provisional entry into force of any IIAs, negotiated by the EC.

Recommendations

1.18 If a catch all solution for resolving investment disputes is to be found, it cannot be based on a modest revamping of the current, ISDS system which has a very low level of public support.

1.19 At a time when all G7 States are engaged in advanced negotiations on comprehensive trade and investment deals there is a unique opportunity to find a credible system which marries the legitimate interests of investors with the rights of a state.

1.20 If a unitary authority is to be the way forward, it should not be composed of private attorneys and must be more accessible to SMEs and have a built in right of appeal.

1.21 The EESC strongly urges the EC to consider the UNCTAD proposals for Reform of ISDS and concludes that the establishment of an International Investment Court provides the best solution to ensure a democratic, fair, transparent and equitable system.

2. Introduction

2.1 By adopting its REX/390⁽¹⁾ opinion by an overwhelming majority, the EESC decided to draw up an own-initiative opinion on ISDS. Although this recommendation was specific to the TTIP, it was subsequently agreed to broaden the remit to cover IP and ISDS in trade and investment agreements with third countries.

2.2 Although this opinion examines the broad implications of ISDS, it is inevitable that much of the material used and references made relate to the TTIP. For the duration of the TTIP negotiations, ISDS has been a dominant issue for EU and US stakeholders.

2.3 The EC held an online public consultation over 15 weeks (March to July 2014) on ISDS in TTIP. The EESC thought it wise to await the publication of the results of this consultation and to hold a subsequent public hearing before finalising its opinion. The results were published in mid-January 2015 followed by the hearing on 3 February 2015. Both were of great assistance in drafting this opinion.

3. Background

3.1 *The system*

3.1.1 ISDS is an instrument of public international law that grants a foreign investor the right to initiate dispute settlement proceedings against a foreign government under the terms of an IIA. The Treaties are designed to create some basic obligations of the parties regarding foreign investment, by providing guarantees that governments will respect key principles such as:

- an obligation not to discriminate on grounds of nationality and to ensure fair and equitable treatment;
- a prohibition of direct or indirect expropriation without prompt, adequate and protective compensation;
- protection on the possibility to transfer capital.

3.1.2 In the event of an alleged breach of these obligations by a state, foreign investors covered by the terms of the IIA, can bring a claim to international arbitration through the mechanism of ISDS. Claimants are required to prove that the measures in question caused them significant damage. If the case is upheld, the host country is required to provide compensation for the damage caused. Unlike the WTO DSP, if a state loses a case, it is not bound to change its legislation.

3.1.3 ISDS is based to a large extent on the argument that it provides a depoliticised neutral space to resolve disputes between foreign investors and host states. It enables companies to sue states at international tribunals. This remedy is only available to foreign corporations or to transnational corporations using a cross-border subsidiary. Affected communities, citizens, domestic entrepreneurs and governments cannot make use of the same mechanism.

3.1.4 Arbiters are not tenured judges with public authority as in domestic judicial systems. The tribunals are comprised mainly of three private lawyers who sit in closed session and are appointed on an *ad hoc* basis. Their decision is final and not subject to any formal appeal process.

⁽¹⁾ EESC Opinion on Transatlantic trade relations and the EESC's views on an enhanced cooperation and eventual EU-US FTA (OJ C 424, 26.11.2014, p. 9).

3.1.5 If both disputing parties so wish, ISDS proceedings can be kept fully confidential, even if the dispute involves matters of public interest. Although the standard US BIT does facilitate greater transparency, in many current agreements secrecy still exists. The UNCITRAL rules on transparency will substantially improve the position if universally implemented.

3.2 *Facts and statistics*

3.2.1 93 % of BITs contain an ISDS provision⁽²⁾. ISDS is also present in certain international trade agreements such as the NAFTA and in international investment agreements such as the ECT. In 2014, ECT surpassed NAFTA as the most frequently invoked treaty⁽³⁾.

3.2.2 Member States have concluded over 1 400 BITs since the 1950s, representing about half the global total⁽⁴⁾. All contain largely similar provisions on IP and ISDS. EU investors are reported to be the largest users of ISDS globally (50 % of all cases).

3.2.3 The EU is currently negotiating the TTIP with the US, a comprehensive FTA with Japan and it has recently concluded negotiations with Canada. These more than any other issue have prompted a huge public debate on the need for an ISDS mechanism in any investment chapter.

3.2.4 Only nine EU Member States have BITs with the US (Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia), seven Member States have a BIT with Canada and none with Japan. All of these predate accession to the EU.

3.2.5 FDI stock held by US investors in these nine Member States equals 1 % of the total US FDI in the EU. In terms of outward FDI from these Member States to the US, the figure stands at only 0,1 % of the total FDI stock in the US⁽⁵⁾.

3.3 *Caseload*

3.3.1 ISDS cases proliferated dramatically between 2002 and 2014 (58 in 2013 and 42 cases in 2014)⁽⁶⁾ with the number of treaty based arbitrations reaching 610 by the end of 2014. However, since most arbitration fora do not maintain a public registry of claims, the total number of cases is estimated to be higher.

3.3.2 Of the 356 known cases that have been concluded, 25 % were resolved in favour of the investor and 37 % in favour of the state. The specific terms of 28 % of the cases remained confidential.

3.4 *Time and cost*

3.4.1 The average cost of an arbitration case is USD 4m per party, approximately 82 % of which is legal fees⁽⁷⁾. Some can take several years to conclude.

3.4.2 High costs have led to the growth of third party funding of claims. By reducing the financial risk for companies this contributes to an increase in frivolous cases for which States still bear full legal costs. The EESC is strongly opposed to the reported speculative investment by hedge funds in specific ISDS cases for a share in any compensation awarded⁽⁸⁾.

⁽²⁾ OECD (2012) ISDS a scoping paper for the investment policy community.

⁽³⁾ UNCTAD Recent Trends in IIAs and ISDS — No 1, February 2015:
http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d1_en.pdf

⁽⁴⁾ Notice accompanying Public Consultation on ISDS in the TTIP.

⁽⁵⁾ UNCTAD — ISDS Information Note on the US and EU.

⁽⁶⁾ See footnote 3.

⁽⁷⁾ E (SN/EP/6777), 10 December 2013.

⁽⁸⁾ European Parliament Research Centre 'ISDS and prospects for reform'.
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI\(2015\)545736_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/545736/EPRS_BRI(2015)545736_REV1_EN.pdf)

4. The case in favour of ISDS

4.1 With the exception of Ireland, all Member States have ISDS in BITs. There are also 190 Intra-EU BITs which account for 16 % of all ISDS cases known globally.

4.2 The EC negotiating mandate endorsed in 2012 by the then 27 Member States includes the objective of achieving ISDS. What is envisaged is *'an effective and state of the art dispute settlement mechanism'*.

4.3 The EC position ⁽⁹⁾ is that ISDS is an:

- *important tool for protecting investments and therefore for promoting and securing economic growth in the EU;*
- *effective way of enforcing the obligations our trading partners agree on with our investors when they sign investment treaties.*

4.4 A Business Round Table organised by the EESC Employers' Group on TTIP concluded in a common declaration ⁽¹⁰⁾ that: *'An international agreement such as TTIP should create the right conditions to attract a high level of future investment in the transatlantic market. This includes granting ample access and non-discriminatory treatment for investors on both sides and improving the current framework for IP, including ISDS by making it more accessible to SMEs and striking a proper balance between investor rights, the right of states and local authorities to regulate in the public interest'*. The need to ensure that the ISDS provisions proposed in TTIP in no way hinder the ability of the EU Member States to regulate in the public interest was also pointed out in the conclusions to a joint meeting on the transatlantic negotiations held by the Farmers and Consumers and Environment categories in June 2014.

4.5 The need for an ISDS mechanism is strongly endorsed by the business communities on both sides of the Atlantic who see it as a fundamental safeguard for inward investors and advocate that:

- *it is a vital part of investment protection, providing for a neutral and fact-based dispute resolution mechanism, with rules to promote compliance and prevent abusive actions;*
- *it helps to establish the right of states to regulate and the right of investors to be protected under international law.*

4.6 It also argued that ISDS is a last resort tool and it is used only in extreme cases when all options have failed and that around of 90 % of the BIT have never been used for investors to present a case. Although global FDI stock exceeds USD 25 trillion, there have been only around 500 cases since 1987. Arbitrary award only provides for pecuniary compensation. Arbitrators do not have the possibility to change legislation or measures adopted by states ⁽¹¹⁾.

4.7 The business community also argues that a functioning and modern ISDS system is also important for SMEs who filed 22 % of worldwide cases ⁽¹²⁾.

4.8 Despite the calls from the business community for the negotiations of a liberal investment agreement ⁽¹³⁾, there is recognition that measures should be taken to make ISDS a more effective, modern predictable and transparent tool. It supports clearer definitions of important concepts such as 'investor/investment', 'fair and equitable treatment' and 'indirect expropriation' ⁽¹⁴⁾.

⁽⁹⁾ EC — Factsheet on ISDS — Paragraph 2 — 3 October 2013.

⁽¹⁰⁾ EESC Business Round Table — Common Declaration on TTIP, 16.12.2014.

⁽¹¹⁾ Business Europe- ISDS — Overview of Businesseurope position — February 2015.

⁽¹²⁾ Idem and Eurochambres position paper — Views and priorities for the negotiations with the US for a TTIP, 6.12.2013.

⁽¹³⁾ Transatlantic Business Council — Comments of the TBC regarding the proposed TTIP, 10.5.2013.

⁽¹⁴⁾ Business Europe: TTIP — An Indispensable Tool to Protect Investors, 2.5.2014. ISDS — Overview of Business Europe position — February 2015.

4.9 Given the very high profile of TTIP, CETA and EU-Japan FTA negotiations, it is argued that failure to deliver a negotiated agreement in such cases would be seriously detrimental to the prospects of negotiating an ISDS provision in any other BIT because each agreement will have an impact on others in the pipeline.

5. Concerns and opposition

5.1 Support for ISDS is not replicated in other key areas of CS. However, there is a broad consensus that inward investors need protection from direct expropriation, are not discriminated against and have access to the same avenues open to domestic investors.

5.2 Strong Trans-Atlantic opposition has been voiced by trade unions, NGOs, consumer, environmental and public health organisations.

5.3 The primary concern is that the ISDS system is not fit for purpose and that it elevates transnational capital to a legal status equivalent to that of the sovereign state. The Committee however notes that if two countries desire to promote economic relations with each other through an IIA, each will promise the other that they will guarantee certain levels of treatment to investors and investments from the other country.

5.4 From modest beginnings, when ISDS was designed to assist FDI to obtain compensation for direct expropriation of private property by national governments in developing nations with poorly functioning court systems, it has grown into a mechanism which:

- fundamentally shifts the balance of power between investors, states and other affected parties;
- prioritises corporate rights over the right of governments to regulate and the sovereign right of nations to determine their own affairs.

5.5 Expropriation has expanded to include *measures tantamount to expropriation, indirect and regulatory expropriation*. The effect has been to admit claims against any state measure which may potentially have an impact on profits, future profits or reasonable expectation of profits, even if the policy or measure is of a general nature and does not apply to the specific investment.

5.6 Adverse domestic court rulings have been challenged as 'expropriations' including the USD 500m suit by US pharmaceutical giant Eli Lilly against Canada alleging that the Federal Court rulings regarding two patented drugs violate the firm's investor rights. This is the first attempt by a patent-holding pharmaceutical corporation to use extraordinary privileges provided by US trade agreements as a tool to push greater monopoly patent protections⁽¹⁵⁾.

5.7 Specialist corporate law firms are now advising and capitalising on cases which have little to do with expropriation of private property. A handful of investment law firms have ridden the litigation boom and dominate the business.

5.8 Is ISDS necessary in the TTIP?

5.8.1 In TTIP, it is difficult to argue that investors have cause to worry about domestic legal systems. Both the EU and the US have mature and robust legal systems. There is no obvious reason why the rights of FDI cannot be protected adequately by the incorporation of a simple rule of non-discriminatory legal protection and equal access to domestic courts. Similar arguments can be advanced in the cases of Canada and Japan. If it proves difficult to enforce international rights through negotiation, mediation or in domestic courts in these highly developed democracies, then the issue should be primarily settled by State to State resolution.

⁽¹⁵⁾ <https://www.citizen.org/eli-lilly-investor-state-factsheet>

5.8.2 A LSE report, analysing the US 2012 BIT model, found that 'particular areas in which the US BIT goes beyond UK law is significant. On these grounds and in the light of the scale of US investment in the UK, we think that there is significant risk of political costs to the UK arising from future preferred policies being abandoned or modified on account of objections from US investors in the UK'.

5.8.3 It is not credible to claim that the lack of an ISDS mechanism is an impediment to inward investment. The volume of inward investment varies widely across the EU. Some of the EU Member States which have ISDS procedures in BIT's with the US are the lowest recipients of US inward investment:

- FDI stocks between US and EU currently stand at over USD 2,5 trillion (EUR 1,5 trillion) either way. Belgium alone enjoys a level of US FDI four times that of China.
- Brazil, Latin America's largest recipient of FDI, has no investment agreements which contain ISDS.
- Australia has shown that a country can credibly exclude investment protection from a trade agreement with one country (the US) and still include it with another (Korea). There is no reason why the EU could not follow a similar path.

5.8.4 It is extremely questionable that the non-presence of an ISDS mechanism in the TTIP would weaken the ability of the EU to include ISDS in future bilateral investment and investment agreements with non OECD countries such as China. China has already built a dense network of more than 130 BITs (including 26 Member States). The desire in China for an agreement is as strong as in the EU. What is more questionable is if it would be in the interests of the EU to allow Chinese state owned enterprises, which are essentially an arm of the Chinese government, to use ISDS to challenge government policy. This would allow a foreign country to use what is supposed to be a commercial process to engage in what should be resolved through negotiation and diplomacy.

5.8.5 A detailed paper published in March 2015 by the Centre for European Policy Studies, the Centre for Transatlantic Relations and the John Hopkins University concluded: '[...] including an investment protection chapter in TTIP that is accompanied by ISDS is unlikely to generate significant economic or political benefits for the EU. Our analysis also suggests that the inclusion of such provisions would lead to significant economic and political costs for the EU. While it is important not to exaggerate the scale of potential costs, our overall assessment is that the costs are highly likely to exceed any potential benefit to the EU. Accordingly, we would suggest that unless ISDS is accompanied by considerable concessions by the United States so as to offset ISDS-related costs, it would be prudent for the EU to consider alternatives' ⁽¹⁶⁾.

5.9 *The current political scene*

5.9.1 South Africa, Bolivia, Ecuador, Venezuela and Indonesia have started to cancel or phase out existing BITs. India, reportedly is also reviewing its treaties and in the wake of the Philip Morris case, Australia has announced that it will not agree to the inclusion of an ISDS clause in any future agreements.

5.9.2 The National Conference of Legislators, which represents all 50 US state parliamentary bodies, has announced ⁽¹⁷⁾ that it 'will not support any trade agreement that provides for investor state resolution' because it interferes with their 'capacity as state legislators to enact and enforce fair, non-discriminatory rules that protect public health, safety and welfare, assure worker health and safety and protect the environment'.

⁽¹⁶⁾ 'Transatlantic Investment Treaty Protection', published simultaneously on the CEPS (www.ceps.eu) and CTR websites (<http://transatlantic.sais-jhu.edu>).

⁽¹⁷⁾ <http://www.citizen.org/documents/State-Legislators-letter-on-Investor-State-and-TPP.pdf>

5.9.3 Resistance to ISDS is also growing in Europe with Germany, Austria, Greece and France questioning the investor rights in the TTIP.

5.9.4 Warning shots have been fired in the EP by members of the influential INTA who have called for ISDS to be dropped from TTIP.

5.9.5 The Committee of the Regions warns that ISDS between the EU and US which circumvents the ordinary courts entails a significant risk and can therefore be dispensed with ⁽¹⁸⁾.

5.9.6 These sentiments echo those of the multitude of European CSOs opposing ISDS in the TTIP. One of the key points is that if an investor turns to the domestic legal system first and obtains a final judgement, that investor can still bring a claim to an investment tribunal. The tribunal therefore becomes the ultimate adjudicator which is seen as anathema to democracy.

6. The EC Public Consultation on Investor Protection and ISDS in TTIP

6.1 The EESC welcomes the EC's decision to launch a public consultation exercise on ISDS in TTIP. Excluding duplicate resubmissions, 143 053 responses were received which demonstrates the extent of public interest. The Commission Staff Working Document published in January 2015 provides a thorough analysis of the content and substance of the public response ⁽¹⁹⁾.

6.2 The consultation was based on a reference text based on CETA. Unfortunately, this draft agreement and that with Singapore were not subject to public consultation. However, the fact that CETA on which negotiations had been concluded, was used as a basis for public consultation after the ink was dry, has led to some concerns that the public consultation was little more than a *fait accompli*, designed to rubber stamp the new generation of Investment Agreements proposed by the EU. This fear was exacerbated by the fact that the consultation document concentrated on modalities and contained no specific question as to the principle of ISDS being included in the TTIP. However, the purpose of the consultation was to consult stakeholders on ways to improve ISDS in TTIP.

6.3 The consultation added little new to the plethora of information already available from the active online public debate on ISDS. However, it was an extremely useful exercise in tying together the various strands of the argument and in giving civil society an opportunity to have a direct input.

6.4 It is unfortunate that some advocates of ISDS have dismissed the 97 % responses submitted collectively through various online platforms. Collective submissions are a legitimate part of public consultation. The EESC welcomes the EC assurance that *'All replies have been taken into account on an equal basis'*.

6.5 The EESC notes that less than 1 % of respondents stated they are investors in the US, but does not consider this to be a matter of concern. On issues such as democracy and the sovereign rights of states to determine their own affairs, broad based CS input and opinion are essential and vital ingredients.

6.6 Four areas have been identified by the EC where further improvements should be explored:

- protection of the right to regulate
- establishment and functioning of arbitral tribunals
- relationship between domestic judicial systems and ISDS
- review of ISDS decisions through an appellate mechanism.

⁽¹⁸⁾ CoR — TTIP — ECOS-V-063 02/15.

⁽¹⁹⁾ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf

They are amplified upon in the concept paper 'Investment in TTIP and beyond the path for reform', presented by Commissioner Malmström to the European Parliament and to the Council in May 2015.

6.7 The EESC is surprised to learn that, at the at the Civil Society Dialogue meeting on 18 May, it was confirmed that the IP model currently being used in the FTA negotiations with Japan is the one agreed in CETA. Given that the Commissioner, in her concept paper 'Investment in TTIP and beyond — the Path for Reform' presented to the EP on 6 May, has identified numerous areas for further improvement in the CETA text, the Committee is concerned that this continues to form the basis for negotiation with such an important global partner as Japan.

7. The right to regulate

7.1 The EESC is concerned that the submission to the public consultation by the European Service Forum calls for exceptions and limitations to be brought down to a minimum and for the EC to 'use its negotiating mandate under the Lisbon Treaty to improve and strengthen, and not dilute' ISDS. These demands include 'unqualified Most Favoured Nation and National Treatment clauses, unqualified Fair and Equitable Treatment clause; a broad umbrella clause, no exceptions for particular sectors, no filter mechanisms, full compensation for direct and indirect appropriation' ⁽²⁰⁾.

7.2 ISDS is increasingly being used to bypass national legal systems and instead to sue governments in private international tribunals, demanding taxpayer compensation for public interest policies that allegedly limit profits. This is particularly prevalent in areas of health and environmental protection.

7.3 Recent high profile cases have strengthened opposition to ISDS:

- Philip Morris v Australia over cigarette packaging arguing that they deprive it of the value of its investment in trademarks and other intellectual property.
- using the provisions of the ECT, Vattenfall is seeking over USD 3,7 billion from Germany following the decision to phase out nuclear energy.
- Lone Pine v Canada for CAD 250m after the province of Quebec imposed a moratorium on fracking over environmental concerns.
- Veolia v Egypt over its decision to increase the minimum wage on the basis that it will damage the Company's profits.
- Libya was ordered to pay USD 935m to a Kuwaiti company for lost profits from real and certain opportunities arising from the cancellation of a tourism project ⁽²¹⁾. The investor had only invested USD 5m in the project and construction never started.
- Romania was sued by Micula over an investment it made before the country acceded to the EU in which it took up a government business incentive. As it acceded, in order to comply with state aid rules, Romania discontinued its incentives programme. The Tribunal awarded compensation of USD 116 000 plus interest (estimated total USD 250 000) for not respecting its obligations under the BIT. In 2014, DG Competition served an injunction on Romania provisionally ordering it not to pay as it would be considered illegal state aid. In spite of this, the arbitrators have authorised Micula to pursue compensation before US courts, using a clause referring to the New York Convention.

⁽²⁰⁾ ESF Response to ISDS Public Consultation, 20.6.2014.

⁽²¹⁾ <http://www.iisd.org/itn/2014/01/19/awards-and-decisions-14/>

7.4 Investment treaties prohibit any restrictions on the repatriation of funds or profits. Governments may not impose capital controls to halt attacks on their currencies or restrict *hot money* flows in a crisis even though the IMF believes that such controls are an essential policy measure. No state has been hit harder by ISDS cases than Argentina which has had to pay out over USD 500m following its decision to decouple the peso from the US dollar in 2002.

7.5 Exclusions for public services exist under Chapter 11 of CETA (*Cross Border Trade in Services*) but there are no exemptions or exclusions for them under Chapter 10 (*Investment Protection*). In principle whilst it must be right that investors are protected from arbitrary acts by State authorities, the definition of *expropriation* and especially *indirect expropriation* raises concern as to the ability of States to bring certain activities currently provided by commercial entities back within State provision for legitimate public policy reasons. Expropriation under Chapter 10 includes any legislation that has the effect of reducing the value of private business. Compensation must reflect '*true loss*'. This could make it economically prohibitive for states to bring services back under state provision.

7.6 There is a recognition in CETA that the definition of indirect expropriation is too broad and Annex X.11 paragraph 3 seeks to clarify the matter by setting out those public policy objectives that would not constitute indirect expropriation such as health, safety or the environment. There is a danger, however, that this could be interpreted as being prescriptive, leaving other wider public policy objectives, such as economic or fiscal policy or renationalisation of key services, open to claims of indirect expropriation within the context of ISDS. It is essential that this matter is clarified.

7.7 In announcing its plans to prevent investors from abusing ISDS, the EC states that in the TTIP it '*would like to include provisions that prevent frivolous claims*'⁽²²⁾. CETA draft also provides for a fast track procedure for rejecting unfounded and frivolous claims. However, defining the term '*frivolous*' in strict legal terminology will be extremely difficult and has the potential to provide further fertile ground for specialist investment lawyers.

7.8 CETA draft also provides for a closed definition of '*fair and equitable treatment*'. This is seen as too broad by those opposed to ISDS and not flexible enough from business community. It still gives latitude to the tribunal to interpret and lacks a flexible review mechanism.

7.9 The mere threat of a case under ISDS can create a regulatory chill which dissuades governments from regulating in the public interest for fear of litigation and resulting penalty charges. For example, the New Zealand government has put on hold its own tobacco plain packaging law pending the decision on the Philip Morris case against Australia.

7.10 In a briefing from law firm Freshfields Bruckhaus Deringer for its multinational clients — '*Businesses are now more attuned to the potential relevance of investment treaties, not only as a last ditch protection when things go wrong but also as an important up-front risk mitigation tool when entering into investments*'.

7.11 Although the EC has committed to ensure that under future EU Trade/Investment agreements a state cannot be forced to repeal a measure, this ignores the potential impact of the threat of a huge fine once a multi-billion dollar lawsuit has been filed.

7.12 The CETA draft also provides that the costs of arbitration should be borne by the unsuccessful disputing party. This means that those submitting trivial claims will be required to pay all costs. However, the huge size of many of the most recent claims is unlikely to make this an impediment for cash rich multinational companies and specialist legal firms when measured against potential gains. On the other hand, average costs of USD 4m per party must act as a major deterrent to SMEs making claims under ISDS provisions.

⁽²²⁾ EC Factsheet on ISDS, paragraph 8, issued on 3 October 2013.

8. Establishment and functioning of arbitral tribunals

8.1 The existing system is explained in chapter 3. It is an issue of widespread concern in the consultation

There is general agreement that ISDS cannot continue in its present format.

8.2 Investment arbiters

8.2.1 Arbiters are selected for each case by both parties naming their arbiter and the two must agree on a third. If they cannot there is usually an appointing authority to decide on the third. This is in contrast to national judges who are assigned without party input. They are typically drawn most frequently from ICSID and UNCITRAL and are highly select members of the legal profession including senior lawyers, professors and former judges. In contrast to WTO practice, it does not appear that government ISDS defence counsel or government investment treaty negotiators have been selected as arbiters for cases involving other states.

8.2.2 As stated by Corporate Europe Observatory (CEO)⁽²³⁾ many have also acted as counsel in other cases: 50 % for investors and 10 % for states. This role swapping among a relatively small number (15 lawyers acted as arbiters in 55 % of all cases)⁽²⁴⁾ is sometimes seen as leading to mutual corporate solidarity that can lead to 'unhealthy compromises'⁽²⁵⁾. An increase in challenges by opposing party to proposed arbiters indicates concerns over the impartiality of the candidate pool⁽²⁶⁾.

8.3 It is clear that the CETA provisions on choice and conduct of arbiters and conduct of proceedings, although recognised by many as representing an improvement in some areas, do not have broad based CS support. There are serious concerns on the establishment and functioning of arbitral tribunals:

- States proposals to regulate in the public interest could still be subject to a claim for compensation which will be heard by a panel of three private lawyers.
- conflicts of interest guarantees are weak and do little to assuage fears that this can be eliminated within an ISDS system. Article X.25 of CETA stipulates that arbiters must comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration. However, this does not solve the fundamental problem of specific individuals serving as counsel and arbiters for the same party in different cases, which is the key conflict of interest issue.
- CETA draft stipulates that UNCITRAL transparency rules shall apply to the disclosure of information to the public and that hearings shall be open to the public. This initially attractive aid to transparency is severely tempered by the fact that the Tribunal has wide discretion to hold sessions *in camera* and to withhold documents.

⁽²³⁾ Corporate Europe Observatory (CEO) is a non-profit research and campaign group carrying out research and publishing reports on corporate lobbying activities at the EU level (<http://corporateeurope.org/>).

⁽²⁴⁾ EPRS — ISDS State of Play and Prospects for Reform 21 January 2014.

⁽²⁵⁾ OECD Working Paper on International Investment No 2012/3, pp. 44-45.

⁽²⁶⁾ UNCTAD — Reform of ISDS — In Search of a Roadmap — Issues Note No 2, June 2013, p. 4.

9. Relationship between domestic judicial systems and ISDS

9.1 FDIs currently enjoy an almost unique right whereby an individual can bring a state to arbitration under International Law. Human Rights Law gives specific rights but, largely to avoid bypassing national court systems, individuals are required to exhaust local remedies before a claim can be brought to an international court. CETA does not require exhaustion of local remedies. Investors are only required to seek consultation.

9.2 Member States have raised key treaty-related and constitutional law concerns about the ISDS, as it is set out in CETA and envisaged for TTIP⁽²⁷⁾. Proposed improvements to ISDS in BITs to date have not alleviated these concerns⁽²⁸⁾. In its trade policy (TFEU Article 205 and 207), the EU is bound by the principles set out in TEU Article 3, the CFR and other EU legal standards.

However, under a trade agreement, where investment disputes are determined by international arbitration procedures which are not bound in such a way, it is possible to reach decisions that are not in keeping with EU law (see Paragraph 7.3 — *Micula v Romania*).

9.3 This delegation of jurisdiction to private arbitration courts not bound by EU principles may not be covered by the Lisbon Treaty and could be significantly ultra vires. The ECJ has made the establishment of such international jurisdiction to be conditional on there being no impairment of the principle of respecting the autonomy of the EU legal system and the allocation of powers fixed by the Treaties⁽²⁹⁾.

9.4 Since ISDS in TTIP has to be established in a mixed agreement the consent of all 28 Member States parliaments is necessary before the (provisional) entry into force. The subsidiarity principle must be recognised in relation to the exclusion of national courts.

9.5 It should be recognised that there is tension between EU law and International Law, in particular where the ECJ's monopoly on jurisdiction is concerned (TEU Article 19 and TFEU Article 263 and subsequent). The opinion of the ECJ on the EU's accession to the ECHR⁽³⁰⁾ and the EC approach calling for supremacy of the EU Law in the case *Micula v Romania* are evidence in this respect. Article 14.16 of the CETA draft denies direct effect of CETA and requires the provisions of the agreement to be incorporated in EU or Member State law in order to be invoked by investors. This further complicates relations between EU legal order and ISDS cases decided by arbitral tribunals.

9.6 With regard to the creation of the first-ever ISDS in EU free trade treaties with a world-wide impact on Member States and many EU citizens, the EESC is of the view that it is absolutely vital that the ECJ review compliance with EU law in advance. This is of particular importance in relation to the EU's fundamental values and the CFR, but also as regards the ECJ's monopoly on legal interpretation and subsidiarity. Therefore, an appropriate legal opinion must be obtained and taken into account before the agreement enters into force, and also prior to its provisional entry into force (TFEU Article 218). In this respect, it should be noted that if CETA enters into force, it contains a survival clause which in the case of any termination would extend provisions for 20 years for investments made before the termination.

⁽²⁷⁾ Legal opinion: 'Europa- und verfassungsrechtliche Vorgaben für das Comprehensive Economic and Trade Agreement der EU und Kanada (CETA)' (European and constitutional law provisions for the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada) by Dr Andreas Fischer-Lescano, Bremen, October 2014; 'Modalities for investment protection and Investor-State Dispute Settlement (ISDS) in TTIP from a trade union perspective' by Dr Markus Krajewski, Friedrich-Alexander-University, Erlangen-Nürnberg, FES October 2014; 'Freihandelsabkommen, einige Anmerkungen zur Problematik der privaten Schiedsgerichtsbarkeit (Free trade agreements: some comments on the issue of private arbitration)' by Prof. Siegfried Broß, Report on Mitbestimmungsförderung (co-determination promotion) No 4, H.Böckler Stiftung, 2015.

⁽²⁸⁾ 'CETA: "Verkaufte Demokratie"', Corporate Europe Observatory.

⁽²⁹⁾ ECJ, Opinion 1/91 of 14.12.1991 — EEA 1; Opinion 1/00 of 18.4.2002 — ECAA; Opinion 1/09 of 8.3.2011 — Patent Court.

⁽³⁰⁾ ECJ, Opinion 2/13 of 18.12.2013.

9.7 There is an urgent need that the EC reflects on how to deal with existing intra-EU BITs and BITs of EU Member States with third countries, especially developed countries such as the US, Canada, which contain non-reformed ISDS mechanisms and which can currently be used to challenge the right of the state to regulate and to achieve legitimate state policies. Most of these agreements also contain survival clauses, which further complicate their termination process.

10. Appeals Mechanism

10.1 Broad CS for an Appeals Mechanism was evident in the Public Consultation and was reaffirmed at the EESC Public Hearing.

10.2 CETA draft contains no appeals system. However, it opens the possibility for such a system to be created. CETA does foresee future consultations on appeals systems and modes. This prospect of 'jam tomorrow' minimises the importance of the issue. An urgent solution must be found.

10.3 In principle a Tribunal award is final and only in very extreme circumstances is revision or annulment possible⁽³¹⁾. This falls well short of any national court system and fails to address fundamental concerns expressed in the Consultation.

11. How to reform the ISDS system

11.1 UNCTAD has defined five options for reforming ISDS:

- Tailoring existing systems through IIAs
- Limiting investor access to ISDS
- Promoting Alternative State Resolution (ASR)
- Introducing an appeals facility
- Creating a standing International Investment Court.

11.2 The EESC considers that these options merit further detailed consideration. The EC has worked on the first four options while defining a new approach to investment protection and ISDS in the CETA and the EU-Singapore draft agreements. The consultation exercise has demonstrated that deep rooted concerns still exist. The Committee considers that the concept of creating an International Investment Court is the best way forward because it would go a long way in ensuring legitimacy and transparency of the system and lead to more consistent interpretation and greater accuracy of decisions. In this connection the EESC welcomes the statement made by the Trade Commissioner to INTA on 18 March that 'A multilateral court would be a more efficient use of resources and have more legitimacy'.

11.3 However, the EESC does not consider that running in parallel negotiations on ISDS in TTIP with a medium-term option of an International Investment Court is a viable way forward. If agreement within TTIP is found, it will almost certainly become the gold standard and undermine any prospect gaining support for an International Court. The position is further complicated by the fact that TTIP does not have an automatic read-across to CETA. It is important to emphasise that negotiations on CETA have concluded and there is no guarantee that the Canadian government will agree to incorporate any changes agreed in TTIP.

⁽³¹⁾ ICSID Convention Article 52.

11.4 By adopting the current strategy, the EC faces the prospect that its first venture into negotiating Investor Protection could result in three different systems covering the US, Canada and Singapore. On the other hand, if the Commission does deliver a uniform system, this will only be achieved after very tough negotiations. The EESC believes it would then be virtually impossible to gain the support necessary to refocus efforts towards the creation of an International Court.

11.5 The EESC therefore concludes that with major global players such as the US, Canada and Japan, all involved in concurrent new trade and investment talks a unique opportunity exists to pursue an international investment court. The Committee also believes that this also represents the best prospect of persuading developing countries where the need for IP is arguably far greater, to buy into a new global system.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

ANNEX

to the opinion of the European Economic and Social Committee

The following counter opinion, which received at least a quarter of the votes cast, was rejected during the discussion:

Delete the whole text of the opinion and replace as follows:**1. Conclusions and recommendations**

1.1 Foreign Direct Investment (FDI) is an important contributor to economic growth and jobs. Companies that invest in another country are ipso facto taking a specific risk, but foreign contractors need to be protected against disproportionate and abusive treatment by the host State where they have invested, such as through direct expropriation, discrimination on grounds of nationality and unfair and unequal treatment when compared with domestic investors. A neutral dispute mechanism is important. Investments are often very long term and political circumstances in host States can change.

1.1.1 An International Investment Agreement (IIA) between two States (or regions) involves international law. To be effective that needs an effective, balancing, international dispute settlement mechanism.

1.1.2 In most IIAs however the dispute settlement mechanism puts together individual companies and the host State through the Investor to State Dispute Settlement (ISDS) Procedure⁽¹⁾. ISDS is retrospective in character. Unlike the WTO Dispute Settlement Procedure, if a State loses a case only payment of compensation is involved. It does not need to repeal the relevant legislation. Investment is not a WTO competency, being dropped from the Doha Round Agenda in 2003.

1.2 The EU is both the largest provider and recipient of international investment. Investment is a core interest for EU business, including SMEs. The Committee therefore welcomes the Commission position⁽²⁾ that ISDS is:

- an important tool for protecting investments and therefore for promoting and securing economic growth in the EU;
- an effective way of enforcing the obligations our trading partners agree on with our investors when they sign investment treaties.

1.2.1 A Business Round Table organised by the EESC Employers' Group on the Transatlantic Trade and Investment Partnership (TTIP), concluded⁽³⁾ that: 'An international agreement such as TTIP should create the right conditions to attract a high level of future investment in the transatlantic market. This includes granting ample access and non-discriminatory treatment for investors on both sides and improving the current framework for IP, including ISDS by making it more accessible to SMEs and striking a proper balance between investor rights, the right of States and local authorities to regulate in the public interest'.

⁽¹⁾ Provision for ISDS is found in some 93 % of the more than 3 250 IIAs signed to date, although the procedure has only been used in under 100, less than 3 %.

⁽²⁾ EC — Factsheet on ISDS — Paragraph 2, 3.10.2013.

⁽³⁾ EESC Business Round Table — Common Declaration on TTIP, 16.12.2014.

1.3 The EU-Canada trade agreement (CETA), yet to be ratified, includes an extensive investment protection chapter including provision for ISDS. This, together with the investment chapter in the EU-Singapore Free Trade Agreement⁽¹⁾, is the first ever investment agreement negotiated by the EU since it gained competency for investment under the Lisbon Treaty in 2009. This has gone a long way to address outstanding concerns, but ISDS needs to evolve further.

1.4 Apart from the principle of 'Most Favoured Nation' (MFN), and the cover normally included by the Commission to deal with compensation in cases of war, revolution and so on, the Committee urges that investor protection under an IIA and therefore open to the use of ISDS, must be restricted to cover the four substantive protections, namely

- not to discriminate on grounds of the nationality of an investor;
- a minimum standard of treatment, usually described as 'fair and equitable';
- prompt, adequate and effective compensation when expropriation occurs (not discriminatory and with due process);
- allowing transfer of funds related to the investment.

1.5 Over time a number of real and perceived abuses have arisen through the use of ISDS and these need to be addressed. ISDS needs to be updated. The Committee welcomes the four areas for further study on investment protection and ISDS identified by the Commission in January 2015 as a result of its public consultation on investment protection and ISDS in TTIP, following its inclusion in the mandate for the negotiations given unanimously by the Member States.

1.5.1 These covered:

- the protection of the State's right to regulate;
- the establishment and functioning of arbitral tribunals;
- the review of ISDS decisions through an appellate mechanism;
- the relationship between ISDS and domestic judicial systems.

1.5.2 The Committee considers due protection of the **State's right to regulate** to be essential, and any remaining ambiguities removed. As stated in the Committee's opinion on TTIP⁽²⁾, it is 'essential that any ISDS provision proposed in the TTIP does not hinder the ability of the EU Member States to regulate in the public interest'. Previous IIAs have been primarily drafted with the need to protect investments. Both CETA and the Singapore Agreement have tightened key definitions to avoid unwarranted interpretations and specifically refer to the right to regulate in the preamble to each agreement. The EESC considers that this should now be included in the body of the relevant text, as a specific Article of any such agreement.

1.5.3 It is essential that **arbitrators on ISDS tribunals** must be fully impartial and not open to conflicts of interest. The Committee urges that all arbitrators must be chosen from a roster pre-established by the Parties to the relevant agreement, and that clear qualifications are established for such arbitrators, notably that they are qualified to hold judicial office and have proven expert knowledge in the relevant fields of international law.

⁽¹⁾ Also still to be ratified, and subject to legal challenge in the ECJ as to whether it is a 'mixed' agreement and therefore needing approval by all Member States Parliaments.

⁽²⁾ EESC Opinion on *Transatlantic trade relations and the EESC's views on an enhanced cooperation and eventual EU-US FTA* — 4 June 2014 (OJ C 424, 26.11.2014, p. 9).

1.5.4 An appellate mechanism is also essential — a legal process without a right of appeal is rightly very rare, although this exists in current IIAs. The EESC notes reference was made to an appellate mechanism in the original TTIP negotiating directives. Design of such a mechanism will be critically important, including the methods how members are designated, their qualifications and remuneration, together with any time limits to be applied. It should cover errors of law and errors of fact. Early consideration should be given as to whether a bilateral mechanism could be made multilateral, perhaps modelled on the WTO Appellate Body. Any such mechanism will involve extra costs, but that should be taken into account.

1.5.5 The relationship between **ISDS and domestic judicial systems** will be harder to resolve. IIAs are international agreements and domestic courts do not necessarily have the competence to interpret matters of international law. Even the best system can falter, but double claims should be prohibited. Either potential litigants should make a final choice at the start of proceedings, or lose the right to go to domestic courts as soon as they turn to ISDS.

1.6 A multilateral, **international court** is the longer term answer. This needs to be developed in parallel with the development of ISDS in TTIP and elsewhere. It is imperative that some form of international investor protection remains whilst such an international body is negotiated and established.

1.6.1 It is important to ensure critical mass for the establishment of an international court as the longer term objective for investment dispute settlement. The widespread acceptability of such an international appellate mechanism is likely to stem from it being set up through consensus, which should deal with potential related problems that all new international institutions, including the International Criminal Court, face.

1.6.2 The EESC cautions against the suggestion that, as all 'G7' members are currently involved in IIA negotiations, these ones start to develop an international court separately by themselves. Critical mass can only be achieved if a much wider spread of countries involved from the onset, and the door is left open for others to join as and when they are interested.

1.6.3 In the meantime, the EESC recommends the EU and the US to engage on a bilateral investment dispute settlement mechanism in the TTIP.

2. Background

2.1 The Committee notes that if two countries desire to promote economic relations with each other through an International Investment Agreement, each will promise the other that they will guarantee certain levels of treatment to investors and investments from the other country. These promises, willingly entered into, then need to complete full domestic ratification processes. They do not in any way prioritise corporate interest over the right of governments to so regulate. In the interests of the rule of law governments do however need to be held to the guarantees they give.

2.2 The Committee recognises that, although negotiating States look to include provisions to protect their own companies against discriminatory actions of trade partners, it is unrealistic for an aggrieved company to expect that any dispute should automatically be taken up at State-to-State level, thus raising the issue to a political or diplomatic level.

2.2.1 If companies were to rely on the EU to take disputes up on a State to State basis, only a very few could be so pursued, and smaller companies would be less likely to have their voices heard. It is unlikely that there would be many cases between two mature democratic legal systems, but if State-to-State Dispute Settlement Procedure were to become the norm, the number of potential cases would be bound to rise, with major resource implications for States.

2.2.2 As Commissioner Malmström herself has pointed out ⁽¹⁾, in connection with the TTIP negotiations, international law cannot be invoked in US courts, and no US law prohibits discrimination against foreign investors. In other countries, domestic courts may be less trustworthy.

⁽¹⁾ European Parliament, 6 May.

2.2.3 Investment is not identical to trade. In a trade dispute the onus is clearly on a State to take the lead. Such disputes are likely to involve a class of production, such as bananas, solar panels or textiles: dumping is a key WTO DSP issue.

3. The evolution of ISDS

3.1 Although the overall number of ISDS cases ⁽¹⁾ remains small, its use has grown substantially since 2002. This is proportionate to the increase in overall FDI, which globally by 2013 had exceeded USD 25tr. European investors have launched some 50 % of all claims since 2002. A sizeable number of these have been launched by smaller or specialist companies ⁽²⁾. It is important that any reformed ISDS procedure must be made more accessible to SMEs.

3.1.1 Of the 356 known cases that have been concluded, 25 % were resolved in favour of the investor, and 37 % in favour of the State. The rest were settled ⁽³⁾.

3.2 Due to issues — both perceived and in reality — arising from the outcome of a number of ISDS cases worldwide, including a number that are still on-going, an increasingly notable part of public opinion in the EU, led by unions, NGOs and other organisations, has become concerned about its use, with opposition growing to an investment chapter and ISDS in TTIP.

3.3 Without reform of ISDS, and the inclusion of an Investment Chapter in TTIP, the Committee notes that previous arrangements as found in the 1 400 Bilateral Investment Treaties (BITs) negotiated by individual Member States (with the exception of Ireland), and those in particular previously reached by nine Member States with the US, would of course still stand and remain valid.

Results of the vote

For: 94
Against: 191
Abstentions: 25

⁽¹⁾ 610 cases by the end of 2014.

⁽²⁾ The Stockholm Chamber of Commerce reports that out of some 100 cases completed between 2006 and 2011, some 22 % were undertaken by SMEs; the BDI also report that some 30 % cases undertaken by German companies were from SMEs.

⁽³⁾ EC Factsheet on ISDS, 3 October 2013.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

508TH EESC PLENARY SESSION OF 27 AND 28 MAY 2015

Opinion of the European Economic and Social Committee on the Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

[COM(2015) 135 final — 2015/0068 (CNS)]

and the Proposal for a Council Directive repealing Council Directive 2003/48/EC

[COM(2015) 129 final — 2015/0065 (CNS)]

(2015/C 332/07)

Rapporteur-general: Petru Sorin DANDEA

On 31 March 2015, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 115 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

[COM(2015) 135 final — 2015/0068 (CNS)]

and the

Proposal for a Council Directive repealing Council Directive 2003/48/EC

[COM(2015) 129 final — 2015/0065 (CNS)].

On 17 March 2015, 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 Petru Sorin Dandea as rapporteur-general at its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), and adopted the following opinion by 148 votes to 11, with 15 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a directive presented by the European Commission, through which the Commission is continuing to implement the measures included in the action plan to strengthen the fight against tax fraud and tax evasion ⁽¹⁾.

⁽¹⁾ COM(2012) 722 final — An Action Plan to strengthen the fight against tax fraud and tax evasion.

1.2. The EESC endorses the move to include within the scope of the automatic exchange of information (AEOI), covered by Council Directive 2011/16/EU, information on advance tax rulings and advance pricing arrangements, which are used, in some situations, by businesses with cross-border activities to develop arrangements that ultimately erode the tax base in the Member States and undermine the efficiency of the internal market.

1.3. The EESC is against tax avoidance: although not illegal, it is an immoral practice allowing businesses that engage in it to pay, in absolute terms, much lower taxes than those paid by individuals or SMEs.

1.4. The EESC considers that the measures set out in the proposal for a directive may do much to reduce the income lost to the Member States and therefore recommends that they be adopted as swiftly as possible.

1.5. Information on advance tax rulings and advance pricing arrangements is very important and can help the Member States to trace artificial transactions. Nonetheless, the EESC would point out that proving that a transaction is artificial is often fraught with difficulty, and thus recommends that the Member States make efforts to ensure that the provisions of the proposal for a directive are transposed correctly.

1.6. The EESC recommends that the European Commission step up its negotiating efforts in the OECD with a view to adoption of the BEPS (Base Erosion and Profit Shifting) standard and to its incorporation of the provisions of the proposal for a directive. BEPS, along with the AEOI standard, constitute the most useful tools for tackling tax avoidance and evasion at global level.

1.7. The EESC welcomes the Commission proposal repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive). Council Directive 2014/107/EU amending Council Directive 2011/16/EU covers all of the financial products, including those covered by the Savings Directive. The proposed repeal is aimed at preventing the parallel application of two standards, and simplifying the rules.

2. Commission proposals

2.1. On 18 March 2015, the European Commission presented three documents ⁽²⁾ intended to implement some of the measures set out in the action plan to strengthen the fight against tax fraud and tax evasion ⁽³⁾. The first of these, COM(2015) 135 final, is a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation. The second document, COM(2015) 136 final, sets out the progress made and the measures through which the Commission intends to increase tax transparency. The third document, COM(2015) 129 final, is a proposal for a Council Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive).

2.2. With the proposal for a Directive amending Directive 2011/16/EU, the Commission wants to ensure comprehensive and effective administrative cooperation between tax administrations by providing for the mandatory automatic exchange of information regarding advance cross-border rulings and advance pricing arrangements used by businesses. In some cases, these practices can result in a low level of taxation in the Member State that issues the ruling, and, at the same time, may substantially reduce the income to be taxed in the other Member States involved.

⁽²⁾ COM(2015) 135 final — Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
COM(2015) 136 final — Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance.

COM(2015) 129 final — Proposal for a Council Directive repealing Council Directive 2003/48/EC.
⁽³⁾ COM(2012) 722 final — An Action Plan to strengthen the fight against tax fraud and tax evasion.

2.3. The proposal for a Council Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive) is necessary because, with the adoption on 9 December 2014 of Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (AEOI), which aligns EU legislation with the global standard on the automatic exchange of financial account information, this directive will now also cover savings, along with the other categories of income. For this reason, the Savings Directive should be repealed so as to prevent the parallel application of two standards, which would also mean an additional and disproportionate administrative burden for companies.

2.4. The Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance sets out the progress made in implementing the measures included in the action plan to strengthen the fight against tax fraud and tax evasion. The Commission also presents the measures that could be implemented in the future.

3. General comments

3.1. With the proposal for a Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, the Commission is continuing to implement the measures included in the action plan to strengthen the fight against tax fraud and tax evasion, presented by the Commission at the end of 2012 at the request of the European Council. In its opinion⁽⁴⁾, the EESC welcomed the plan and supported the Commission with regard to combating these problems, which are harming the internal market.

3.2. The proposal for a directive includes advance cross-border tax rulings and advance pricing arrangements in the categories of information subject to mandatory automatic exchange of information. These rulings are often requested by businesses from tax administrations in order to obtain confirmation of the legality of business operations. The practice of tax rulings is not a problem in itself, and is used by many Member States. However, tax rulings are sometimes used by businesses to develop arrangements to reduce their tax liabilities, thereby eroding the tax base in the Member States and undermining the efficiency of the internal market. The EESC endorses the move to make this information subject to mandatory automatic exchange of information; the Member States need this information to combat aggressive tax planning.

3.3. The changes recommended by the Commission will enable the Member States to identify any arrangements put in place by businesses that reduce national tax bases, such as transfer pricing, which results in reduced tax liabilities in jurisdictions other than those in which the income was generated. The EESC has stated its disapproval of such practices on many occasions: although not illegal, they are immoral in that they cause the Member States to increase the tax paid by small taxpayers (businesses or individuals) which, in the final analysis and in absolute terms, end up paying more in taxes than big businesses.

3.4. The Commission acknowledges that tax avoidance, fraud and evasion have a major cross-border dimension, as globalisation and increased mobility of taxpayers are conducive to these phenomena. The EESC considers that the measures set out in the proposal for a directive may do much to reduce the income lost to the Member States and therefore recommends that they be adopted as swiftly as possible.

3.5. Including savings in the categories of income subject to the mandatory automatic exchange of information regulated by the Directive on administrative cooperation in the field of taxation simplifies the regulatory system while at the same time making taxation more transparent. The EESC endorses the proposal for a Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive), as the objective pursued by Directive 2003/48/EC is taken up and expanded upon by Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

⁽⁴⁾ Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council — An action plan to strengthen the fight against tax fraud and tax evasion' (OJ C 198, 10.7.2013, p. 34).

4. Specific comments

4.1. The aggressive tax planning carried out by certain businesses with cross-border activities costs Member State budgets hundreds of billions in losses each year. The EESC endorses the move to include advance tax rulings and advance pricing arrangements issued by Member State administrations among the categories of information subject to the mandatory automatic exchange of information governed by Article 8(a), paragraph 5 of Directive 2011/16/EU, and considers that this amendment is necessary with a view to boosting tax transparency and combating this damaging phenomenon.

4.2. The fact that, in accordance with the provisions of the proposal for a directive, the Member States will have access to information regarding these two types of rulings does not guarantee that the arrangements used by businesses to avoid the payment of taxes will cease to exist. In most cases, these arrangements exploit loopholes in Member State legislation or mismatches between national legislative systems. The Committee recommends that the Commission and the Member States keep working to simplify and harmonise the legal framework at European and national levels.

4.3. Information on advance tax rulings and advance pricing arrangements is very important and can help the Member States to trace artificial transactions. By implementing the General Anti-Abuse Rule (GAAR) laid down in Directive 2011/96/EU (Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — the Parent and Subsidiary Directive), the Member States will be able to recover tax income lost as a result of artificial transactions. Nonetheless, the EESC would point out that proving that a transaction is artificial is often fraught with difficulty.

4.4. The EESC reiterates the proposal made in a previous opinion, calling for the Member States to establish a procedure whereby businesses that make use of tax avoidance or carry out their own activities through jurisdictions known to be tax havens are denied access to public and European funds.

4.5. Given the sheer volume of information that will be subject to mandatory automatic exchange of information and given that the categories listed in Article 8 will be supplemented by other types of information, the EESC recommends that the Member States provide the human and IT resources needed for the proper implementation of the measures set out in the proposal for a directive. Moreover, the EESC considers that national tax administration staff with AEOI responsibilities need to be trained to correctly use the forms that are to be prepared in conjunction with the Commission, which are to facilitate the exchange of information and the recording of such information in the future central registry to be operated by the Commission.

4.6. Following the changes implemented in 2013 and those recommended in the present proposal for a directive, Directive 2011/16/EU provides for the exchange of information for all the main types of income recorded by natural persons and for even more types in the case of legal persons. This means that information on income generated in the European Union will be available to the Member States. Frequently, arrangements put in place by businesses that use aggressive tax planning involve jurisdictions and territories outside the EU. Given that the Commission's proposal for a directive is more ambitious than the BEPS project (Base Erosion and Profit Shifting) being negotiated at OECD level, the EESC recommends that the Commission and the Member States step up their efforts to cooperate in order to make the BEPS standard and the AEOI standard real global standards.

4.7. The EESC welcomes the Commission proposal repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive). In practice, as explained above, Council Directive 2014/107/EU amending Council Directive 2011/16/EU covers all of the financial products, including those covered by the Savings Directive. The aim of this proposal for a directive is to avoid the parallel application of two standards on the exchange of financial account information. This will simplify the tax rules and make them more transparent.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

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

(COM(2015) 098 final — 2015/0051 (NLE))

(2015/C 332/08)

Rapporteur: Carlos TRINDADE

Co-rapporteur: Vladimíra DRBALOVÁ

On 10 March 2015 the Council decided to consult the European Economic and Social Committee, under Article 148 of the TFEU, on the:

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

(COM/2015/098 final — 2015/0051 (NLE))

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May 2015), the European Economic and Social Committee adopted the following opinion by 109 votes to 9 with 4 abstentions.

1. Conclusions and recommendations

1.1. Despite the efforts undertaken and measures carried out, the long and persistent economic crisis in the EU has had a highly negative impact on employment levels, particularly long-term unemployment, and on poverty levels in the great majority of Member States, and has made young people's transition from education to the labour market slow and difficult. Instead of the hoped-for economic convergence, differences between countries and between regions within Member States have been exacerbated. The EESC finds this state of affairs unacceptable and recommends that the Commission, together with the Member States, set detailed targets and measures in the short-term to reverse the situation.

1.2. The EESC is pleased to note that the European Commission has amended the employment guidelines for 2015 to reflect the recent situation and to address many of the existing economic and social weaknesses.

1.3. Mindful in particular of the fact that there is a strong interaction between the broad economic policy guidelines of the Member States and the EU and the employment guidelines, the EESC calls on the Commission and Member States to implement as a matter of urgency the necessary changes in economic, financial and social policies so that they are fully on track for meeting the Europe 2020 objectives based on the successful structural reforms.

1.4. The EESC welcomed the Social Investment Package⁽¹⁾ and supported the launch of the Youth Guarantee, putting forward proposals for improvements⁽²⁾. The EESC's observations remain valid and should be given due attention by the Commission in the framework of the European Semester. The Member States play a crucial role in increasing public investment to create jobs, and the 'employment' dimension in public procurement should be considered an important criterion in selecting bids.

1.5. In the EESC's view, the new employment guidelines must overcome the shortcomings and ensure that all economic and social players are firmly behind appropriate and realistic policies that will enhance growth and competitiveness and create jobs, with the aim of implementing the Europe 2020 strategy (and the smart, sustainable and inclusive growth that it stands for), raising the standard of living for the people of Europe and making sure that they benefit from the same rate of progress.

⁽¹⁾ OJ C 226, 16.7.2014, p. 21.

⁽²⁾ SOC/522 18.3.2015 EESC Opinion on the Youth Employment Initiative — prefinancing (not yet published in the OJ).

1.6. The EESC is deeply alarmed at the persistence of the austerity policy in the EU as it will prevent us from achieving the objectives of employment and poverty reduction. In this respect, the Committee is surprised that the Commission completely ignores, in both the Joint Employment Report and the employment guidelines, the danger of low inflation turning into deflation. Some groups have been particularly hard hit, such as young people, the low-skilled, the long-term unemployed, women, persons with disabilities, migrants, children, Roma and single parents. The EESC considers that the guidelines do not convey in strong enough terms the message that tackling unemployment and poverty should be key policy objectives for the EU and the Member States.

1.6.1. In the EESC's view, the EU has failed in its capacity to create and offer employment opportunities. There are a range of challenges calling for urgent and appropriate responses by the EU and the Member States:

- (a) persistently high unemployment rates in many Member States;
- (b) unacceptably high youth unemployment;
- (c) the alarming long-term unemployment figures;
- (d) increasing segmentation of the labour market and the growing number of atypical contracts;
- (e) the poor quality of new jobs;
- (f) the high risk of social exclusion and segregation, primarily of children, Roma, immigrants and homeless people, leading to their alienation from the labour market and to greater poverty;
- (g) the increasing number of people in the categories of low wages and 'in-work poverty';
- (h) growing inequalities between and within Member States;
- (i) low worker mobility in the EU;
- (j) the persistence of gender inequality and the fact that women face a higher risk of poverty;
- (k) the mismatch between supply and demand in the labour market owing to low levels of skills and the low rate of school-to-work transition;
- (l) the insufficient involvement of the social partners and of civil society in labour market policies.

1.6.2. The guidelines should set quantified objectives for employment and poverty reduction, and these should be complemented by measurable targets for vulnerable groups. The Member States' objectives, while taking account of specific constraints, should be ambitious enough to allow the EU to reach the targets for the whole European arena.

1.6.3. In the EESC's view, the guidelines' lack of quantification, in the short and medium term, suggests that Europe's stand on employment and poverty is losing momentum. Transferring the setting of objectives and targets exclusively to the Member States will result in them becoming less involved in employment policies and in combating poverty and social exclusion.

1.6.4. The EESC calls on the Commission to promote the social economy as a means of increasing labour market opportunities for the unemployed and for vulnerable groups, and recommends that Member States set aside adequate and sustainable funding for this.

1.6.5. The EESC endorses the Commission's comment that SMEs continue to have limited access to finance, which is a major impediment to job creation. Furthermore, ECB policy changes have not been translated into better financing conditions in the real economy, which is of concern to the EESC and warrants special attention from the EU and Member States. The job creation potential of SMEs needs to be better explored, by improving access to finance, new information and communication technologies (ICTs) and market opportunities, bearing in mind the role of medium-sized and large undertakings in this process.

1.6.6. The EESC is convinced that a return to growth with a view to improving the labour market hinges above all on strengthening domestic demand, particularly as regards significant public investments, as these act as a catalyst for private investment. This is how to bring Europe closer to full employment, a target which in the EESC's view remains crucial.

1.6.7. The EESC considers that the social aspects of public procurement can play a vital role in improving the quality of labour markets. Any public contract should include provisions prohibiting the contractor or subcontractors from using precarious contracts, forced self-employment or from setting very long time limits for paying invoices.

1.6.8. The EESC encourages the Member States to involve the social partners more effectively in policies on labour market regulation, in particular the promotion of collective bargaining, in strengthening active labour market policies, reducing labour market segmentation and boosting investment in human capital in order to address social risks and achieve greater social inclusion.

1.6.9. The EESC calls for the text of the proposed employment guidelines to be revised as follows:

- Guideline 5: Add in the first sentence ‘... reduce barriers for business to hire people, **promote job stability and the quality of jobs ...**’ and insert at the end of the sentence ‘**and require the use of ambitious social investment to stimulate employment.**’
- Guideline 6: Include a **specific and measurable target for combating youth unemployment and a regular assessment of whether resources are spent to good effect,**
- Guideline 7:
 - greater involvement of the social partners and civil society in the design and implementation of relevant reforms is to be welcomed, **but this must be in keeping with national characteristics and respect the autonomy of national social partners,**
 - at the end of the first paragraph add as follows: ‘public institutions should set a positive example with regard to job quality, in particular by safeguarding the social aspects of public procurement, especially the recruitment of the long-term unemployed and of those excluded from the labour market.’
 - add the following definition of ‘quality employment’: ‘Quality employment should be ensured in terms of **fair wages/ appropriate pay, stable labour relations and worker representation,** socioeconomic security ...’ and amend the title of the guideline to read: ‘Enhancing the functioning of labour markets **to create quality jobs**’,
- Guideline 8: **remove the proposed automatic linkage of the statutory retirement age to life expectancy in Member States,** inserting, conversely, **the need to promote measures that bring the actual age closer to the statutory retirement age.**

2. Introduction

2.1. In its Annual Growth Survey⁽³⁾ marking the beginning of the 5th European Semester, the Commission recommends three main pillars for the EU's economic and social policies in 2015: a coordinated boost to investment, a renewed commitment to structural reforms and pursuing fiscal responsibility.

⁽³⁾ COM(2014) 902 final.

2.2. As part of the package of documents published together with the Annual Growth Survey, the Joint Employment Report ⁽⁴⁾ reviews developments in the employment and social situation in Europe based on the implementation of the employment guidelines in the national reform programmes and country-specific recommendations at national level.

2.3. In 2014, growth in GDP was 1,3 % in the EU and 0,8 % in the euro area. In 2015, growth will be slightly higher (1,5 % and 1,1 % respectively), and is expected to further improve in 2016 (2,0 % and 1,7 % respectively). There are internal factors preventing faster growth in the EU. The main sources of concern are once again the persistent risk of low growth, close on 'zero inflation', and the high rate of unemployment.

2.4. The EESC fully agrees with the fact that weak investment is hampering Europe's recovery. It therefore welcomes the Commission's intention to strengthen competitiveness and stimulate investment for job creation, noting that the Investment Plan for Europe ⁽⁵⁾ is a step in the right direction, but does not go far enough because it ignores the need for strong public investment, making provision only for investment in infrastructure and omitting social investment ⁽⁶⁾. The EESC recommends that future public investment should not be considered as an expenditure for the purpose of calculating the budget deficit under the EU budget rules, and reiterates the need for new approaches to finding resources and a way of balancing surpluses in some Member States with shortfalls in others.

2.5. In this opinion, the EESC refers back to recommendations made in previous opinions ⁽⁷⁾ that have not received the attention they deserve from the Commission.

3. The continuing high level of unemployment — including long-term employment and youth unemployment — poverty and social inequality in the EU

3.1. This chapter presents the most relevant aspects of the Joint Employment Report ⁽⁸⁾ influencing the current social situation in the EU.

3.2. Europe is still experiencing an extremely critical situation as regards **unemployment** ⁽⁹⁾, with huge discrepancies between Member States. There are currently 24,1 million people out of work in the EU, with unemployment rates ranging from 4,8 % in Germany and 4,9 % in Austria to 23,7 % in Spain and 25,8 % in Greece.

3.2.1. Between the first quarters of 2008 and 2014 ⁽¹⁰⁾, full-time employment decreased by 8,1 million, while there was a steady increase in part-time jobs (more than 4 million). It is a fact that the burden of adjustment fell mainly on temporary jobs (non-renewable contracts).

3.2.2. Long-term unemployment continues to increase, rising over the last year (as a percentage of total unemployment) from 45 % to 49 %. The risk of marginalisation has become more acute in Europe, since 'one in five of the long-term unemployed in the EU has never worked, and three out of four are young people below the age of 35 years' ⁽¹¹⁾.

3.2.3. Young people ⁽¹²⁾ and low-skilled workers were hit especially hard by rising unemployment, with rates almost double the overall unemployment rate. Youth unemployment rates range from 7,6 % in Germany and 9,1 % in Austria, to 50,7 % in Greece and 53,7 % in Spain.

⁽⁴⁾ COM(2014) 906 final.

⁽⁵⁾ COM(2014) 903 final.

⁽⁶⁾ ECO/374, 19.3.2015 — An Investment Plan for Europe (not yet published in the OJ).

⁽⁷⁾ OJ C 133, 9.5.2013, p. 77; OJ C 11, 15.1.2013, p. 65; OJ C 143, 22.5.2012, p. 94 and OJ C 21, 21.1.2011, p. 66.

⁽⁸⁾ COM(2014) 906 final.

⁽⁹⁾ Although significantly down (0,3 percentage points) on the December 2013 figure, the overall unemployment rate in the 28 EU Member States was 9,9 % in December 2014 (11,4 % in the 18 euro area countries).

⁽¹⁰⁾ COM(2014) 906 final.

⁽¹¹⁾ Ibid.

⁽¹²⁾ Although 1,7 percentage points lower compared with December 2013, the youth unemployment rate in the 28 EU Member States was 21,4 % in December 2014 (23 % in the 18 euro area countries).

3.3. The same developments in unemployment can also be seen in the EU's **employment rate**, which continues to show a negative trend⁽¹³⁾, making the 75 % target set for 2020 virtually unattainable. Furthermore, there are marked imbalances in job trends between the various segments of the labour market, between the different Member States and between their regions.

3.3.1. In 2013, the lowest employment rates were in Member States in southern Europe. Between 2008 and 2013, many southern Member States witnessed a substantial decline in their employment rates, whereas in some northern Member States the figures improved or remained stable.

3.3.2. The employment rate among young people (15-24) slipped from 37 % to barely 32 % between 2008 and 2013, a decrease of five percentage points⁽¹⁴⁾. In eight Member States, the youth employment rate actually decreased by 12 or more percentage points. Germany was the only country in which there was no reduction in youth employment (47 %).

3.4. The communication notes that the **proportion of people at risk of poverty and social exclusion** has increased significantly, with ever greater differences between Member States. Between 2008 and 2012, the number of Europeans at risk of poverty or social exclusion increased by 9 million, to reach 25,1 % of the population. The Committee finds it unacceptable that in many European countries at-risk-of-poverty and social exclusion rates remain very high and have worsened in recent years⁽¹⁵⁾.

3.4.1. There are a growing number of unemployed or underemployed households and in-work poverty has increased. In 2013, some 32 million people suffered severe material deprivation.

3.4.2. The risk of poverty or social exclusion for children has increased, with single-parent households twice as much at risk of poverty as households with two adults⁽¹⁶⁾. The risk of poverty among third-country nationals is also twice as high as among Member State citizens (49 % against 24 % in 2012). Approximately 31 % of families with three or more children are at risk of poverty or social exclusion.

3.4.3. Since 2011, social expenditure has decreased, which has aggravated economic and social conditions⁽¹⁷⁾. In some Member States, people in vulnerable situations and with low incomes continue to experience difficulties in access to healthcare, in particular in Finland, Portugal and Greece.

3.5. There is still considerable **segmentation in the labour market** in a number of Member States, particularly evident in the high ratios of temporary (40 %) and part-time employment (30 %) among young people, persistent pay gaps between men and women and low transition rates from less protected to other, more protected types of contract.-

4. General comments on the proposed guidelines

4.1. The results of the recent public consultation on the Europe 2020 strategy⁽¹⁸⁾ show that, as regards employment, R & D and poverty, the EU is a long way from achieving the objectives set. 2013 data point to an employment rate of 68,4 % (well below the 75 % target), to a level of investment in R & D of 2,0 % of GDP (well off the 3 % target) and 122 million people at risk of poverty and social exclusion (far wide of the 97 million target).

4.2. The EESC notes the progress made by the Commission in these guidelines in relation to the 2010 guidelines and welcomes the more positive approach in Guideline 5.

4.3. Against the background of the protracted economic and financial crisis and the still weak signs of recovery, tackling unemployment and poverty must be key policy objectives for the EU and the Member States. The EESC is of the view that steps to monitor labour market matching and the transition from school to work, and to combat poverty need to be improved and should include specific targets and measures for the most vulnerable groups.

⁽¹³⁾ In 2013 the employment rate in the EU was 68,4 %, as against 70,3 % in 2008 (down 1,9 percentage points).

⁽¹⁴⁾ Between 2008 and 2013, the decline in the employment rate (20-64 years) in the 18 euro area Member States was 2,5 percentage points, down from 70,2 % in 2008 to 67,7 % in 2013.

⁽¹⁵⁾ COM(2014) 906 final.

⁽¹⁶⁾ In 2012 the percentages were 47,8 % and 24,4 % respectively in the 28 EU Member States.

⁽¹⁷⁾ COM(2014) 906 final.

⁽¹⁸⁾ COM(2015) 100 final.

4.4. The EESC notes that the employment guidelines do not contain quantitative targets, which weakens the obligation on the part of Member States to achieve common objectives for employment in the EU. In many of its opinions, the EESC has put forward proposals to define measurable targets, notably as regards gender equality, youth employment, combating working conditions with insufficient social protection, combating poverty (including among people who are in work) and employment of migrants and persons with disabilities⁽¹⁹⁾.

4.5. The social aspects of public procurement must be included as one of the most important ways of raising the quality of the labour market and boosting demand for labour.

4.6. The European Employment Strategy should contain clear objectives in areas such as reducing youth unemployment, reducing the number of long-term unemployed, providing job offers or training for young people within a very short time-span, creating adequate care facilities in order to balance work and family life, reducing inequalities between men and women and fighting poverty. At the same time, it should assess the effectiveness of measures adopted. The 2010 guidelines have contributed little to improving employment and reducing poverty. The EU and its Member States urgently need to seek more ambitious solutions to make up for this lack of progress.

5. Specific comments and proposals for amendments to the four employment guidelines

5.1. *Guideline 5: Boosting demand for labour*

5.1.1. The EESC explicitly supported the EU target of raising the employment rate to 75 % by 2020. However, it is concerned by the negative trend observed in recent years, and a change in policies is essential if we are still to meet this target.

5.1.2. The EESC recognises that state and public investment play a crucial role in job creation. It therefore calls for a major public investment drive and for smart and ambitious employment policies to create jobs. The 'employment' dimension should be an important criterion in awarding public contracts. The Employment Guidelines must give priority to 'technological', 'green' and 'white' jobs and the 'youth' and 'long-term unemployed' groups.

5.1.3. The EESC welcomes the measures designed to facilitate job creation, and particularly those supporting SMEs and entrepreneurship and promoting the social economy and social innovation, and therefore calls on the EU and the Member States to focus on these. At the same time, it calls for job creation to be made on a sustainable basis. In this sense, it would suggest adding the following to the first sentence of Guideline 5: '*... reduce barriers for business to hire people, **promote job stability and the quality of jobs** ...*'.

5.1.4. For many years, the EESC has expressed the view that there should be a commitment to R & D, training, infrastructure, health and social services in order to create jobs and generate greater economic growth. With this in mind, the EESC has emphasised the multiple positive effects of social investment in employment and recommended promoting investment as a key element of the revision of the integrated guidelines⁽²⁰⁾.

5.1.5. As regards taxation, the EESC recommends changes to ease the tax burden on labour, provided that this does not jeopardise levels of social protection and other social expenditure, which moreover must be improved. All income should duly contribute to financing social security. It will therefore be necessary to consider other sources of revenue to offset this reduction (e.g. EU own resources⁽²¹⁾, taxing financial transactions and taxes on properties and companies).

5.1.6. The EESC agrees with the Commission on the need to promote social dialogue and collective bargaining, in accordance with specific national situations and safeguarding the autonomy of the social partners. Establishing national minimum wages and raising the lowest wages will contribute positively to boosting domestic demand and reducing poverty.

⁽¹⁹⁾ OJ C 242, 23.7.2015, p. 9; OJ C 12, 15.1.2015, p. 16; OJ C 354, 28.12.2010, p. 8; OJ C 318, 23.12.2009, p. 52; OJ C 318, 23.12.2009, p. 15; OJ C 318, 23.12.2009, p. 113.

⁽²⁰⁾ OJ C 226, 16.7.2014, points 1.5 and 5.3.3.

⁽²¹⁾ As described in Opinion ECO/377 — An European tax as an EU own resource (not yet published in the OJ).

5.2. **Guideline 6: Enhancing labour supply and skills**

5.2.1. As the EESC has already stated, a policy that creates quality jobs and sets ambitious targets for education, vocational training and lifelong learning will have a considerable impact on growth and will help increase productivity. It therefore welcomes the fact that the Commission is attaching priority to combating the problem of school drop-out rates and the mismatch between the supply of skills and labour market needs.

5.2.2. Despite some slight 'positive developments regarding the youth unemployment rate' ⁽²²⁾, the EESC believes that the situation is still very serious in some Member States, particularly in the countries of southern Europe, and cannot accept that differences between countries are so marked and persistent. The EESC has repeatedly called for ambitious targets for fighting youth unemployment, either under the Europe 2020 strategy or within the framework of the employment guidelines, and strongly insists, regardless of the Europe 2020 review, that a quantified target for reducing youth unemployment be set.

5.2.3. The EESC is deeply concerned that the percentage of young people who are not in employment or in any kind of education or training has risen significantly in half of the Member States. Member States should establish systems for lifelong learning and continuing education for all age groups. The EESC urges the EU and the Member States to implement, as a top priority, national plans in the context of the Youth Guarantee, providing the relevant institutions with the necessary resources and, at the same time, assessing the quality of national plans and the effectiveness of financial resources already deployed.

5.2.4. Given the growing volume of long-term unemployed, the EESC stresses the urgent need for the EU and Member States to develop national plans for combating long-term unemployment along the lines of current plans under the Youth Guarantee and to set reduction targets.

5.2.5. The EESC believes that developing the skills of unskilled workers and promoting adult education are of paramount importance, as skills need to be improved to bring them more closely in line with labour market requirements. Member States must offer training opportunities to all unemployed people and wage-earners. To this end, measures such as setting indicators relating to public and private investment in vocational training, and the right of workers to paid leave for training purposes should be considered and required in this Guideline. Also the promotion of training for apprenticeships and the modernisation of training programmes are essential to facilitate the transition from school to work, and companies should therefore be made aware of the importance of training.

5.3. **Guideline 7: Enhancing the functioning of labour markets**

5.3.1. The EESC welcomes the fact that this guideline refers to the need to ensure quality employment in terms of socioeconomic security, education and training opportunities, working conditions (including health and safety) and work-life balance. However, it calls for a definition of 'quality employment' to be included, making particular mention of fair wages/appropriate pay, stable employment relations, gender equality and worker representation. It emphasises the need to monitor the market, particularly as regards the reduction of labour market segmentation and the qualitative aspects of new jobs created.

5.3.2. As the EESC has stated, the qualitative aspect of jobs is of utmost importance, since the creation of jobs at any price, without decent economic and social conditions (precarious, low-paid jobs without guarantees of health and safety in the workplace) is no solution. It is therefore necessary to reverse this trend in many Member States. In order to draw attention to this priority, the EESC proposes amending the title of Guideline 7 to read: '*Enhancing the functioning of labour markets **to create quality jobs***'.

5.3.3. The EESC argues that new jobs should be systematically monitored on the basis of quality criteria. Employment law should promote stable contracts. Regardless of the type of contract, no worker should be deprived of adequate employment protection rights. Atypical contracts should be the exception rather than becoming the rule. The EESC stresses the need for Member States to continue their efforts to integrate the informal economy into the formal economy and eradicate undeclared work.

⁽²²⁾ COM(2014) 906 final.

5.3.4. In the EESC's view, public institutions should set a positive example with regard to job quality, as it is not possible to get around this obligation through outsourcing or public procurement. Public institutions should therefore make ample use of the possibilities inherent in the social aspects of public procurement laid down in Directive 2014/24/EU to ensure the quality of work, they should avoid precarious contracts or forced self-employment and should ensure that contracts with subcontractors are fair.

5.3.5. The EESC agrees with the Commission on the need to strengthen active labour market policies and ensure that they tie in more closely with passive policies. The facilitation of the transition from periods of unemployment to employment, with decent economic conditions during the transitional periods, should be given special attention by public employment services, which must provide individually tailored and timely support for the unemployed. Active policies need to be strengthened, not weakened. This means ensuring that there is an adequate financial base for dealing with times of crisis and the serious labour market situation.

5.3.6. The EESC agrees with increasing the mobility of workers within the European area, subject to safeguarding the transferability of pension rights, the recognition of qualifications and the treatment of workers in accordance with the labour conditions in force in the host country. Third-country workers must also be treated decently, by ensuring compliance with the law and eliminating abuse.

5.4. **Guideline 8: Ensuring fairness, combating poverty and promoting equal opportunities**

5.4.1. The EESC considers that growing social inequality in Europe means stepping up the fight against poverty and social exclusion. This will call for specific measures targeting vulnerable groups such as young people and children, single parents, migrants, minorities, people with disabilities, the elderly, Roma and homeless people. As the EESC has argued, this approach should focus on reducing the risk of poverty and setting specific targets⁽²³⁾.

5.4.2. The EESC points out that reducing the risk of poverty will require stable and reliable common indicators in order to monitor progress. Although developments have been encouraging, the EESC stresses the need to develop new indicators to assess in particular the relationship between income and purchasing power in each Member State.

5.4.3. The EESC emphasises the need to ensure a guaranteed minimum income⁽²⁴⁾ and to counteract the growing number of low-paid jobs by targeting 'in-work' poverty and social exclusion. Although there are legal contractual arrangements that still allow this, the aim is to reduce as far as possible precarious contracts and promote contracts offering lasting social protection, invest in training and job creation, combat youth unemployment and promote integration of marginalised people, in addition to ensuring social protection during transition periods between training and work.

5.4.4. The EESC urges the EU and the Member States to intensify measures to combat poverty and social exclusion, focusing on the most at-risk groups and setting specific targets for integrating people into society and the labour market.

5.4.5. The EESC would reiterate that the best way to ensure a reduction in poverty is to give people jobs and boost their participation, as well as increasing their employability and adaptability.

5.4.6. In previous opinions⁽²⁵⁾, the EESC has also shown considerable scepticism about how raising the statutory retirement age would help to address demographic challenges. In the Committee's opinion, what is most important is to bring the actual retirement age closer to the statutory retirement age (which first requires adapting working conditions to reflect workers' ages⁽²⁶⁾). It is therefore necessary to amend the text of Guideline 8 regarding pension reform accordingly.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽²³⁾ OJ C 21, 21.1.2011, p. 66.

⁽²⁴⁾ OJ C 170, 5.6.2014, p. 23.

⁽²⁵⁾ OJ C 318, 29.10.2011, p. 1, point 2.2.

⁽²⁶⁾ OJ C 318, 29.10.2011, p. 1, chapters 2 and 6.

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 1.6

Add text as follows:

The EESC is ~~deeply~~ alarmed at the persistence of the austerity policy in ~~the EU~~ some Member States as it will prevent us from achieving the objectives of employment and poverty reduction. In this respect, the Committee is surprised that the Commission completely ignores, in both the Joint Employment Report and the employment guidelines, the danger of low inflation turning into deflation. Some groups have been particularly hard hit, such as young people, the low-skilled, the long-term unemployed, women, persons with disabilities, migrants, children, Roma and single parents. The EESC considers that the guidelines do not convey in strong enough terms the message that tackling unemployment and poverty and, better matching of supply and demand in the labour market should be key policy objectives for the EU and the Member States.

Voting

For: 32
Against: 66
Abstentions: 9

Point 1.6.9

Add text as follows:

Guideline 8: ~~Remove the proposed automatic linkage of the statutory retirement age to life expectancy in Member States, inserting, conversely, Instead of referring to the increase in the effective retirement age, more explicit mention should be made of the need to promote measures that bring the actual age closer to the statutory retirement age.~~

Voting

For: 36
Against: 73
Abstentions: 11

Add new point to follow point 5.3

Member States should reduce and prevent labour market segmentation while supporting job creation. Employment protection rules and institutions should provide a suitable environment for recruitment, inter alia, by making a variety of contractual arrangements available on the labour market.

Voting

For: 36
Against: 63
Abstentions: 10

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1007/2009 on trade in seal products

(COM(2015) 45 final — 2015/0028 (COD))

(2015/C 332/09)

Rapporteur: Thomas McDONOGH

On 12 February 2015 and 20 February 2015 the European Parliament and the Council respectively decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the:

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1007/2009 on trade in seal products

COM(2015) 45 final — 2015/0028 (COD).

The Section for Agriculture, Rural Development and Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 May 2015.

At its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), the European Economic and Social Committee adopted the following opinion by 161 votes with 9 abstentions.

1. Conclusions and recommendations

1.1 The amendment to the EU legislation must be adopted to comply with recommendations and rulings with regard to the Basic Regulation made on 18 June 2014 when the WTO Dispute Settlement Body (DSB) adopted the panel and appellate body reports.

1.2 Rules and regulations for humane slaughter should be rigorously enforced by the various authorities including the EU. All possible steps should be taken to eliminate unnecessary suffering of the seal population. For instance, the clubbing of young seals in the spring time in Canada could be best described as barbaric and is being continually fought by animal rights organisations throughout the world. The EESC abhors this method of slaughtering.

1.3 Realistic verifiable quotas including permissible killing methods must be put in place for the traditional hunting for subsistence purposes by Inuit communities. Animal welfare has to be respected simultaneously.

1.4 The quotas, hunting limits, other compliance issues, etc. should be properly monitored and policed.

1.5 The minimum requirements to a traceability scheme could be formulated as a set of requirements that economic operators looking to import into the EU must fulfil, including three key aspects⁽¹⁾:

1. identification requirements;
2. record and record-keeping requirements;
3. the ability to produce traceability reports (verification).

2. Introduction

2.1 Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (the 'Basic Regulation') sets out a general ban on placing these products on the Union's market.

⁽¹⁾ Commission funded study on implementing measures for trade in seal products conducted by consultancy COWI in cooperation with ECORYS.

2.2 The Basic Regulation contains an exception from the general ban for seal products derived from hunts traditionally conducted by Inuit and other indigenous communities that contribute to their subsistence ('the IC exception').

2.3 It also contains exceptions for the import of seal products derived from seals hunted for the sole purpose of the sustainable management of marine resources on a not for profit basis and not for commercial reasons ('the MRM exception') as well as for imports of an occasional nature and which consist exclusively of goods for the personal use of travellers or their families.

2.4 An Implementing Regulation, Commission Regulation (EU) No 737/2010 of 10 August 2010, lays down detailed rules for the implementation of the Basic Regulation.

2.5 Both acts ('the EU seal regime') were challenged by Canada and Norway in the World Trade Organisation (WTO) in the dispute on EC — Measures Prohibiting the Importation and Marketing of Seal Products (DS400 and DS401).

2.6 While the WTO reports concluded that the ban on seal products can, in principle, be justified for moral concerns regarding the welfare of seals, they took issue with the two exceptions, the IC exception and the MRM exception.

2.7 The MRM exception was found not to be justified as the possible difference in the commercial dimension of commercial hunts and MRM hunts (small scale, non-profit) was not sufficient to justify the distinction.

2.8 With regard to the IC exception, while in principle reflecting a legitimate distinction, the appellate body ruled, that some elements of its design and application amounted to 'arbitrary and unjustifiable discrimination'.

2.9 On 10 July 2014 the European Union notified the DSB that it intends to implement the recommendations and rulings of the DSB in this dispute in a manner that respects its WTO obligations.

2.10 On 5 September 2014, the European Union, Canada and Norway agreed that the reasonable period for implementing the DSB recommendations and rulings would be 16 months. Accordingly, the reasonable period of time will expire on 18 October 2015.

2.11 The purpose of this legislative proposal is to implement the DSB recommendations and rulings with regard to the Basic Regulation. It also creates the legal basis for bringing Regulation (EU) No 737/2010 into compliance with the said rulings.

2.12 The concerns regarding the MRM exception are remedied by removing the MRM exception from the Basic Regulation. The concerns relating to the design and application of the IC exception are addressed by modifying the exception, in particular by linking its use to the respect of animal welfare and providing for a limit to the placing on the market of seal products if the scale of the hunt or other circumstances are such as to indicate that the hunt is being conducted primarily for commercial purposes.

2.13 In addition, experts from the Commission are working together with experts from Canada in order to set up the necessary attestation system to enable Canadian Inuit to make use of the Inuit exception under the EU seal regime.

2.14 A marketing structure for Inuit products should be set up by the various governments involved.

3. General comments

3.1 Seal hunting is an integral part of the culture and identity of the Inuit and other indigenous communities and makes a major contribution to their subsistence. The full prohibition of seal hunting, established several years ago due to the pressure of public opinion, generated a deep crisis for the Inuit community characterised by poverty and incapability to ensure their survival. At present, 90 % of the Inuit are unemployed and a great number of them are completely dependent on social security. For those reasons, seal hunts traditionally conducted by Inuit and other indigenous communities have been recently readmitted if done for their own subsistence.

3.2 The EESC proposes to involve the Inuit Community, in the process between the European Commission and the Canadian Government, in order to find together the best way to ensure the Inuit's right to subsistence continuing, and, at the same time, to protect seals from the international trade and the extinction.

3.3 A genuinely humane killing method cannot be effectively and consistently applied in the hunts conducted by the Inuit and other indigenous communities, just like in the other seal hunts. Nonetheless, it is appropriate, in the light of the objective pursued by Regulation (EC) No 1007/2009, to make the placing on the Union market of products resulting from hunts by the Inuit and other indigenous communities conditional upon those hunts being conducted in a manner which reduces pain, distress, fear or other forms of suffering of the animals hunted to the extent possible.

3.4 Regulation (EC) No 1007/2009 also allows, by way of exception, the placing on the market of seal products where the hunt is conducted with the sole purpose of sustainable management of marine resources.

3.5 While recognising the importance of hunts for the purpose of sustainable management of marine resources, in practice, however, these hunts may be difficult to distinguish from the large hunts conducted primarily for commercial purposes. This may lead to unjustified discrimination between the seal products concerned. Therefore, this exception should no longer be provided for.

3.6 The placing on the market of seal products shall be allowed only where the seal products result from hunts conducted by Inuit and other indigenous communities, provided that the following conditions are all satisfied:

- (a) the hunt has been traditionally conducted by the community;
- (b) the hunt contributes to the subsistence of the community and is not conducted primarily for commercial reasons;
- (c) the hunt is conducted in a manner which reduces pain, distress, fear or other forms of suffering of the animals hunted to the extent possible taking into consideration the traditional way of life and the subsistence needs of the community.

3.7 The EESC shares the conditions for the placing of the seal products on the market, but suggests that the European Commission finds a good balance between the seals' protection and the Inuit's need to hunt them, as it is crucial for their survival. A non-pragmatic interpretation of said conditions could, in practice, impede the Inuit hunting of seals.

3.8 The EESC considers it useful:

- (a) to establish a special status for the seal products made by the Inuit according to the traditional way of hunting, for example 'Traditionally caught by Inuit'. In this case, in order to avoid more international disputes, it could be useful to clearly define this concept as a 'non-industrial harvest';
- (b) to create a system of tracking, labelling and a specific logo to monitor Inuit activity and to protect and inform the consumers;
- (c) import quotas should be considered if arrangements are seen to be abused.

3.9 The import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of such goods shall not be such as to indicate that they are being imported for commercial reasons.

3.10 How traceability is further organised depends on the kind of system put in place and the responsibilities allocated to the various parties involved. In the context of the regulation of trade in seal products, these minimum requirements should be interpreted as follows:

Identification requirements

The identification requirements comprise in principle three elements:

- the hunter (either Inuit/indigenous hunter or licensed hunter for resource management purposes) — having a unique identification number;
- the collecting station (designating the territory/geographical location);
- the product (essentially traces the transaction between the hunter and the collecting station).

It may be necessary to identify in addition or instead 'the hunt' in case it is not directly linked to the hunter, there is no collecting station or it does not cover the national level, but only specific regions.

3.11 In reaching its decision, which will be final and binding, the WTO must reconcile contradictory statements from international agreements that are almost 70 years old. Among such statements, one forbids 'arbitrary or unjustifiable discrimination' between countries. Another says that nations can act in a way that is 'necessary to protect public morals' ⁽²⁾.

3.12 *The greatness of a nation and its moral progress can be judged by the way its animals are treated* ⁽³⁾.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽²⁾ A. Butterworth and M. Richardson, *Marine. Policy*, 38, 457-469; 2013.

⁽³⁾ Quote attributed to Mahatma Gandhi.

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1236/2010 of the European Parliament and of the Council laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries

(COM(2015) 121 final — 2015/0063 COD)

(2015/C 332/10)

On 25 March 2015 the European Parliament and on 23 March 2015 the Council decided to consult the European Economic and Social Committee, under Article 43(2) of the TFEU, on the:

‘Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1236/2010 of the European Parliament and of the Council laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries’

(COM(2015) 121 final — 2015/0063 COD).

Since the Committee has already set out its views on the content of the proposal in question in its opinion on the ‘Proposal for a Regulation of the European Parliament and of the Council establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002’, adopted on 13 February 2013 ⁽¹⁾, and in its opinion on the ‘Action Plan for a Maritime Strategy in the Atlantic area — Delivering smart, sustainable and inclusive growth’, adopted on 18 September 2013 ⁽²⁾, it decided, at its 508th plenary session of 27 and 28 May 2015 (meeting of 27 May 2015), by 173 votes with 10 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the abovementioned documents.

Brussels, 27 May 2015

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁾ OJ C 133, 9.5.2013, p. 41.

⁽²⁾ OJ C 341, 21.11.2013, p. 77.

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