



English edition

## Information and Notices

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## I

(Resolutions, recommendations and opinions)

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

516TH EESC PLENARY SESSION OF 27 AND 28 APRIL 2016

**Opinion of the European Economic and Social Committee on ‘The new EU strategy on foreign and security policy’**

**(own-initiative opinion)**

(2016/C 264/01)

**Rapporteur: Mr José María ZUFIAUR NARVAIZA**

On 21 January 2016, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on:

*The new EU strategy on foreign and security policy.*

(own-initiative opinion)

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 19 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 190 votes to 10 with 50 abstention.

### 1. Conclusions and recommendations

1.1 The EESC agrees with the need to revise the current European Security Strategy (ESS) of 2003, in order to respond to the substantially altered international context. And, as consultative body to the European institutions and a representative of organised civil society (OCS), the EESC considers it vital that it is consulted in the process of drafting the new strategy, and that civil society is involved in a structured way. In the EESC’s view, reviews of the global strategy should be carried out more frequently. For example, every five years, coinciding with the Parliament’s and the Commission’s terms of office.

1.2 The EU is facing crises, primarily involving social disintegration, interdependence, institutional weakness and the global nature of inequality. We have now entered an era where social exclusion is a key factor in conflicts, in which military intervention is clearly insufficient.

1.3 The increased volatility of geopolitical and geo-economic competition and the persistence of some powers in dividing the world into spheres of influence impact on the European strategic model based on cooperation and positive conditionality, requiring the model to be adapted.

1.4 In the EESC's view, in such a complex international context, Europeans will only be able to defend their values and interests through closer coordination of objectives, policies and resources. European foreign policy begins at home, as the link between internal and external policies is inseparable.

1.5 European citizens will only shift away from the current feeling of disaffection and commit to the Union if the EU changes course and positions itself as a promoter of freedom, security and prosperity — as the defender of equality — in Europe and in the rest of the world.

1.6 It is imperative to strengthen European political integration in order to aspire towards sovereignty in a globalised world, to take decisions to revive enthusiasm for the European project, through a renewed social contract, and to address the democratic deficit.

1.7 Foreign policy and European security and defence policy, to which more resources should be allocated, require the use of more flexible working methods that are at the same time more coordinated between the Member States and the European institutions.

1.8 EU defence needs stronger coordination and joint planning, with a view to moving towards a European Defence Union. This requires increased funding and the development of the European defence industry, avoiding duplication in expenditure through pooling and sharing initiatives. In the same sense, better governance and a consistent institutional structure are also key, as is the promotion of large-scale joint projects. This is without prejudice to the transatlantic relationship and the close cooperation with alliances and bodies, such as NATO, which include most EU countries.

1.9 In the EESC's view, the priorities of the new Global Strategy should be the following: a) strengthening the accession path of candidate countries, particularly the Western Balkans, and stabilising the Eastern and Southern neighbourhood, including by responding to the flow of migrants and refugees; b) fostering a more capable, effective and visible Common Security and Defence Policy (CSDP) underpinned by a strong and more clearly defined European Defence Technological and Industrial Base (EDTIB); c) strengthening an effective and reformed multilateral system for security, socioeconomic and development governance; and d) promoting trade and investment. These priorities should also factor in two cross-cutting dimensions: sustainable development at large and the strengthening of civil society organisations.

1.10 With its traditional preventive and multilateral diplomacy the EU should be a regulatory, constructive power that promotes inclusive governance, committed to involving emerging economies in multilateral institutions.

1.11 The EU was created to consolidate peace in Europe and the main goal of its global strategy must be to maintain and promote peace. Security and defence policies, diplomatic activity and the role of civil society are crucial to achieving this goal.

1.12 Regarding the refugee crisis, in the EESC's view it is vital that the EU adopt a common refugee, asylum and immigration policy to be implemented by a European institution. This would ensure that the Member States assume their responsibilities on a joint, proportionate and mutually-supportive basis.

1.13 In the EESC's view, changes should be made to the system for granting European development funds, in order to make them more flexible, versatile and adapted to specific circumstances.

1.14 The series of trade mega-deals currently being negotiated or ratified are taking on, over and above their strictly commercial aspects, an indisputable geopolitical dimension. Addressing the geopolitical impact of this type of multilateral agreement, strengthening multilateral relations and avoiding tensions between trading blocs will be a key component of the future EU global strategy. And, insofar as these agreements affect people's way of life, it is essential, in the EESC's view, to meet the demands and concerns of civil society and the general public in this regard.

1.15 The EESC believes that it is vital to strengthen civil society and its activities and links that operate in parallel with diplomatic activity, in order to implement the EU's foreign and security policy. The EESC therefore advocates expressly including this component among the priority objectives of the CFSP.

1.16 We believe that the EESC, as a consultative body to the European institutions and a representative of all major civil society organisations in the EU Member States, is best placed to become a key EEAS partner for the EU institutions involved in the on EU foreign and security policy, particularly the European External Action Service (EEAS) and the European Commission.

1.17 To this end, the EESC proposes jointly exploring these priorities and a means of formalising cooperation between the EEAS and the EESC.

1.18 The EESC offers to assist the EEAS in carrying out an evaluation report on the participation of civil society in the EU's external policy.

1.19 We propose that the EESC hold a foreign and security policy audition every year, attended by the High Representative, bringing in the main European civil society organisations.

## 2. A new context for the EU's external action

2.1 The EESC points out that a strategy is required that includes all of the EU's tools for external action, including security and defence tools, within a coherent and updated overall framework. To achieve this, the objectives, priorities, interests and instruments of Europe's external action need to be overhauled, taking a comprehensive standpoint that breaks away from partisan approaches and national resistance and that boosts coordination and flexibility<sup>(1)</sup>,<sup>(2)</sup>.

2.2 In spite of the major social advances in various areas included among the Millennium Development Goals, other aspects such as the West's loss of influence, the consolidation of new emerging powers and the growing impact of the information technologies, demographic trends and greater inequality are beginning to reveal a more complex global geopolitical context in which the progress of a model based on the rules and values of open society will be met with greater resistance. This is true in the case of some multilateral institutions, which have not adapted to a new multipolar world. As a result, international standards are being eroded, while the relevance of geopolitics is being redefined. With a wider range of actors, including non-state actors and transnational companies, and the development of disruptive technologies, it is more difficult to set strategic agendas and manage complex environments.

2.3 The most immediate challenges facing the EU are: managing migration flows, securing the continent against terrorist threats and deterring possible military or cyber aggression against EU Member States. The other challenges, threats and dangers are now essentially global: climate change, migration, terrorism, financial and economic crises, tax evasion, organised crime, pandemics, humanitarian emergencies, etc. The Union has a role to play in all of them. The CFSP must become a much more effective tool than it currently is, in order to defend the interests of the Union and the Member States. This, in turn, is essential in order that the latter become significantly more involved in the EU's foreign and security policy. As stated by the HR/VP, 'we need a strategy to protect proactively our interests, keeping in mind that promoting our values is an integral part of our interests'.

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<sup>(1)</sup> See EESC opinion on *The external dimension of the renewed Lisbon Strategy* (OJ C 128, 18.5.2010, p. 41).

<sup>(2)</sup> See EESC opinion on *The new foreign and security policy of the EU and the role of civil society* (OJ C 24, 28.1.2012, p. 56).

2.4 Since the 2003 strategy, there have been two substantial structural changes:

2.4.1 Firstly, we are facing crises, primarily involving social disintegration and institutional weakness, interdependence and the global nature of inequality. Today, globalisation implies proximity, visibility and population density. Inequality has become a global parameter. It is this degree of social inequities that lies at the root of today's mass movements of people. This increasingly linked and extremely unequal world is a source of instability and insecurity. We have now entered the era of conflicts resulting from social exclusion, for which military intervention is clearly insufficient. We are facing a global social issue which must be recognised and addressed, as happened in the nineteenth and twentieth centuries in European nation-states, and, at international level, with the pioneering Philadelphia Declaration in 1944. This will require regulatory, solidarity-based and cooperation policies.

2.4.2 Secondly geopolitical competition is once again on the rise, and not only in the European neighbourhood. We are shaped by our geographical location. The conflicts in Ukraine, Syria, Iraq, Libya and the Sahel, for example, affect us directly from the point of view of trade, jihadist terrorism, energy supply and the movement of refugees or migrants. This has an impact on the European policy model, based on cooperation and positive conditionality.

2.4.3 The statement in the existing strategy, that 'the best protection for our security is a world of well-governed democratic states' remains true. However, the strategy has highlighted several shortcomings: 1) generally speaking, this concept has not produced the expected results, except for a few cases closely linked to EU accession processes; 2) other narratives exist, based on particular readings of religion, such as the self-proclaimed Islamic State, or on a certain authoritarian nationalism, as in the case of Russia and China (major powers that directly influence the wider EU neighbourhood). These narratives have a concept of geopolitics based on spheres of influence; 3) often, the diversity between the countries with which the EU has attempted to establish partnerships has been ignored; 4) there has frequently been a lack of consistency between EU discourse and the practical policies carried out; 5) it has not been sufficiently taken on board that democracy and the rule of law cannot be imposed from outside but must develop from within.

2.5 While defending its universal principles and values, the EU is called upon to adapt its strategy in order to promote them more effectively through what the EEAS has called 'pragmatic idealism'.

### 3. Foreign policy begins at home

3.1 It is universally accepted that foreign policy is an extension of internal policy. That is why, in order to be effective, they must seek the same objectives, be integrated, coordinated and not lack focus in their common key aspects. In the EESC's opinion, the two vital pillars of a comprehensive strategy for EU external policy are constructed at home.

3.1.1 The first of these is the basic element of the EU's attractiveness in the world: its way of life, based on freedom and human rights and the social cohesion among the whole population. It does not seem realistic to envisage a more structured, shared and effective EU foreign and security policy without tackling the increase in economic and social inequalities amongst its Member States, the weakening of its social model, the symptoms of a lack of solidarity and trust, the retreat to national boundaries, the difficulties in making joint decisions, the growing disaffection among the public or the rise of populist, xenophobic or Europhobic movements. It is crucial to strengthen European political integration, most likely through enhanced cooperation as provided for by the Treaties, in order to aspire towards sovereignty in a globalised world, to take decisions to revive enthusiasm for the European project, through a renewed social contract, and to put decision-making and democracy on the same footing.

3.1.2 The second pillar concerns greater European integration and the introduction of common policies and instruments for action in areas such as migration flows, energy supply, climate change, international terrorism, food security, trade policy, the fight against organised crime, an effective European investment and job creation plan, a European social dimension, and completing the internal market. European citizens will only shift away from the current feeling of disaffection and commit to the Union if the EU changes course and positions itself as a promoter of freedom, security and prosperity — as the defender of equality — in Europe and in the rest of the world.

3.2 In the EESC's view, improving the single market — industrial policy, the financial system, telecommunications and transport policy, digital technologies, defence industries — is a priority for the EU. Foreign policy should also address a growing number of concerns relating to other EU policies, including social, environmental, energy, digital, transport, economic and transport. Conversely, we need to define a long-term vision in which foreign economic policy is a central pillar for promoting trade and investment. In addition, a common energy policy is urgently needed, as is a common migration and asylum policy.

3.3 Faced with the new geostrategic configuration of the world, the EU has no choice but to build up its security and defence capacities. This will inevitably require a more integrated external policy — the Member States' importance is steadily diminishing at international level and acting together is advantageous to all — and implies dedicating more room to European defence policy. All this assumes a far broader understanding of security and defence than the use of force. But it also means making it clear that a defence policy is there to be used preventively: it has a deterrent function but is also intended to serve an instrument of last resort, when vital interests and the responsibility to protect cannot be upheld in any other way. This requires more and better use of resources. Although it has 28 different military structures, the EU spends 40 % of the amount the US spends on national defence. On top of this comes considerable duplication and an underdeveloped defence industry, among other factors, all of which points to the need for larger budgets and common planning and control instruments. EU governments and citizens must be aware that security, prosperity and freedom are inseparable. Greater strategic self-sufficiency for the EU in terms of defence must not, however, be incompatible or clash with the cooperative, trans-Atlantic relationship it has with alliances and bodies to which most of the EU countries belong, NATO in particular.

3.4 European defence policy should concentrate on two key areas: 1) current geopolitics dictate that the EU, as a supplier of security beyond its borders, should focus on the wider neighbourhood, together with supporting human rights and helping neighbouring countries to develop; and 2) contributing to the freedom of access to global public assets and to a rules-based international order.

3.5 Industry must play a major role in achieving strategic autonomy for the European Union. Its competitiveness is a value that goes far beyond the interests of the private sector. The fragmentation of the defence industry must be overcome; the success of this process is closely linked to the implementation of some key tools, such as the implementation of collaborative projects, the allocation of adequate funds for the upcoming Preparatory Action <sup>(3)</sup> and the establishment of a specific budget line in the next multiannual financial framework.

3.6 The idea that the stability of our real neighbourhood — our neighbours and our neighbours' neighbours — is essential for our own stability applies directly to the terrorist threat from the so-called Islamic State. It means, for example, that it is the EU's direct responsibility to help find a political solution to the war in Syria, because it involves taking action on one of the causes of the problem. It also involves improving coordination activities in counter-terrorism and intelligence. Stepping up the exchange of information between the Member States, even setting up a European intelligence service, should be an imperative. Furthermore, a global anti-terrorism strategy needs to be developed to analyse the causes of terrorism, prevent confrontation between religious views and, instead, encourage cooperation between communities with different beliefs in the fight against terrorist fanaticism. It is particularly important to support the Arab and Islamic world (the worst hit by the attacks of the misnamed Islamic State) so it can react to this threat from within. Similarly, taking action against the sale and trafficking of arms or against sources of funding should be part of a European strategy to combat terrorism. Relations between civil society and our wider neighbourhood have a useful role to play in this endeavour.

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<sup>(3)</sup> In partnership with the European Defence Agency, the European Commission is preparing a Preparatory Action for CSDP-related research in the 2017-2019 period.

3.7 External action should be made more flexible. Greater flexibility must not lead to fragmentation, but should be achieved by making full use of the tools provided for by the TEU and the TFEU. Constructive abstention by Member States when dealing with CFSP and CSDP matters in the Council therefore needs to be increased. In this context, with regard to strengthening international security, the EESC refers once again to the need to uphold particular foreign policy values, in particular respect for the Charter of the United Nations. However, when it is not possible to find a satisfactory solution using existing tools, ad hoc groups involving the High Representative or, if she is unavailable, other European institutional bodies, must be set up, so that the Union's foreign policy opportunities are not paralysed by the principle of unanimity. The Green Diplomacy Network (GDN), initially established to promote the integration of environmental objectives into the EU's external relations and which played an important role in mobilising and coordinating the EU's diplomatic action ahead of COP21, can serve as a model for other networks.

3.8 The EU should not wait for the next crisis to equip itself with greater external policy resources. Resources must match the objective and not fluctuate significantly according to immediate circumstances. Effective planning should identify those areas in which the Union is under-equipped. This would avoid the reactive behaviour that has characterised EU action over recent years when faced with various crises. The EU budget for external action, especially in the areas of humanitarian action, migration, development, education, counter-terrorism and diplomacy, and for strengthening organised civil society, needs to be increased.

#### **4. Rethinking the role of the EU in the world**

4.1 The EESC believes that the new strategy will mean re-examining the EU's analysis of the international context and the role that it seeks to play in future. It is vital to find new narratives based on active involvement in equality between members of the public in terms of security, freedom and prosperity and it is important to highlight the EU's strengths. These include being the world's largest internal market, having an active trade policy, the most highly-funded development cooperation and humanitarian aid policy in the world, a way of life based on respect for the rule of law and democratic principles and a social model based on economic and social cohesion, and upholding a sustainable development model based on the fight against inequality and environmental protection, including strong climate policy objectives.

4.2 Lack of internal cohesion and political will have historically hampered the EU's role in the world. The EU does not aspire to be a superpower, but to project its power as effectively as possible. It must therefore focus on those areas where its action can bring added value and it can have the greatest impact, particularly in its neighbourhood and in international institutions such as the United Nations, IMF, World Bank or G20, where coordination between the Member States is poor, limiting their ability to exert influence. The EESC therefore welcomes the Commission proposal of October 2015 for a unified representation of the euro area within the IMF and other international organisations.

4.3 The EU must continue with its traditional preventive and multilateral diplomacy, with a view to becoming a regulatory and constructive power. Defending an open, rules-based world order is a key element in the Union's identity on the international scene. As a major trade power, the EU benefits from a world that is connected in terms of energy, finance, cyberspace and sea routes (some 90 % of the EU's external trade is by sea). Nuclear safety and energy security must stay in focus.

4.4 Cooperation must also continue with the various regional integration processes such as ECOWAS, ASEAN and Mercosur.

4.5 The EU should boost inclusive governance, promoting the involvement of emerging economies in multilateral institutions in order to relieve tensions peacefully and discourage the creation of alternative governance mechanisms or ones hostile towards the current mechanisms.

4.6 The EU must uphold its values and principles, the universality and indivisibility of human rights, the fight against the death penalty and violence against women and girls, and the protection of the rights of persons with different sexual identities (LGBTI). It must then base its foreign and security policy on its characteristic social model, which is the foundation of its security, freedom and prosperity.

## 5. Greater involvement in a wider neighbourhood

5.1 The current elaboration of the Global Strategy should clearly reflect the importance of Europe's Eastern and Southern neighbourhoods for Europe's own security and prosperity, and should provide the EU with greater impact and leverage on key developments in those areas, responding to and regulating the flow of migrants and refugees. These priorities should also factor in two cross-cutting dimensions: sustainable development and the strengthening of civil society organisations <sup>(4)</sup>, <sup>(5)</sup>.

5.2 The wider or strategic neighbourhood (from the Sahel to the Gulf and from Central Asia to the Arctic) is the area of greatest significance not only for European external action, but for the internal dimension of the Member States. This area is currently experiencing radical social and institutional disintegration for a variety of reasons, such as armed conflict, forced population displacement, international terrorism, the collapse of state structures, corruption, organised crime, regression to authoritarian rule as in the case of Turkey, the assertiveness of powers such as Russia, and hybrid and military aggression. This is accompanied by profound, long-term structural challenges with a powerful impact on the Union.

5.3 Faced with this disheartening scenario, the EU must take greater responsibility for improving the economic, social and security situation in its neighbourhood. The EU must not retreat from defending democracy, the rule of law and fundamental human and social rights — including freedom of association and the right to collective bargaining — in its neighbourhood: the support of local civil society, including the social partners, is key in this regard, as is ensuring they keep their independence.

5.4 The EESC welcomes the review of European Neighbourhood Policy and the recognition of a link between instability, poverty, inequality and lack of opportunities, which can increase vulnerability to radicalisation. In this respect, external action can generate synergies when security, development and trade are brought together. If this objective is to be met, it is crucial to do away with infringements of the right of association and the freedom of organisation of employers, workers and third-sector bodies. It is also important to strengthen early-warning tools to prevent possible future crises.

5.5 The EESC advocates keeping a close, but not narrow, focus on visa extension and liberalisation, in all cases depending on verifiable reforms.

5.6 Closely linked to this neighbourhood is the African continent, which, in the EESC's view, should be the second priority geographical region of the EU's foreign policy. This is not only because many of these challenges originate there, but also because of the possibilities for alliances that can contribute to economic development and global governance <sup>(6)</sup>. The Sustainable Development Agenda for 2030 and the Paris Agreement on climate provide clear opportunities to establish and strengthen partnerships with Africa.

<sup>(4)</sup> REX/458 — EESC opinion on *Review of the European Neighbourhood Policy*, adopted on 25 May 2016 (not yet published in the OJ).

<sup>(5)</sup> See EESC opinion on the *EU enlargement strategy* (OJ C 133, 14.4.2016, p. 31).

<sup>(6)</sup> REX/455 — EESC opinion on the *Future of EU's relations with the ACP Group of countries*, adopted on 25 May 2016 (not yet published in the OJ).

5.7 In geopolitical terms, the stability of our wider neighbourhood also requires us to concern ourselves with the major powers which have most impact on it, particularly Russia and China. Russia's new assertiveness and the Chinese One Belt, One Road policy (OBOR — massive investment in connectivity infrastructure) makes it more necessary than ever for the EU to act with one rather than 28 voices with regard to these two powers.

5.8 Regarding the refugee crisis, in the EESC's view it is vital that the EU adopt a common asylum and refugee policy to be implemented by a European institution. This would ensure that the Member States assume their responsibilities on a joint, proportionate and mutually-supportive basis. The strengthening of channels for legal migration is crucial, both to meet demands for labour and refuge, and to meet the needs of migrants in the EU in view of its demographic decline, as well as to prevent human trafficking. Respect for international and EU law and a community response to the humanitarian crisis affecting those already on EU territory are also essential, as are greater resources to protect shared borders, search and rescue at sea, and the creation of a European Border and Coast Guard, as proposed by the European Commission.

## 6. Boosting EU development policy

6.1 The EU must align its internal and external policies with the goals of the 2030 Agenda for Sustainable Development. In its development policy, the EU should pay particular attention to the Addis Ababa Action Agenda. The Paris climate change agreement has shown that the world is moving inexorably towards a green economy, a process in which the EU is playing a pioneering role.

6.2 The EESC welcomes the steps to redirect official development aid (ODA) towards the least developed countries (LDC), funding for the New Deal for Engagement in Fragile States, evaluation of the aid strategy for gender equality, the increase in the biodiversity protection budget and the EIB's undertakings in combating climate change, as well as the financial support for developing countries of USD 100 billion by 2020 pledged in the Paris Agreement.

6.3 The economic dimension of European foreign and security policy should be strengthened and should not be limited to trade. There is also a need to support training, innovation and entrepreneurship, as the stabilisation of our neighbours depends on their economic and social development. A development plan should be drawn up for countries such as Tunisia, Lebanon and Jordan, among others, in order to boost their economies. There are mutual opportunities in assisting third countries in making the transition to low-carbon economies, including by means of effective technology transfer and cooperation.

6.4 The EESC notes that climate change is a contributing factor to migration resulting from state fragility, insecurity and resource scarcity. The EU must support developing countries, notably the most vulnerable, and help them move directly to low-carbon economies and strengthen their climate resilience.

6.5 The EESC emphasises that, notwithstanding the current budgetary restrictions in many Member States, the aim of spending at least 0,7 % of gross national income (GNI) on ODA must remain a priority. There is also a need to boost policy coherence for development (PCD) and promote coordination between the Member States and the EU institutions<sup>(7)</sup>.

6.6 It is crucial to involve a very wide range of actors in financing the sustainable development goals (SDG), including civil society and development finance institutions (DFI). Social partners should also be more closely involved in managing projects<sup>(8)</sup>.

<sup>(7)</sup> See the EESC opinion on *The European Union Development Policy 'The European Consensus'* (OJ C 24, 31.1.2006, p. 79).

<sup>(8)</sup> See EESC opinion on *Financing development — the position of civil society* (OJ C 383, 17.11.2015, p. 49).

6.7 In the EESC's view, changes should be made to the system for granting European development funds, in order to make them more flexible, versatile and adapted to specific circumstances. This would require the introduction of arrangements such as the 'framework agreements', operational grants, cascading subsidies, multiannual agreements, emergency funding or the implementation of the 'toolbox', as defined in the Structured Dialogue<sup>(9)</sup>.

## 7. The new trade and investment environment

7.1 The EESC supports free trade, one of the pillars of the European Union itself. At the same time, it voices the need to take into account the asymmetries between negotiating parties and respect for fundamental labour rights, as well as environmental standards. At the same time, it continues to support the WTO's multilateral approach to trade rules. In the EESC's view, it is necessary to completely rethink the involvement, both consultative and real, of the organisations that are most representative of civil society in drawing up agreements<sup>(10)</sup>.

7.2 Over and above their strictly commercial aspects, these mega-agreements, such as the TPP, the CETA, the TTIP, the free trade agreements with Japan and India, and the RCEP are taking on an indisputable geopolitical dimension and attracting the growing interest of civil society, insofar as they concern rules and standards with a significant impact on its way of life. This is particularly important with regard to the impact on democratic decisions, the decisions of investor-state dispute settlement mechanisms and of legislative cooperation committees.

7.3 The challenge for the EU in this field is that, whilst geostrategic and economic opportunities are opening up, it is essential to guarantee European norms and standards, public services and the preservation of key areas of regulatory policy such as health, labour and environmental protection standards<sup>(11)</sup>. The opinion of the EESC, and of civil society, is in favour of investor protection being guaranteed by the ordinary courts or, failing that, by an independent international court set up by the United Nations. It is also in favour of the effective involvement of organised civil society in the agreements, which goes hand in hand with a policy of real-time transparency of information, both during the negotiations and in the decisions affecting civil society<sup>(12)</sup>.

## 8. Strengthening civil society as a key element of EU foreign and security policy

8.1 In the EESC's view, civil society is one of the building blocks of democracy. A civil society that enjoys freedom and rights, strong social partners, effective involvement in decisions, and institutional recognition is vital to achieve and consolidate democracy, prevent shifts towards authoritarianism, promote economic development, build peace, foster social cohesion, fight for equality in its various forms, to promote and enable a sustainable development model and enrich the democratic institutional structure. It is also key to developing closer ties with civil society in other countries and regions of the world, creating a parallel to the diplomatic activity that is essential for strengthening global histories, cultures, beliefs and objectives.

8.2 The EESC therefore advocates expressly including this component among the priority objectives of the CFSP, using various means for this reinforcement such as the funds for cooperation and developing human rights; diplomatic activity and demands; genuine, effective involvement — consultative and not solely on a listening-only basis — of civil society in trade and/or association agreements, as an integral part of them and with powers relating to all areas; strengthening policies that aim to ensure that European businesses present in other countries or regions respect the ILO core conventions and develop corporate responsibility policies as supported by the EU.

<sup>(9)</sup> See EESC opinion on *Civil society involvement in the EU's development policies and in development cooperation* (OJ C 181, 21.6.2012, p. 28).

<sup>(10)</sup> Letter of Committee President Mr Malosse to Commissioner Malmström of 18 June 2015 conveying his assessment and recommendations on the advisory groups under the Association Agreements.

<sup>(11)</sup> EESC opinion on *Trade for All: Towards a more responsible trade and investment policy*. See page 123 of OJ.

<sup>(12)</sup> See EESC opinion on *Investor protection and investor to state dispute settlement in EU trade and investment agreements with third countries* (OJ C 332, 8.10.2015, p. 45).

8.3 To this end, the EESC believes that the CFSP must involve European organised civil society in setting and implementing its objectives and priorities. The EESC suggests that the role of civil society could be improved by:

- strengthening civil society in the European neighbourhood, with the aim of supporting stabilisation and democratisation processes;
- improving the identification of partners on the basis of criteria that are compatible with the European social model, specifically by recognising social partners on an equal footing;
- promoting instances of civil society participation, such as the ESCs;
- tackling the social dialogue deficit in the ENP countries;
- supporting the development of regional sectoral organisations, like those that already exist in areas such as the social economy, business organisations and trade unions, agricultural organisations, the promotion of female entrepreneurship, human rights, etc.;
- subjecting EU external action to greater supervision and follow-up by European civil society;
- ensuring that civil society is more effectively involved in trade, association and partnership agreements;
- supporting the creation of a climate favourable to the participation of third country civil society organisations in EU development policies;
- involving civil society in asylum and refugee policy where integration and overcoming xenophobic resistance are concerned;
- coordinating the involvement of the various elements of civil society — employers, trade unions, third-sector socioeconomic organisations and NGOs — in a more structured, less assembly-based way.

## 9. The role of the EESC

9.1 We believe that the EESC, as a consultative body to the European institutions and a representative of all major civil society organisations in the EU Member States, is best placed to become a key partner of the EEAS and the European Commission in strengthening and further developing an effective EU foreign and security policy. This assertion is backed up by its tripartite composition, its global outlook, its long-standing experience and its relations with civil society in other parts of the world, based for the most part on mandates derived through different types of international agreements signed by the EU: association agreements, strategic partnerships, free trade agreements, and agreements with candidate countries for EU accession <sup>(13)</sup>.

9.1.1 We propose that the EESC hold a foreign and security policy audition every year, attended by the High Representative, bringing in the main European civil society organisations.

9.2 The EESC believes it would be very positive to establish a strategic relationship with the EEAS, based on the conviction shared by both parties regarding the importance of civil society in the EU's external policy, particularly when implementing certain priority objectives. To this end, the EESC proposes jointly exploring these priorities and a means of formalising cooperation between the EEAS and the EESC.

9.3 The EESC could assist the EEAS in carrying out an evaluation report on the participation of civil society in the EU's external policy.

9.4 In connection with foreign and security policy, the EESC will step up its cooperation with United Nations organisations such as the ILO and FAO.

Brussels, 28 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(13)</sup> The EESC currently has 23 international structures monitoring international issues.

**Opinion of the European Economic and Social Committee on 'Fairer labour mobility within the EU'****(exploratory opinion)**

(2016/C 264/02)

**Rapporteur: Laura GONZÁLEZ DE TXABARRI ETXANIZ****Co-rapporteur: Dorte ANDERSEN**

In a letter dated 16 December 2015, the Ministry of Social Affairs and Employment asked the European Economic and Social Committee, on behalf of the Netherlands presidency of the Council and under Article 304 of the Treaty on the Functioning of the European Union, to draw up an exploratory opinion on:

*Fairer labour mobility within the EU*

(exploratory opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for the Committee's work on the subject, adopted its opinion on 4 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 232 votes to 2 with 5 abstentions.

**1. Conclusions and recommendations**

1.1. The EESC considers that, in the current political context, both the Commission and the Member States must make a special effort to guarantee and promote the free movement of workers in the EU abolishing any discrimination based on nationality, avoiding unjustified restrictions for both workers and businesses, given that they are fundamental freedoms enshrined in the TFEU and one of the most highly-valued achievements of the European integration process. The EESC support initiatives which can encourage and promote fair labour mobility within the EU, as expressed also by the Dutch presidency and the Commissions aim to promote mobility.

1.2. Labour mobility, when conducted under fair conditions and when it offers a positive option, can be enriching and beneficial for workers, employers and society as a whole. Labour mobility is a cornerstone of the internal market and can help to bring employment opportunities and prosperity to European citizens and companies. It can be an important element in achieving the objectives of economic growth and employment in the EU, helping to balance out the different employment levels in Member States, providing labour and talent where there is a shortage, can help ensure a more effective use of human resources and can also promote the transfer of knowledge, innovation and skills development, which is essential in a world undergoing technological change. Labour mobility can also help offset the effects of the ageing of the workforce in the country of destination.

1.3. It can, however, in some cases and in certain sectors, lead to what is called 'brain drain', where in particular young people from certain countries with high rates of unemployment, move in search of a job or better opportunities for work. At the same time the positive value of free movement of labour must not be weakened or questioned by any unsubstantiated fear of all kind of abuses.

1.4. In order to avoid such situations, the EESC urges the Commission and the Member States to promote economic policies aimed at boosting growth and productivity and creating high-quality jobs in every Member State with a view to improving the living conditions of all European citizens.

1.5. Fair mobility requires ensuring compliance with the principles of equal treatment and non-discrimination on the grounds of nationality in accordance with the European *acquis* for European mobile workers exercising the right of freedom of movement, who are subject to the working conditions and wage-setting rules of the host country, in full respect of national systems for collective bargaining and industrial relations.

1.6. The EESC urges the Commission to address, in consultation with the social partners, all necessary issues regarding posted workers to address unfair practices that lead to social dumping. Similarly, any new measures at European level must respect national competences for collective bargaining and the different systems of industrial relations.

1.7. Concerning cross-border/frontier workers, the EESC considers that it is necessary to monitor the situation and collect data at EU level, in order to remove possible obstacles and ensure free and fair mobility of these workers.

1.8. The EESC calls on the Commission, in line with its stated desire to end social dumping and abuses, not to allow other internal market initiatives to facilitate these practices (incl. the planned service passport).

1.9. Labour inspection is required to play a key role in guaranteeing fair mobility. For this to be possible, the EESC calls on the Member States to provide sufficient competencies, staff and resources for national inspectorates and labour-market monitoring authorities, while supporting the improvement of European cross-border labour-market inspection tools Incl. improvement in cross-border enforcement of penalties.

1.10. The EESC supports streamlining the rules on the coordination of social security systems and cooperation among the Member States for their implementation and underlines the need for any revision of Regulation (EC) No 883/2004 <sup>(1)</sup> to show due regard for the principle of equal treatment of mobile workers to ensure they do not lose acquired rights or find that they have no rights as a result of moving to another Member State in order to work.

## 2. Introduction

2.1. The EESC is drawing up this exploratory opinion on fairer labour mobility in the EU at the request of the Dutch Presidency, which states in its priorities that 'worker mobility can boost economic growth and employment, but the downside has to be addressed to increase public support for the free movement of workers'.

2.2. The free movement of workers is a basic freedom of the internal market and one of the pillars of the European integration process. It is furthermore one of the achievements most highly valued by the people of Europe. Developed on the basis of freedom of movement, the internal market has contributed to economic growth, employment and opportunities for citizens, workers and businesses. Labour mobility carried out under fair conditions can be beneficial to workers, businesses and society as a whole. It should therefore be facilitated by eliminating obstacles to it insofar as possible. Unfair competition or discrimination against workers should not be tolerated in the internal market.

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<sup>(1)</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

2.3. Labour mobility can also entail a number of disadvantages that need to be addressed in order to reduce their risks and to enable both workers and businesses to benefit fully from the opportunities it offers.

2.4. The EU is working to increase fair labour mobility in Europe by removing barriers that hinder it. In its 2016 work programme, the European Commission announced that it would put forward labour mobility proposals containing measures 'to tackle abuse by means of better enforcement and coordination of social security systems and [...] present a targeted revision of the Posting of Workers Directive <sup>(2)</sup> to address unfair practices leading to social dumping and brain drain by ensuring that the same work in the same place is rewarded by the same pay', and to promote labour mobility in the EU.

2.5. The purpose of this opinion is to address the various aspects of labour mobility at a time when labour markets still suffer high levels of unemployment and are undergoing major upheaval, against a backdrop of globalisation, societal change and technological innovation.

2.6. Following decades of very low intra-community mobility, EU enlargement, the 2008 crisis and rising unemployment have increased the migration of workers. In 2014, there were some 15 million mobile workers in the EU, compared with just under 12 million in 2006 <sup>(3)</sup>. In the same year, there were 8,3 million mobile workers of working age living and working in another Member State, equivalent to 3,4 % of the entire workforce, in addition to the 1,6 million people living in one country but working in another (cross-border workers) <sup>(4)</sup>.

2.7. However, various factors mean that the free movement of citizens and workers in the EU is currently in doubt. The EESC is concerned about this development. The restrictions being imposed in the Schengen area by some Member States as a result of the influx of refugees <sup>(5)</sup> as well as exceptions to the equal treatment of intra-EU mobile workers agreed with the United Kingdom at the meeting of the European Council of 18 and 19 February 2016 <sup>(6)</sup> could affect one of the most highly-valued achievements of the European integration process.

2.8. Free movement of workers and the abolition of any discrimination based on nationality are fundamental principles enshrined in the Treaty on the Functioning of the European Union (TFEU), which should be guaranteed and promoted. Furthermore, Schengen is central to European integration and the proper functioning of its economy. It should be a priority and an obligation for the EU and its Member States to ensure that the borders remain open and that citizens have an equal right to move freely and reside and work in any Member State.

2.9. Since this impacts on workers and businesses in particular, the Commission must consult the social partners, both at sectoral and inter-sectoral level, about the need for any initiative in this area and its possible content. Similarly, any new measures at European level must respect national competences for collective bargaining and the different systems of industrial relations.

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<sup>(2)</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

<sup>(3)</sup> European Commission, *Employment and Social Developments in Europe 2015*, p. 33.

<sup>(4)</sup> European Commission, *Speech by Commissioner Marianne Thyssen on Europe's vision for fair labour mobility*, Dublin, 13 November 2015.

<sup>(5)</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control/index_en.htm)

<sup>(6)</sup> The Decision of the Heads of State or Government, meeting within the European Council, concerning a new settlement for the United Kingdom within the European Union and notably its section D on social benefits and free movement.

### 3. General comments

3.1. The freedom of movement of workers is governed by Article 3.2 of the Treaty on European Union and Articles 4.2, a, 20, 26 and 45 to 48 of the Treaty on the Functioning of the European Union (TFEU). It entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration, and other conditions of work and employment. It allows access to the rights of mobility and residence as well as to economic and social rights, the basic rules governing which are set out in Directive 2004/38/EC on freedom of movement and residence in the EU<sup>(7)</sup> and Directive 2014/54/EU on measures facilitating the right to work in another Member State<sup>(8)</sup>.

3.2. The freedom of movement of workers establishes the right to move freely as well as the right to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action. This therefore comprises freedom of movement itself and the right to equal treatment in employment, social services, education and training, among other things.

3.3. Labour mobility, when conducted under fair conditions, can be beneficial for workers, businesses and society as a whole. It can represent a major opportunity for the personal, economic and social development of citizens and workers and must therefore be facilitated.

3.4. Mobility is a key factor of employability and developing talent and can be a way to address the differences between Member States' employment rates by offsetting labour shortages wherever they arise and making better use of workers' skills. It provides greater job opportunities for workers and offers employers greater scope in their search for talent. Mobility can consequently be a major element in achieving the Europe 2020 objectives for employment and economic growth.

3.5. Labour mobility can also help promote knowledge transfer, innovation and the development of human capital, which is essential at a time of globalisation and rapid technological change. In the right conditions, fair labour mobility should encourage interaction between Europeans and should improve mutual knowledge and acceptance, thereby contributing to a more tolerant and inclusive society.

3.6. But nor can we ignore the fact that labour mobility also entails a number of disadvantages. Europeans working in another Member State are sometimes, and for a variety of reasons, more vulnerable to abuse and discrimination with respect to social security, working conditions and wages, access to social benefits and education, taxation, etc. These factors can also distort competition between businesses, especially in labour-intensive sectors such as construction, which has a high concentration of very small businesses. Mobility can moreover result in family separation and difficulties in integrating into another country, due to linguistic, cultural and other barriers. The EESC has drawn up a number of opinions on the importance of supporting mobility within the EU and removing these barriers<sup>(9)</sup>.

3.7. The ongoing poor economic outlook, high unemployment and lack of job prospects in some EU countries are leading a number of workers, particularly young people, to look for a job or better wages and working conditions in other countries. This may have a positive side, insofar as it enables young people to work abroad, gaining experience and developing their skills, instead of being unemployed in their country of origin. What is more, once they return, the experience they have gained will benefit their country. On the other hand, this mobility can create the problem known as 'brain drain' and can exacerbate the impact of the ageing of the population in the countries of origin.

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<sup>(7)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

<sup>(8)</sup> Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014, on measures facilitating the exercise of rights conferred on workers in the context of the freedom of movement for workers (OJ L 128, 30.4.2014, p. 8).

<sup>(9)</sup> OJ C 424, 26.11.2014, p. 27; OJ C 18, 19.1.2011, p. 74; OJ C 228, 22.9.2009, p. 14.

3.8. In addition, a high level of mobility can lead to major challenges and spark tensions in the labour market of the countries of destination, particularly if the economic situation does not ensure an adequate level of growth and job creation to avoid increased unemployment.

3.9. One prerequisite for maximising the benefits of labour mobility within the EU, whilst at the same time reducing the risks it poses and enabling both workers and businesses to fully benefit from the opportunities it affords, is to promote an economic policy to boost growth, productivity and job creation, enabling living conditions to rise in all countries.

3.10. The public perception in some countries that labour mobility may entail social and wage dumping, combined with the unfounded belief that mobile workers exploit social and public services — so-called ‘benefit tourism’ —, helps to fuel hostility towards labour mobility. In response to these perceptions, various studies have found no evidence that higher social benefits in countries other than the country of origin constitute a significant reason for labour mobility. This is confirmed by the lower take-up of these benefits by intra-EU mobile workers compared with nationals. When mobile workers make more intensive use of certain benefits, this is due to specific socioeconomic circumstances<sup>(10)</sup>. Studies show that the link between mobility and social benefits is minimal, with the country’s unemployment rate and salary levels playing a much bigger role<sup>(11)</sup>.

## 4. Specific comments

### 4.1. Fairer labour mobility

Fair labour mobility means ensuring that mobile workers exercising their right to free movement in accordance with the EU *acquis* are being treated in accordance with the principles of equal treatment and non-discrimination. To that end, it is essential for Member States to guarantee that existing legislation in the field of social rights and of working and wage conditions is applied and fully enforced for mobile workers, so as to avoid the risk of social and wage dumping and unfair competition among businesses. This also has a positive value for the internal market.

4.1.1. Similarly, the institutional, administrative and linguistic barriers that continue to hamper labour mobility must be overcome, taking concrete measures such as the provision of information and advice to mobile workers, in collaboration with the EURES network and the European Union network of public employment services, measures to improve language skills, the recognition of vocational qualifications, etc. in line with proposals set out in previous EESC opinions<sup>(12)</sup>.

4.1.2. Fair labour mobility should also be accompanied by measures to ensure growth and job creation in all EU countries, in order to avoid the differences between them deepening and to ensure that everyone benefits from this mobility.

4.1.3. Only under these conditions can fair labour mobility be guaranteed as a positive option for workers, and not as a choice they feel forced to make.

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<sup>(10)</sup> European Commission, *A fact finding analysis on the impact on the Member States social security systems of the entitlements of non active intra-EU migrants to special no contributory cash benefits and healthcare granted on the basis of residence*

<sup>(11)</sup> Giuletti Corrado, IZA-World of Labor, *The welfare magnet hypothesis and the welfare take-up of migrants*, p. 5.

<sup>(12)</sup> OJ C 327, 12.11.2013, p. 65, OJ C 424, 26.11.2014, p. 27; OJ C 18, 19.1.2011, p. 74 and OJ C 228, 22.9.2009, p. 14.

## 4.2. Posting of workers

4.2.1. Posted workers have a different legal regime insofar as they do not make use of their right to free movement. It is the employer who benefits from the freedom to provide services by posting workers temporarily to another country. Employers and workers both benefit from not having to change the place of work stipulated in the contract and can keep up social security contributions in the country of origin.

4.2.2. The legal regime applicable to posted workers is governed by Directive 96/71/EC<sup>(13)</sup> and its Implementing Directive 2014/67/EU<sup>(14)</sup>, adopted in May 2014.

4.2.3. Although there are no official statistics on the wages of posted workers, one report commissioned by the EC<sup>(15)</sup> notes that in the construction and transport sectors their wages can be up to 50 % lower than those of local workers. These differences can be explained by the incorrect application of minimum wages and other reasons such as the tendency to classify posted workers at a low level in the conventional classification scale. Though smaller, differences also exist in other productive sectors which vary from country to country. It is important to highlight the variety of information sources: labour inspections, reports by trade unions and employer organisations, the media<sup>(16)</sup>.

4.2.4. The Court of Justice of the European Union (CJEU) has also addressed the issue of the wage applied to posted workers, with the result that its case law has generated a great deal of controversy. This situation led the Commission to propose Directive 2014/67/EU<sup>(17)</sup> in order to improve measures to tackle fraud and abuse relating to the posting of workers. Member States have until 18 June 2016 to transpose the Implementing Directive. The EESC has already argued that this Directive, though a step towards strengthening the social dimension of the internal market, is not enough to satisfy the Committee's requirements<sup>(18)</sup>.

4.2.5. In the context of the labour mobility package, the Commission announced a targeted revision of the Posting of Workers Directive 'to address unfair practices leading to social dumping and brain drain by ensuring that the same work in the same place is rewarded by the same pay'<sup>(19)</sup>. On 8 March, it published its legislative proposal for the revision of the Directive<sup>(20)</sup>, prior to the presentation of the labour mobility package and before the deadline for transposing the implementing directive. The EESC will deal with all issues relating to it in a separate opinion on the Commission proposal.

4.2.6. In any event, the EESC notes with interest the European Commission's stated intention to put an end to social dumping. The EESC reiterates what has been said in the opinion SOC/460, 'stressing the importance of guaranteeing the protection of posted workers, respecting the various labour market models in the Member States and discouraging social dumping and unfair competition'. It is important — also in the future — to strike the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. The EESC will come back on this.

4.2.7. The EESC calls on the Commission, in line with its stated desire to end social dumping and abuses, not to allow other internal market initiatives to facilitate these practices (incl. the planned service passport).

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<sup>(13)</sup> Op. cit.

<sup>(14)</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

<sup>(15)</sup> European Commission, *Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors. Final Report.*

<sup>(16)</sup> *Ibid.*, pp. 18-20.

<sup>(17)</sup> Op. cit.

<sup>(18)</sup> OJ C 351, 15.11.2012, p. 61.

<sup>(19)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2016 COM(2015) 610 final.

<sup>(20)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, COM/2016/0128 final.

### 4.3. *Cross-border workers*

Cross-border workers are, according to Regulation (EC) No 883/04, covered by the social security system of the country where they work. However, in certain cases they might be subject to some forms of discrimination because of insufficient enforcement of the existing rules. It is therefore necessary to monitor the situation and collect data at European level, in order to remove possible obstacles to free movement to cross-border workers and ensure the proper application of EU and national law, in accordance with the principle of non-discrimination and equal treatment.

### 4.4. *The role of labour inspection*

4.4.1. The EESC considers that national labour inspection has to play a crucial role in fighting bogus businesses, underpayment and undeclared work by ensuring that the rights of mobile and posted workers are respected and enforced, and abuses prevented. This will also make it possible to prevent distortion of competition among businesses.

4.4.2. The absence of controls in some countries — due to the lack of an appropriate labour inspectorate, the adequate competencies, the relevant know-how or the necessary resources — facilitates abuse. Labour inspectorates and other labour market monitoring authorities can be effective only if they are adequately funded and have enough staff, with appropriate training. In this connection, rules at European level are required incl. improvement in cross-border enforcement of penalties, together with support for Member States experiencing difficulties in creating such infrastructure.

4.4.3. Combined with this, the improvement of European cross-border inspection tools, as suggested in the European Parliament resolution of 14 January 2014 <sup>(21)</sup>, would help to identify and take steps against cases of social dumping, especially by identifying bogus businesses.

4.4.4. This would fit in entirely with the recently established EU platform against undeclared work.

### 4.5. *The portability of social rights and the protection of mobile workers*

4.5.1. The EESC supports streamlining the rules on the coordination of social security systems and cooperation among the Member States for their implementation and underlines the need for any revision of Regulation (EC) No 883/2004 to show due regard for the principle of equal treatment of mobile workers to ensure they do not lose acquired rights or find that they have no rights as a result of moving to another Member State in order to work.

4.5.2. Ensuring the portability of social rights for mobile workers is another key aspect of fair mobility, both for those who go to work in another country and those who return to their country of origin after having worked in another country.

4.5.3. In order to facilitate the free movement of people and promote labour mobility, the EU has pursued the approach of coordinating social security systems with a view to regulating relations between national systems, without altering the substance of their rules.

4.5.4. A number of developments in the treaties have led to rules being promoted on the coordination of social security systems. These include Regulation (EEC) No 1408/71 (Basic Regulation) and Regulation (EEC) No 574/72 (Implementing Regulation), replaced by Regulation (EC) No 883/2004 (Basic Regulation) and Regulation (EC) No 987/2009 <sup>(22)</sup> (Implementing Regulation). Regulation (EC) No 883/2004 is currently under review.

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<sup>(21)</sup> European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe P7\_TA(2014)0012.

<sup>(22)</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

4.5.5. The EESC intends to issue a detailed report as soon as the Commission has made available its proposal for the revision of Regulation (EC) No 883/2004. As already stated in an earlier opinion, the legislative framework must be adapted to the changing realities in the world of work, to new forms of employment and, above all, to new forms of mobility<sup>(23)</sup>.

4.5.6. The EESC believes that the principles of equal treatment, aggregation of periods, exportability of benefits and the determination of the applicable legislation (unicity principle) are fundamental for free movement of labour and should be ensured in any future revision of Regulation (EC) No 883/2004.

4.5.7. Regarding the free movement of jobseekers in another country, the EESC notes Commissioner Thyssen's statement of 13 November 2015 in Dublin: 'The right to movement of jobseekers also needs to be upheld in our view — particularly in light of the highly diverging unemployment figures between Member States. It is essential, however, that this is not at the expense of the host country's social security system. With this in mind, we want to make it possible for someone who becomes unemployed to take his unemployment benefits to another country where he may have a better chance of finding a job. This is already possible today for a period of 3 months'. The Commission wants to prolong it to 6 months.

4.5.8. Regulation (EC) No 883/2004 is complex, and national authorities therefore need to cooperate closely in order to ensure that differences in national regulations do not hinder free movement, and information needs to be as clear as possible to ensure that benefit recipients and businesses understand their rights and obligations. In addition, the use of electronic means should be stepped up, as should cooperation between Member States in order to minimise the information requirements placed on workers and businesses.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(23)</sup> OJ C 228, 22.9.2009, p. 14.

**Opinion of the European Economic and Social Committee on 'Integration of refugees in the EU'****(exploratory opinion)**

(2016/C 264/03)

**Rapporteur: Christa SCHWENG****Co-Rapporteur: Panagiotis GKOFAS**

In a letter dated 16 December 2015, the Ministry of Social Affairs and Employment asked the European Economic and Social Committee, on behalf of the Dutch presidency of the Council and under Article 304 of the Treaty on the Functioning of the European Union, to draw up an exploratory opinion on:

*Integration of refugees in the EU*

(exploratory opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 232 votes to 3 with 3 abstentions.

**1. Introduction**

The Dutch presidency has put forward the reasons for its request as follows:

The EU and its Member States are facing the current massive arrival of refugees largely unprepared. However, the number of people arriving is a fraction of those on the move globally and not without precedent in recent European history. All governmental levels and many civil society organisations need to cooperate to receive refugees and to assure their integration once their protected status is granted. The approach, benefits and level of organisational response vary from Member State to Member State. Examples of existing good practice can be found in various databases, which can serve as a basis for deeper analysis.

The exploratory opinion aims to draft recommendations, drawing on current experiences and seeking inspiration from other geographic areas and times that witnessed the arrival of refugees and other migrants on a comparable or far larger scale, focusing on the role of civil society organisations. It should address such questions as: what are the best models of cooperation between national, regional and local authorities and civil society organisations? What innovative approaches exist already? How can they be transferred to other contexts?

**2. Recommendations**

2.1 The EESC is convinced that integration is a necessity for our societies if we want to preserve social cohesion.

2.2 For the EESC a common European asylum system as well as a deep reform of the Dublin Regulation and a European plan for migration must be immediately deployed, to be effective and restore confidence in the values of our societies.

2.3 The EESC points out that integration is a two-way process. Best-practices in integration policies do not only target refugees but include locals as well. Such an approach is critical for the acceptance of the integration measures. Media, local authorities, trade unions, employer organisations and NGOs play an important role in this process. In order to create a positive climate towards refugees in the receiving countries — especially in times of little projected economic growth and tight labour markets in some countries — integration measures and social investments should be provided to the local population and refugees alike, covering the specific needs of each target group.

2.4 Language training should be provided soon after registration, if a positive decision on the asylum status is to be expected. This training should also include basic information on values, cultures and processes as well as identification of skills and qualifications. Cedefop could assist in developing methods to identify skills acquired in the country of origin.

2.5 The EESC recommends that special attention is paid to minors, particularly the unaccompanied, who are often traumatised and need socio-pedagogical support. A rapid integration into the school system or guidance on the professional training opportunities shall be provided.

2.6 The EESC stresses that refugees must have access to information about rights and obligations in the host society in general and on the labour market in particular. Refugees must be treated equally with locals on the labour market, in order to prevent unfair competition as well as social and wage-dumping.

2.7 The EESC reaffirms the praise for solidarity shown by segments of civil society, trade unions, employers' organisations, private individuals and enterprises, in particular micro and craft SMEs, who have voluntarily assisted asylum seekers. The EESC stresses the importance of protecting and supporting such individual engagements, with appropriate incentives in particular during humanitarian emergencies, promoting solidarity in civil society.

2.8 The EESC stresses the need for the EU to base its immediate response to the situation on solidarity and fair sharing of responsibility and costs, as stated in Article 80 of the Treaty on the Functioning of the European Union (TFEU).

2.9 The Member States, EU competent authorities, including in the 'transit' countries, should cooperate with CSOs in monitoring, updating data information and coordination activities, to have a common, more effective EU asylum policy. Common, harmonised and up-to-date statistical systems should be developed in order to define EU and Member States policy options.

2.10 Further efforts in terms of investment to boost economic growth and employment are needed, inter alia, through the Juncker Plan, to achieve lasting success in integrating refugees. Additional investment in integration measures and social investments should be provided to the local population and refugees alike, covering the specific needs of each target group. The EESC has noted the potential positive effects of a financial transaction tax for public finances, by securing a fairer contribution from the financial sector. Due to the exceptional circumstances, and in line with the Stability and Growth Pact, the additional costs of hosting refugees should not be, after the thorough examination, recognised in the public deficits of the Member States. Investment in integration measures is costly in the short and middle term, but should be seen as an investment in people, which will pay off in the long term. If integration is successful it will lead to social cohesion, economic growth and job creation. The resources of the Asylum, Migration and Integration Fund (AMIF), as well as the European Social Fund (ESF), should therefore be increased as appropriate, particularly in those Member States that have exceeded their refugee quotas, in order to achieve better co-financing of measures to integrate refugees.

### 3. Background

3.1 The conflicts in the Middle East have caused an unprecedented influx of refugees into Europe. People from war-torn countries mixed with people who wanted to leave their countries for economic reasons. All European countries have signed the 'Geneva Convention' of 1951 relating to the status of refugees, which grants basic rights to refugees in order to protect this vulnerable group. In view of the high number of people and in order to comply with the Geneva Convention and general principles of human rights it is important to clearly distinguish between economic migrants and refugees, that is, people in need of protected status (particularly asylum or subsidiary protection).

3.2 While it is fully understandable from an individual point of view that individuals leave their country in order to find better economic circumstances abroad, the current situation and the societal climate in the majority of Member States requires this clear distinction. Economic migrants have to return to their countries of origin, if they claim protected status on unjustified grounds. The EU action plan on return as well as the return handbook should be followed by the Member States in those cases where the claim for international protection was refused.

3.3 This requires a common European asylum system with efficient external border protection, proper registration at the so-called hotspots, rapid processing of asylum claims and arrangements for the return to the country of origin, or to a third country with which a readmission agreement has been concluded, of asylum-seekers whose applications have been rejected and who have not been granted international protection. It could also be significant and effective to establish hotspots in the third countries bordering the EU and having agreements on migration policy for registration and asylum request.

3.4 The events that occurred during the second half of 2015 have shown that third country nationals often come to Europe with false expectations and rosy images of life in the EU that are usually provided by smugglers. Confronted with reality, the reaction of these third country nationals is disappointment and in some cases voluntary return. In the framework of a voluntary return programme participants could contribute to painting a more realistic picture of European life to citizens of their home countries, which might prevent others from embarking upon the dangerous journey to Europe.

3.5 Aside from the need to make the common European asylum system fully operational, to establish a sustainable and fair sharing of responsibility and costs and in order to reduce pressure on the current asylum system, it will be necessary to swiftly adopt a new European approach for migration, as well as a deep reform of the Dublin Regulation able to tackle short and long term challenges, as has been announced by President Juncker for the first quarter of 2016. The EESC will express its views in a separate opinion.

3.6 In its resolution on refugees, adopted in December 2015, the EESC has stressed that 'the current situation requires the EU to develop safe humanitarian corridors for refugees from countries affected by wars and threatened by terrorism and to do this together with the countries where these refugees are mostly concentrated'. The EESC reaffirms that the registration process should already take place outside the EU.

3.7 War, climate change and lack of prospects in third countries may create a continued and even increased influx of refugees and migrants. Limiting push factors for migration in general is a global challenge. The present opinion, however, is solely dedicated to the integration of individuals with granted protected status or people applying for such status.

#### 4. Comparability with previous refugee movements?

4.1 The Dutch presidency asked for integration lessons to be drawn from previous crisis that generated large refugee movements. The EESC came to the conclusion that the current refugee crisis is not comparable with previous ones, first due to the number of people that are on the move, more than 900 000 migrants enter the EU borders through Greece during 2015, and second due to the rapidity of the evolution, leading to increased uncertainty among the local population. Looking for example to the Austrian case where about 90 000 refugees came at the beginning of the 90s, escaping from the war in former Yugoslavia, one can see the differences quite clearly: People from Bosnia often had relatives in Austria, or had already worked there. The qualifications achieved in the country of origin were of immediate value to the Austrian companies, and women were used to fully participate in the labour market. This increased the family income and made families more mobile, which prevented the creation of designated areas and favoured a better social intermix at schools and on the labour market.

4.2 The experiences from the situation in the 90s are not completely comparable to today's situation. People arriving now have more diverse backgrounds, with some having academic degrees that can be compared to European ones, others have education that might not be of immediate use in Europe, whereas others have very limited education and many women have never participated in the labour market. Moreover, people in receiving countries, still suffering from the aftermath of the economic crisis, tend to be rather reserved towards foreign people competing on the labour market.

#### 5. What is integration?

5.1 According to the UNHCR there is no consensus on the definition of immigrant integration in the context of developed countries and there is no formal definition in international refugee law. Broad understanding of integration as processual, individual and two-way underpins many government and academic attempts to define what integration or an integrated society looks like.

5.2 'At the core of the UNHCR's definition is the concept of integration as a two-way process and this is premised on the "adaptation" of one party and "welcome" by the other. It does not however require the refugee to relinquish their cultural identity, and integration therefore differs from assimilation' <sup>(1)</sup>. This definition corresponds with the EESC's view <sup>(2)</sup>.

5.3 The EESC has underlined the need to link integration with the values and principles set out in the Treaty, the Charter of Fundamental Rights, the European Convention on Human Rights, the Europe 2020 agenda, employment policy and the social agenda. The EESC considers this reference to be of vital importance, as it takes into account the existence of a crisis of values in certain social and political sectors in Europe. Integration and economic and social cohesion are two sides of the same coin <sup>(3)</sup>. Ensuring decent living conditions and prospects for everybody will foster acceptance of integration measures.

5.4 The Common Basic Principles for Immigrant Integration Policy (2004) and the vehicle for its implementation, the Common Agenda for Integration (2005) form the basis upon which migrant integration in the EU is formulated, and view integration as comprising the following:

- a two-way, dynamic process,
- implying respect for EU values,
- employment forms a key part of integration and is central to participation,

<sup>(1)</sup> A new beginning — Refugee integration in Europe (2013).

<sup>(2)</sup> OJ C 181, 21.6.2012, p. 131. Also OJ C 347, 18.12.2010, p. 19.

<sup>(3)</sup> Information Report on *The new challenges of integration* — Rapporteur: Luis Miguel PARIZA CASTAÑOS.

- knowledge of the receiving society's language, history, and institutions is integral to successful integration,
- education, which is critical for active participation,
- access to institutions, goods and services on the same basis as nationals is fundamental to integration,
- interaction between migrant/citizen,
- practice of diverse cultures and religions to be safeguarded,
- participation in the democratic process,
- mainstreaming integration policies,
- clear goals, indicators and evaluation mechanisms to adjust integration policy.

5.5 Although these principles do not differentiate between migrant and refugee integration, the EESC also regards these principles as a basis for the integration of refugees. However, due to the large number of people arriving in Europe, additional efforts are necessary in order to provide language training, housing and labour market integration.

5.6 In order to create a positive climate in receiving countries towards refugees — especially in times of little projected economic growth and tight labour markets in some countries — integration measures and social investments should be provided to the local population and refugees alike, covering the specific needs of each target group. The importance of connecting and mainstreaming social objectives in the context of integration has been stated by the EESC <sup>(4)</sup>.

5.7 The EESC is convinced that integration of refugees is an absolute must for our societies if we want to preserve social cohesion. A lack of integration can lead to parallel societies which may destabilise receiving countries. It is therefore in our own interest to start integration measures from a very early stage. Media should be encouraged to acknowledge the importance of integration and the role they play in creating a positive political and societal climate.

5.8 The demographic developments in most European countries show a decline in working age population. In order to keep our social systems sustainable for the next generations the integration into the labour market of the entire labour force, regardless of, for example, gender, age, physical ability, religion, sexual orientation or (ethnic) origin must become a priority. Investment in integration measures is costly in the short and middle term, but should be seen as an investment in people, which will pay off in the long term. If integration is successful it will lead to social cohesion, economic growth and job creation.

5.9 The local level has a decisive role to play in integration, as it is the place where people live together and where a lack of integration first becomes visible. Communities should get advice and guidance on well-functioning integration measures, such as inviting refugees to participate in local voluntary associations (e.g. trade unions, NGOs, firefighters or sports clubs).

5.10 The European Commission's website on integration <sup>(5)</sup> contains a wealth of information on integration examples. By using search filters best practice examples can be found, according to, for example, country, field of integration, target group. This website should be further promoted to inspire Member States, local authorities, NGOs and social partners on integration activities

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<sup>(4)</sup> OJ C 347, 18.12.2010, p. 19.

<sup>(5)</sup> <https://ec.europa.eu/migrant-integration/home>

5.11 Based on a proposal from the EESC, a structured collaboration between civil society organisations, the EESC and the European Commission via the European Migration Forum, which deals with all questions related to migration, asylum and integration, is already in place. In addition it could be useful to extend the mandate of the advisory committee on free movement of persons to the integration of refugees, as this is the body via which governments discuss and exchange ideas with social partners. This committee could provide an additional space for sharing best practices.

## 6. Integration measures

6.1 Asylum seekers arriving in Europe after (in most cases) an exhausting and often traumatising journey need first and foremost a place to stay and rest. This time should be used by the authorities to properly register them and to roughly evaluate whether they have a chance of receiving the status of a refugee. In this case, integration measures should start from a very early stage. According to recent research by the World Health Organisation, there is a need for special medical treatment for refugees with developed post-traumatic stress disorder, as this frequently is one important barrier for integration.

6.2 Integration is not thinkable without having at least a basic knowledge of the language of the receiving country. Therefore, language training should start as early as possible during the asylum procedure. This requires the establishment of new structures as well as an improved interface management in order to cope with the large number of asylum seekers. Language courses should also be used to acquaint asylum seekers with the values (e.g. equal treatment of women and men, freedom of expression, prohibition of domestic violence) and culture of the receiving country. These courses can also be used to provide asylum seekers with basic guidelines on issues of organisations, institutions and information where to turn to, when problems arise. Asylum seekers often come from very different cultures. Actions resulting from a lack of awareness about the receiving countries' basic values, rights and obligations may harm integration.

6.3 Refugee children should attend schools with local children as quickly as possible and receive support in learning the national language. Special attention must be paid to minors, particularly the unaccompanied, who are often traumatised. If they are — due to their age — not allowed to attend school any more, adequate offers especially designed for this group should be provided in order to prevent frustration. Member States should be aware of the special needs of traumatised children and unaccompanied minors, and offer socio-pedagogical support (e.g. the City of Vienna tries to place unaccompanied children into foster families using existing frameworks).

6.4 The early identification and classification of certificates, skills and qualifications are essential in terms of guaranteeing rapid integration into the employment market. Already at the beginning of an asylum procedure the professional skills and qualifications of the asylum seeker should be mapped out, with the involvement of labour market experts. These aspects are indispensable for targeted language promotion, the initiation of a training course, the recognition of professional qualifications, the provision of necessary secondary qualifications and the effective procurement of suitable employment. However, the identification of skills can be a very difficult process. Many refugees do not even have their personal documents with them let alone their attestations or certificates providing evidence of their level of qualifications. Different methods in order to test skills and competences are being developed by different Member States (e.g. Germany, Austria). Cedefop could provide a platform for mutual learning and an exchange of best practices in this field.

6.5 Asylum procedures often take a very long time, leaving the asylum seeker in a position of uncertainty. Long periods during which the asylum seeker is not able to lead a self-determined life may cause psychosocial instability, loss of self-confidence and dependency syndrome, which may impede employment chances even after recognition as a refugee. Children are even more affected as they need a stable environment. The EESC therefore calls on Member States to decide on asylum procedures as quickly as possible. According to the OECD <sup>(6)</sup> on integration support for asylum seekers, the asylum procedures in Greece, Belgium and Denmark have the shortest duration, and include language training combined with adult education and job related training.

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<sup>(6)</sup> Making integration work, 28.1.2016, OECD.

6.6 With regard to projected economic growth and the labour market situation, countries may try measures to reduce waiting times for labour market access. While Germany and Hungary have already reduced waiting times for access to work, Finland, Belgium and Luxembourg have made some moves to reduce it. Fair, transparent and reasonable regulations to grant labour market access for asylum seekers prevent undeclared work and raise acceptance with locals. At the same time, people with protected status should have on the prospect of staying in the host country, if they are integrated in the labour market or the host society. Asylum seekers must be made aware that their labour market access is dependent on the country where they claimed asylum. Due to a lack of knowledge, some travel to other Member States hoping to find a job there. In reality they find themselves in a situation of irregularity, which could easily be avoided through proper information.

6.7 Housing is very important with regard to integration: reception centres satisfy the immediate need for a place to rest (and often for a much longer period than planned), but stays of a longer duration make integration more difficult. In Austria, the project 'Kosmopolis' for private housing has been established. In a newly-built area, a certain number of apartments are reserved for refugees, who are already in employment. In order to avoid misunderstandings between refugees and other people living there, an information centre has been established nearby. In Portugal, a protocol between the Lisbon Municipality and Portuguese NGOs has enabled the provision of housing for refugees and access to the municipality's services for training, education and integration into the labour market <sup>(7)</sup>.

6.8 After a positive decision on asylum status the refugee has to find housing himself. This period is often very difficult as the support which was initially granted by the state ends and the refugee has to find employment in the same way as nationals of the receiving country.

6.9 The public employment service has a particular role to play in this context. First and foremost, it should actively fulfil its role as a facilitator of sustainable employment. But it also has to decide on additional qualifications the refugee may need to acquire if he/she is to succeed in the labour market. It must be noted and taken into consideration that, even after the 4th year of duration of stay, only 25 % of refugees are employed; even up to the 10th year, it is only around 50 % <sup>(8)</sup>. An individual integration contract with each refugee could be concluded, containing the relevant actions which have to be undertaken (additional training, number of applications, etc.) in order to integrate fully into the labour market. The EESC stresses that refugees must be treated equally with locals on the labour market, in order to prevent unfair competition as well as social and wage-dumping. If there is no chance of finding a job for the refugee in reasonable time, volunteering for community service could be offered as a good alternative. It could support the acquisition of additional language skills and help the refugee to integrate into society.

6.10 A good example is that of Germany who has recently decided to introduce an ID card specifically for asylum seekers. After registering for the first time, the card becomes the central and obligatory means of identification, linked to a central database that contains information such as a person's educational background and professional experience.

6.11 Among the refugees, as well as among the local population, there are people with entrepreneurial interests and skills. They should receive information and guidance on how to start a business and become an employer.

6.12 Discussions are currently taking place in Germany and Slovakia on how refugees with high qualifications in professions with skills shortages could be admitted to the labour market via fast track procedures.

6.13 Refugees need information about the labour market in general, the professional training opportunities and the jobs available. As a high percentage of refugees are of a typical student age, between 16 and 25, basic information or preparatory courses in different professional fields need to be provided before training can commence. In Germany the Chambers of Commerce and Industry have started initiatives to assist with placements such as, for example, speed-dating-style interviews. The German CCIs support businesses to provide qualifications and training for refugees via the 'Commitment to training' project. They also try to attract voluntary sponsors to look after refugees and firms, giving advice to both sides. CCIs also provide support to refugees who want to start up their own business.

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<sup>(7)</sup> Approaches towards the labour market integration of refugees in the EU, 7.1.2016, EurWORK.

<sup>(8)</sup> See footnote 6.

6.14 In Austria a project has started which aims to place young refugees in unfilled apprenticeship places with the support of the public employment service and coaches. A traineeship period may precede the signing of a formal apprenticeship agreement. Furthermore, the Austrian Federal Train Service (ÖBB) started the 'Diversity as chance' (*Diversität als Chance*) project and offered 50 unaccompanied refugees between 15 and 17 years old apprenticeships.

6.15 In order to facilitate the integration of highly-qualified migrants, the Austrian Federal Economic Chamber has developed the programme 'Mentoring for migrants', which has been extended to highly-qualified refugees. Mentors are people who are well-integrated in the Austrian labour market and who support the migrant during their job search by providing information or even access to their own professional network. This programme also helps to avoid cultural misunderstandings.

6.16 In a number of Member States, so-called 'Refugee buddies' take care of refugees. They engage voluntarily at a variety of organisations, and meet regularly with one refugee, in order to establish personal relations. This is all the more important as a large number of refugees are unaccompanied minors, who have left their families behind. Buddies could also act as advocates in order to improve the image of refugees in their country.

6.17 Social partner organisations in some Member States (e.g. Spain, France, Germany, Czech Republic, Austria) have called on their governments to work more effectively on the integration of refugees. In Spain, an additional measure was included in the Annual Employment Plan policies specifically aimed at labour integration of refugees.

6.18 Denmark uses the so-called 'staircase model' for the integration of refugees into the labour market: in the first step (four to eight weeks) the competencies of the individual refugee are identified and Danish lessons provided. In the second step (26-52 weeks) the trainee is placed in an enterprise (at no cost to the employer) and given additional Danish lessons. After this, the refugee is ready to take a job with a wage subsidy. Effective implementation of such models should foster the creation of additional employment opportunities and prevent crowding-out of locals (no 'revolving-door' effects).

6.19 In order to guarantee fair competition, working conditions including wages have to be fully respected regardless of the nationality or the status of a worker (*lex loci laboris*). Member States have to ensure efficient measures, mechanism and administrative capacities to enforce it. Trade unions support refugees or migrant workers who are without documentation in claiming their rights ('École des solidarités' — Belgium, 'UNDOK' — Austria).

## 7. Financing of integration of refugees

7.1 The EESC points out that any measures will have to be properly funded, to have a lasting positive impact on our society. Further efforts in terms of investment to boost economic growth and employment are needed, inter alia, through the Juncker Plan, to achieve lasting success in integrating refugees. Additional investment on integration measures and social investments should be provided to the local population and refugees alike, covering the specific needs of each target group. The EESC has noted the potential positive effects of a financial transaction tax for public finances, by securing a fairer contribution from the financial sector. Due to the exceptional circumstances and in line with the Stability and Growth Pact, the additional costs of hosting refugees should not be, after the thorough examination, recognised in the public deficits of the Member States<sup>(9)</sup>.

7.2 Member States of initial reception, such as Italy, Malta, Spain and Greece, should receive direct economic aid for each refugee or migrant so they can accurately and speedily process applications for asylum or arrange for return in the event that the requirements for granting asylum are not met. Member States taking on the responsibility of integrating more refugees into their societies than required by the principle of solidarity, should also be able to count on the financial support of the EU.

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<sup>(9)</sup> EESC declaration on refugees.

7.3 The financial resources of the Asylum Migration and Integration Fund (AMIF) should be increased in order to better engage with the Member States in financing the integration of refugees, in particular for programmes carried out by the local authorities and NGOs. The European Social Fund should also be increased as appropriate to provide extra resources to facilitate the social integration of refugees, the equality of women, support for businesses and the inclusion of refugees in the labour market which requires dialogue and collaboration with social partners. In addition, the Regional Development Fund should work with extra resources for urban areas which implement arrangements required for the reception and integration of refugees.

7.4 International cooperation concerning the funding of refugees' integration should be explored with the special cooperation of the UNHCR and the International Organisation for Migration.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the European Economic and Social Committee on the 'External dimension of the EU's energy policy'**

(2016/C 264/04)

**Rapporteur: Mr Vitas MAČIULIS**

On 16 December 2015, the Presidency of the Council of the European Union decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on the:

*External dimension of the EU's energy policy.*

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 April 2016.

At its 516th plenary session, held on 27-28 April 2016 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 143 votes to 0 with 2 abstentions.

**1. Conclusions and recommendations: Towards a consolidated and resilient external energy policy in the EU**

1.1 Energy is an inseparable part of international politics, and is currently at the top of the EU agenda. As some international players attempt to use energy as a tool for achieving political aims, it is in the interest of the EU's citizens that the EU remains vigilant with regard to energy questions.

1.1.1 Three factors are paramount for the external dimension of energy: diversification, 'speaking with one voice' and a properly developed internal energy system.

1.2 Diversification of the EU's energy sources, suppliers and routes is essential for external energy policy. As underlined in the EU's Energy Union Strategy, a key challenge for the EU is that more than half of the energy consumed comes from imports, which must be secured through the certain trade policies.

1.2.1 The circle of energy import partners must be expanded by constantly looking for and establishing dialogues with new, reliable and predictable energy suppliers.

1.2.2 New major infrastructure projects, contributing to the diversification goals, should meet the objectives of the Energy Union Strategy and be in full conformity with the EU *acquis*. They should also be fully consistent with the objective of developing a decentralised energy system where renewable energy sources play a crucial role.

1.2.3 Cooperation between representatives of private and political sectors should be encouraged in order to find the most suitable ways and partners for external energy development. The goals of energy security and sustainability should always be taken into account.

1.3 'Speaking with one voice' must be pursued in spite of different energy mixes, energy import structures and traditional partners among the Member States. A common internal EU position is key to a strong external dimension.

1.3.1 The EESC urges the Member States to coordinate their individual energy interests and constantly maintain solidarity and transparency towards one another.

1.3.2 The EESC welcomes the proposal of the Commission of 16 February 2016 reinforcing the current information exchange mechanism with regard to inter-governmental agreements and non-binding instruments.

1.3.3 Common environmental and nuclear safety standards in the energy projects being implemented in the EU's neighbouring countries should be an important point of the EU's external energy policy. Energy purchases from countries that fail to comply with these standards should be limited.

1.4 A strong internal energy system is the cornerstone for reducing external impact: one of the core dimensions of the Energy Union is the creation of a fully functional and transparent internal EU energy market. It would translate directly into a more effective EU approach to external energy issues.

1.4.1 All the necessary parts of energy infrastructure must be established, making it possible to optimise and streamline the import of energy resources into the EU.

1.4.2 The EESC underlines the need to fully integrate the energy networks and systems of all Member States into the EU's internal market and ensure that they are fully synchronised.

1.4.3 The competitiveness of the EU's energy producers must be preserved by establishing a level playing field between European and non-European energy producers.

1.4.4 The EESC calls for the design and implementation of the EU's external energy policy to take account of the need of EU industries, particularly energy-intensive industries, to have at their disposal a competitive, stable and predictable energy supply, in order to be able to operate on a level playing field with its international competitors.

1.5 A forward-looking energy policy, which would help achieve the EU's external goals, including in the context of the COP21 agreement, should primarily rely on systematic attention to the EU's climate policy goals and international efforts to mitigate climate change, mainly by developing three key factors: renewable energy sources, energy efficiency and research and development.

1.5.1 Renewable sources are the essential element in increasing energy security and reducing import dependence.

1.5.2 The EU should do its utmost to maintain the leading position in the field.

1.5.3 Energy efficiency is one of the cornerstones for lowering the volume of the EU's energy consumption and consequently reducing the amount of imported energy. It is therefore essential to reduce the energy expenditure of private and commercial consumers.

1.6 Research and development must receive adequate resources, which would lead to increased effectiveness and decreased costs of energy production. International cooperation is clearly also important in this context.

1.7 As energy should be affordable for consumers and supportive of the competitiveness of industry, the EESC calls on the Commission and national governments to give a broad role to civil society, the social partners and consumer organisations. For this reason the EESC asks for a European Energy Dialogue and a European Energy Forum including all stakeholders. This is crucial for the establishment of an intelligent, efficient and sustainable EU external energy policy.

1.7.1 The EESC must rally its international bodies to play an active role in the creation of an effective and resilient EU external energy policy.

## 2. Background

2.1 Energy issues only recently became significant in the EU's policy debates and have risen to the top of the European Commission's agenda. The EESC is also active in the field of the external dimension of energy and has already issued a number of opinions on this topic<sup>(1)</sup>.

2.2 Given the growing dependency of the EU on energy imports, particularly of oil and gas, the external dimension of EU energy policy is becoming crucial to underpinning the security of energy supplies.

2.2.1 More than half (53,2 %) of the EU's gross inland energy consumption comes from imports. The EU imports 44,2 % of solid fuels (of which more than half is hard coal), 87,4 % of petroleum and petroleum products and 65,3 % of natural gas (Eurostat data, 2013).

2.2.2 These numbers clearly underline the extent of the EU's dependency on trade with third country suppliers. Therefore, should the supplier prove to be unreliable or unpredictable or should the infrastructure not be properly maintained, the energy security of the whole EU could be seriously damaged.

## 3. Significance of diversification in external energy relations

3.1 The EU should look for new opportunities for cooperation and strengthen existing energy partnerships with third countries in terms of the diversification of sources, suppliers and routes.

3.2 It is most likely that Russia will remain the main energy import partner of the EU for the foreseeable future. It is especially relevant in terms of pipeline gas.

3.2.1 A key priority of Russia is to at least maintain its favourable position on the EU energy market, which is both its largest energy export destination and a very reliable customer.

3.2.2 The Nord Stream II pipeline project is currently a key item on Russia's energy agenda, directed towards increasing natural gas exports to the EU. Concerns have been expressed within the EU, as to whether this project could contradict the EU's Energy Union strategy on gas supply diversification. The EESC sees the most important role of the Commission as being a thorough evaluation of the Nord Stream II project and its compliance with the EU *acquis*, including the Third Energy Package, as well as the objectives of the Energy Union Strategy, notably the diversification of energy sources, suppliers and routes.

3.2.3 The interests of every Member State must be taken into account when establishing a common position of the EU with regard to Nord Stream II. The commercial aspects of the project should not be the sole factor in the decision, especially considering the tendency of Russia to use energy as a tool for geopolitical aims.

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(<sup>1</sup>) 1) 'Civil society contribution to the review of the EU-Central Asia Strategy', EESC opinion (OJ C 242, 23.7.2015, p. 1).  
2) 'The Energy Union strategic framework', EESC opinion (OJ C 383, 17.11.2015, p. 84).  
3) 'Energy — a factor for development and a deeper accession process in the Western Balkans', EESC opinion (OJ C 32, 28.1.2016, p. 8).  
4) 'Securing essential imports for the EU — through current EU trade and related policies', EESC opinion (OJ C 67, 6.3.2014, p. 47).  
5) 'Intergovernmental agreements between Member States and third countries in the field of energy', EESC opinion (OJ C 68, 6.3.2012, p. 65).  
6) 'Involving civil society in the establishment of a future European Energy Community', EESC opinion (OJ C 68, 6.3.2012, p. 15).  
7) 'The external dimension of the EU's energy policy', EESC opinion, 2009 (OJ C 182, 4.8.2009, p. 8).

3.3 Norway is a valuable partner of the EU on the international stage with shared policy priorities, including in the energy sector. As a member of the European Economic Area Agreement Norway is a part of the EU's internal market.

3.3.1 The significance of the Northern dimension is likely to increase, as is cooperation in the northern areas with regard to oil and gas fields in the Arctic Ocean. However, particular emphasis should be placed on the sensitive environmental context if and when companies begin to seriously explore the potential resources in this area.

3.4 The EU's energy cooperation with its Southern and Eastern Mediterranean Partners has gained a new impetus with the recent establishment of regional platforms encompassing gas, electricity, renewables and energy efficiency. These platforms are envisaged to be instrumental for facilitating and enhancing energy cooperation.

3.5 Considering Central Asia as a region of strategic importance and rich with energy resources the European Union has committed to establish a durable and stable relationship with it. As noted in the Foreign Affairs Council conclusions on the EU strategy for Central Asia adopted on 22 June 2015, the EU calls for strengthening energy links, which would contribute to mutual energy security.

3.6 Connection of the Caspian Sea region with the EU market through the Southern Gas Corridor will open new possibilities for natural gas trade and contribute to the EU's diversification objective. The Trans-Anatolian natural gas pipeline (TANAP) will be a central part of the interconnection along with the Trans-Adriatic (TAP) pipeline.

3.7 Energy relations with the US are becoming increasingly important on the EU's agenda, as reflected in the EU-US Energy Council. The US is currently experiencing an era of cheap gas as a result of unconventional gas production. The EU should seize the moment and encourage the development of the transatlantic liquefied natural gas (LNG) trade as this would contribute substantially to the diversification of energy supply.

3.7.1 The Transatlantic Trade and Investment Partnership (TTIP) could become a significant tool to promote, among other fields, transatlantic energy security. The EESC urges the parties to direct all efforts towards duly addressing energy issues in the agreement.

3.8 The EU's energy security is closely linked to its neighbourhood energy affairs, which means that the EU should continue to work closely with its neighbours and expand the scope of mutually beneficial cooperation.

3.8.1 The EESC calls on the Commission to further strengthen the Energy Community, especially in terms of implementation of the EU energy *acquis* with regard to the Contracting Parties <sup>(2)</sup>.

3.8.2 The key objective of the Energy Community is the expansion of the EU's internal energy market. The EU must continue to strengthen cooperation with neighbouring countries and their civil societies with the aim of establishing a genuine pan-European energy market. The EESC welcomes the Commission's proposal for the security of supply regulation directly involving the Energy Community countries.

3.9 Following the lifting of the international sanctions on Iran, the EU must seize the moment and re-establish energy relations given the potential role that Iran can play in diversifying the EU's sources of energy supplies.

3.10 The EU should also accelerate and strengthen efforts to reinforce solid partnerships with such diverse, yet significant third countries as Canada, Turkey and Algeria. The EESC welcomes the engagement of high-level energy dialogues with these countries in 2015.

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<sup>(2)</sup> Contracting parties — Albania, Bosnia and Herzegovina, Kosovo, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine.

3.11 The energy dimension should be duly reflected in trade agreements with third countries. In addition, energy agreements with third country suppliers must fully comply with the EU legal provisions and energy security principles.

#### **4. The importance of 'speaking with one voice' and a unified approach to energy issues**

4.1 On 20 July 2015, the Foreign Affairs Council approved an Energy Diplomacy Action Plan (EDAP) to support the external dimension of the Energy Union Strategy. The plan is aimed at strengthening common messages to enable the EU to 'speak with one voice' on major energy issues and to meet the energy objectives in a spirit of solidarity and common interest, instead of re-nationalising energy policies.

4.1.1 The key dimensions of the EDAP include diplomatic support for the diversification of energy sources, suppliers and routes, increasing cooperation with transit countries (especially Ukraine) and key third country energy partners, further strengthening the Energy Community and maintaining the strategic engagement of the EU in the energy-related multilateral initiatives.

4.2 An information exchange mechanism for Intergovernmental Agreements (IGAs) was established by a decision adopted by the Parliament and the Council on 25 October 2012, to ensure that the agreement is legally clear and transparent and complies with EU law. In February 2016, the Commission came forward with a proposal strengthening the existing mechanism.

4.2.1 The EESC welcomes the attempts to bring legal compliance and transparency to the EU's agreements with third parties<sup>(3)</sup>, and would therefore support the strengthening of the current information-sharing mechanism.

4.3 The EU should remain committed to the promotion and continuous improvement of environmental and nuclear safety standards in third countries.

4.3.1 Particular attention must be paid to the nuclear power plants being constructed by third countries near the borders of the EU (i.e. Astraviec nuclear power plant in Belarus, which was found to be non-compliant with the provisions of the Espoo Convention). The EU should underline to third parties the importance of ensuring the all-round safety of such projects in line with the IAEA Nuclear Safety Convention and other relevant international agreements. The Commission should increase its efforts to ensure that countries which have agreed to the nuclear stress tests according to the EU rules, fulfil this commitment as soon as possible. Further, unsafe plants should get their energy access to the EU restricted.

#### **5. Impact of a strong internal energy system**

5.1 A strong internal energy system translates directly into a resilient external position. Therefore, the EU should aim to streamline its internal approach to energy issues.

5.2 The Energy Union Strategy is a priority initiative which aims to consolidate a common EU response to energy challenges. As energy security underpins the EU's economic and social prosperity, it becomes a collective responsibility of the Member States, energy producers, consumers, transit countries and the international community, all of whom are involved in today's globalised energy markets.

5.2.1 A key pillar of the Energy Union is the improvement of interconnections between the Member States and the full implementation of the internal energy market *acquis*. The full integration of the EU internal market will increase competition among energy providers, which in turn would result in better prices for the end consumers.

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<sup>(3)</sup> See footnote 1, point 5).

5.2.2 As LNG becomes ever more widely available at global level, it presents the EU with new opportunities for gas supply diversification. Therefore, internal LNG infrastructure should be strengthened and developed. Within this context, the EESC welcomes the LNG and gas storage strategy adopted by the Commission in February 2016.

5.2.3 Complete integration of the EU means the elimination of 'energy islands'. The EESC underlines the need to fully integrate the energy networks and systems of all Member States into the EU's internal market both by developing physical infrastructure to connect the grids and finally solving the synchronisation issue of the three Baltic States <sup>(4)</sup>, as the operation of their electricity system is currently dependent on a third country operator (Russia).

5.2.4 The competitiveness of the EU's energy producers must be preserved. A level playing field between European and non-European energy producers must be established, in order to ensure that the EU's competition rules are followed by all participants in the energy market.

## 6. A forward-looking energy policy as a significant factor in the external dimension

6.1 Renewable energy sources create a direct opportunity for the EU not only to lower its dependence on imported fossil fuels, but also to make its domestic energy production more sustainable. The EESC recognises the development of renewable energy sources as one of the most important actions towards a more secure energy future. However, the EU should not rely on past successes, and should do its utmost to maintain the leading position in the field. In addition, EU officials should encourage third countries to set ambitious goals for renewable energy.

6.1.1 The EU is already looking beyond 2020 and has established even more ambitious targets for 2030. A common goal of at least 27 % of energy deriving from renewable sources would require Member States to increase cooperation on the regional level, further consolidating the EU's energy sector.

6.1.2 Within the context of mitigating climate change, the EESC welcomes the COP21 agreement and the EU's commitment to cut greenhouse gas emissions by at least 40 % (from 1990 levels) by 2030 as set in the climate and energy framework. The EU should not only encourage its partners to work actively in the field, but provide practical help if deemed necessary.

6.1.3 Decentralised energy production as well as energy cooperatives would contribute to meeting the EU's climate and energy targets. It allows involving the wider society to work towards energy independence and security in their countries as well as in the entire EU. Therefore, the best practices of cost-effective self-generation and consumption should be adopted.

6.2 Energy efficiency is also a direct way of tackling the issue of the EU's high level of energy imports. A target of an improvement of at least 27 % in energy efficiency (the same as for renewable sources) was set for 2030 across the EU, with the European Commission making serious efforts to implement the 'energy efficiency first' principle. In turn, the Energy Union will continue to promote better access to financing instruments for energy efficiency, notably in the transport and buildings sector, and encourage Member States to give energy efficiency primary consideration in their own policies.

6.3 Contributing adequate resources to the field of research and development is crucial in order to maintain technological advances in energy production and smart distribution. This is especially relevant in terms of renewable energy, with the aim of making its production cost-friendly and reliable. In addition, development of cutting edge technologies, such as usage of hydrogen, fuel cells and nuclear fusion in energy generation, should be kept up.

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<sup>(4)</sup> OJ C 228, 22.9.2009, p. 84.

6.4 The EESC urges the EU to take a leading part in addressing the energy issues of the developing countries in a sustainable manner through policies and initiatives aimed at extending financial, technical and legal assistance. Support of education and training in related fields should be the main tool for the expansion of cooperation with developing countries.

#### **7. Civil society as an active player in external energy issues**

7.1 As consumers expect energy to be accessible and supportive of the competitiveness of industry, the EESC calls on the Commission and national governments to involve civil society, the social partners and consumer organisations in energy affairs and maintain an open dialogue. It would contribute significantly to a better understanding of the energy issues at hand.

7.1.1 Energy poverty is a global issue which cannot be overlooked in terms of either the internal or external energy policies of the EU. A helping hand must be extended to those threatened the most.

7.2 Civil societies should show more initiative in energy policy making processes. The EESC welcomes the Joint Declaration on energy signed by the EU-Ukraine Civil Society Platform (CSP) on 11 February 2016, which aims to strengthen the role of civil society and to prepare recommendations on the rule of law for the relevant authorities.

7.2.1 Energy issues must become part of the agenda of the EESC's international meetings, as well as an important topic in debate with the civil societies of partner countries.

Brussels, 28 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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## III

(Preparatory acts)

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

516TH EESC PLENARY SESSION OF 27 AND 28 APRIL 2016

**Opinion of the European Economic and Social Committee on the Green Paper on retail financial services — Better products, more choice, and greater opportunities for consumers and businesses**

**(COM(2015) 630 final)**

(2016/C 264/05)

**Rapporteur: Milena ANGELOVA**

On 10 December 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

*Green Paper on retail financial services — Better products, more choice, and greater opportunities for consumers and businesses*

(COM(2015) 630 final).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion with 191 votes in favour and 5 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC welcomes the Commission's declared aim in publishing this Green Paper and the fact that the Commission is on track and has an ambitious programme for implementing the Action Plan on Building a Capital Markets Union<sup>(1)</sup>.

1.2 The EESC endorses the Commission's idea of endeavouring to facilitate the cross-border penetration of retail financial services and the possibilities for consumers to switch providers. Such measures should ensure a more competitive market structure and increase the convenience to financial service consumers, including by promoting even access to out-of-court redress mechanisms across the Member States (MS)<sup>(2)</sup>.

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<sup>(1)</sup> OJ C 133, 14.4.2016, p. 17.

<sup>(2)</sup> OJ C 181, 21.6.2012, p. 93 and OJ C 181, 21.6.2012, p. 99. The situation should also be improved now, when the Alternative Dispute Resolution Directive should have been transposed by the MS (OJ L 165, 18.6.2013, p. 63 and OJ L 165, 18.6.2013, p. 1).

1.3 The EESC welcomes the Commission's approach in the Green Paper of seeking suitable policies to stimulate both sides of the retail financial services market: supply and demand.

1.4 The EESC endorses the idea that consumers should be given the opportunity, whenever possible, to compare different products, so they can make an informed choice. In this respect, the EESC fully supports the Directive on markets in financial instruments (MiFID) II — at the same time as still preparing its opinion on the recently proposed revisions <sup>(3)</sup> — and the Regulation on packaged retail and insurance-based investment products, which require better transparency and disclosure of information <sup>(4)</sup>.

1.5 One of the Green Paper's goals is to reduce the market fragmentation in retail financial services. To this end, the EESC would like to point that there is no absolutely reliable evidence that the price differences are due only to a market failure within the EU. National and local factors also influence the prices of products and services, thus making price harmonisation between Member States (MS) more difficult. For example, the premium for a consumer's car insurance policy in one MS and the equivalent premium in another MS could be completely different owing to the loss ratio, which is based on the number of road accidents or number of fraud cases in each of these countries. Similarly, consumer credit interest rates can differ between MS depending on their level of bad debt. Such local factors are correctly referred to in the Green Paper, but they merit further analysis. The EESC therefore keenly awaits the results from the consultation and invites the Commission to look further for any evidence of insufficient competition and for clearer reasons to explain the price differentials detected. It should also pursue this examination in the impact assessment to be carried out before the expected legal proposals.

1.6 At the same time, the EESC wants to emphasise that many of the problems highlighted in the 2007 Green Paper on Retail Financial Services <sup>(5)</sup> still remain valid — eight years later — in the present Green Paper. The EESC generally endorsed that earlier Green Paper <sup>(6)</sup> and praised the actions that had been undertaken to find some practical solutions <sup>(7)</sup>. Despite some positive results, however, progress has been limited and the problems for the functioning of a single market in retail financial services remain. In the EESC's view, therefore, results from the consultations on this Green Paper need this time to be translated into a more ambitious programme that overcomes the longstanding problems.

1.7 The Green Paper takes into consideration a wide variety of financial products, for which the greater choice and opportunities cannot come about simultaneously for all. Clearly, they will need different prioritisations and timeframes. The EESC suggests that the results from the consultation process be applied as a matter of priority to simpler products for which local factors have comparatively less importance. In this way the process of creating a single market for financial products will gain momentum and confidence. Examples of such products could be payment services, pan-European pension products (PEPP), savings accounts, and car and life insurance. One of the first steps could be the application across all MS of the *bonus malus* system in automobile insurance, which diminishes the importance of local factors and ties insurance premiums closely to the profiles of individuals. Products such as mortgages, consumer loans, professional insurance and asset management should follow in the timeframe.

1.8 While the Green Paper puts the emphasis mostly on digital technologies, the EESC sees two important factors for more cross-border demand of products which should be taken into consideration as well:

- financial education is clearly key to maintaining confidence in the financial system and ensuring the responsible consumption of financial products. The EESC has already expressed its view on this matter <sup>(8)</sup>,
- financial advice is to be well regulated at EU level and the distinction between advising and marketing to be made clear. To that end the services offered by independent brokers also merit attention.

<sup>(3)</sup> COM(2016) 56 final; COM(2016) 57 final; OJ L 173, 12.6.2014, p. 1; OJ L 257, 28.8.2014, p. 1.

<sup>(4)</sup> OJ C 191, 29.6.2012, p. 80.

<sup>(5)</sup> COM(2007) 226 final.

<sup>(6)</sup> OJ C 151, 17.6.2008, p. 1.

<sup>(7)</sup> OJ L 257, 28.8.2014, p. 214; OJ L 60, 28.2.2014, p. 34; OJ L 337, 23.12.2015, p. 35; OJ L 26, 2.2.2016, p. 19; OJ L 173, 12.6.2014, p. 349.

<sup>(8)</sup> OJ C 318, 29.10.2011, p. 24.

1.9 The EESC finds it imperative to make every effort to avoid reopening Directives (such as PSD 2 and MCD<sup>(9)</sup>) that have been just adopted. Certain time has to be allowed for measures to be applied effectively and the introduction of new regulatory measures should be executed with caution so as not to over-regulate financial markets.

## 2. Aim of the Green Paper. Previous Commission and EESC work on retail financial services

2.1 The European Commission published the Green Paper in connection with the Action Plan on Building a Capital Markets Union<sup>(10)</sup> in order to examine how the European market for retail financial services — namely insurance, loans, payments, current and saving accounts and other retail investment products — can be further opened up, bringing better results for consumers and firms, whilst maintaining an adequate level of consumer and investor protection at both European and national level.

2.2 The Green Paper is very much concerned with responding to the challenges of digitalisation, which can help bring down prices and improve the comparability of products, thus empowering consumers in their financial choices. In the long run, digitalisation should allow firms to make their products available anywhere in the Union, bringing a single European market closer to reality.

2.3 Another important issue raised by the Green Paper is how to build confidence and trust, since these are crucial to the expansion of the Single Market in financial retail services. To achieve these objectives, the document focuses on how to make the services and products more comprehensible.

2.4 The Green Paper also explores what can be done to help the Single Market in financial services deliver tangible improvements to people's lives in the EU and to create new market opportunities for suppliers, thereby supporting growth in the European economy and creating jobs.

## 3. Comments on the current state of the markets for retail financial services

3.1 The EESC believes that the fragmentation of the markets for retail financial services underscored in the Green Paper is due to the combined influence of national and local factors on the prices of products and services (the constraints of laws, regulations, culture and public social protection systems), as well as to both demand- and supply-side market challenges that will need to be tackled in the future.

3.2 The main supply-side challenges are:

- unjustified and unnecessary differences in national regulations, as a result of gold-plating and national traditions and specifics, and other national differences in factors that affect the costs of doing business,
- difficulties in cross-border identification of customers and the source of their funds,
- difficulties with cross-border evaluation of customers' assets and enforcement of collaterals,
- different legal mechanisms in the Members States and particularly with respect to seizing collaterals (i.e. length of foreclosure procedures, necessary recourse to a notary, different land register rules).

3.3 The main demand-side challenges are:

- consumers who are used to a given standard of protection in their own country, cannot rely on the same standard in another MS,
- uneven enforcement of compliance with European legislative requirements,

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<sup>(9)</sup> OJ L 337, 23.12.2015, p. 35; OJ L 60, 28.2.2014, p. 34.

<sup>(10)</sup> COM(2015) 468 final.

- uneven access to out-of-court redress mechanisms for financial service consumers in the different MS<sup>(11)</sup>,
- language barriers,
- requirements for financial advisors' skills and qualifications are a prerogative of the national regulatory authorities but are not uniform across the MS. There are few competent financial advisors providing objective advice, especially on cross-border purchases.

3.4 The EESC also accepts that the development of digitalisation creates a new environment and considerably expands the scope for providing new services and for enhanced cross-border activity. Nevertheless, care must be taken to ensure that digital advances are not used to mislead the consumer by providing information about financial services that is too complex, irrelevant or difficult to compare.

3.5 The EESC points out that people's financial literacy still varies greatly from place to place and is relatively low compared with other developed countries, such as the USA, Australia and Canada<sup>(12)</sup>. Pre-sale financial advice is not well regulated and does not guarantee that customers will select the most appropriate products and professional financial advice services are insufficiently developed compared to some non-EU countries.

3.6 The possibilities offered by new technologies and increased supply — including cross-border supply — create opportunities, but they also come with some potential risks. They could lead to high debt levels, mortgage defaults and more cases of insolvency if consumers lack the necessary financial knowledge. Consumers who buy insurance and pension products online might be at risk because they often do not do enough research and may sign up to contracts without knowing it<sup>(13)</sup>. National regulators should therefore ensure that companies selling products online comply with a 'duty of advice' to protect consumers. There are more than enough arguments to show the importance of financial education and proper advice.

3.7 Consumers who do not understand the concept of compound interest accumulate larger debts and bear higher interest rates and transaction costs<sup>(14)</sup>, while those with financial knowledge plan better, save more for retirement<sup>(15)</sup> and diversify financial risks<sup>(16)</sup>. The same also applies at macroeconomic level, where financial literacy can be seen to have a strong beneficial effect on national savings and wealth accumulation<sup>(17)</sup>. To that end, it is strongly recommended that a clearer distinction be drawn between activities involved in marketing products and those involved in selling products, especially in cases where advice is provided. Advice should on no account be used as a marketing tool and advisors should be truly independent. The pre-contractual information should be provided and presented in a clear and comprehensive manner. The EESC strongly believes that — in order to restore trust in financial service markets, increase cross-border activity and improve the portability of financial products — targeted measures are required for educating individual investors and improving financial advice.

<sup>(11)</sup> See footnote 2.

<sup>(12)</sup> The degree of financial literacy varies considerably within the EU. On average, 52 % of the adult population is financially literate, with the highest figures (at least 65 %) being recorded in Denmark, Germany, the Netherlands and Sweden. Southern European countries score much lower: Greece (45 %), Spain (49 %), Italy (37 %) and Portugal (26 %). Similarly low are the indicators for countries that joined the EU in 2004 and afterwards: Bulgaria (35 %), Cyprus (35 %) and Romania (22 %). From a global point of view, Europe on average is lagging behind the USA (57 %), Canada (68 %) and Australia (64 %). Data source: Leora Klapper, Annamaria Lusardi, Peter van Oudheusden, *Financial literacy around the world*, 2015.

<sup>(13)</sup> The European Insurance and Occupational Pensions Authority (EIOPA) says in an opinion on consumer protection and insurance and pensions sales that users do not do adequate research before buying products online — EIOPA-BoS-14/198 28 January 2015 EIOPA Opinion on sales via the internet of insurance and pension products.

<sup>(14)</sup> Annamaria Lusardi and Peter Tufano (2015). *Debt Literacy, Financial Experiences, and Overindebtedness*, Journal of Pension Economics and Finance, Vol. 14, Special Issue 4, pp. 332-368, October 2015.

<sup>(15)</sup> Behrman Jere R., Olivia S. Mitchell, Cindy K. Soo and David Bravo (2012). *The Effects of Financial Education and Financial Literacy: How Financial Literacy Affects Household Wealth Accumulation*, American Economic Review: Papers & Proceedings, Vol. 102(3), pp. 300-304.

<sup>(16)</sup> Margarida Abreu and Victor Mendes (2010). *Financial Literacy and Portfolio Diversification*, Quantitative Finance, Vol. 10(5), pp. 515-528.

<sup>(17)</sup> Tullio Jappelli and Mario Padula, *Investment in financial literacy and saving decisions*, CFS Working Paper, No 2011/07.

#### 4. Answers to the questions in the Green Paper

##### 4.1 General questions:

1. *For which financial products could improved cross-border supply increase competition in national markets in terms of better choice and price?*

4.1.1 The Green Paper contains questions concerning various banking and nonbanking products and services, but there are considerable differences between the main transaction products (such as current accounts or fixed-term deposits) and contractual products (such as mortgages or saving and investment products). When it comes to saving and investment products, some other EU legal instruments (such as the MiFID or the initiative on building a capital markets union) will have an effect on the market when they enter into force.

4.1.2 For all products discussed in the Green Paper cross-border provision has the potential to increase competition in national markets. However, those with the greatest potential at this stage are undoubtedly pension and investment products. The Commission's scorecard-based system ranks the market for these products as the worst of 31 consumer markets<sup>(18)</sup>. The pension products offered are characterised by localism and high fees. If inflation, management fees and additional payments are taken into account, these products often have negative real return and display worse results than the relevant market indices<sup>(19)</sup>. For this reason, the EESC strongly supports the idea of a single market for pension products and, more specifically, for developing a pan-European personal pension product<sup>(20)</sup> that will lead to increased economies of scale, lower prices and greater consumer choice.

4.1.3 Concerning insurance products, some of these are easily portable, such as life insurance products, in which the customer is protected even when he moves outside the local boundaries. However, others have elements that are locally regulated and require adaptations when entities try to distribute them in different countries. Article 11 of the Insurance Distribution Directive (recast)<sup>(21)</sup> stipulates that MS must establish a single point of contact responsible for providing information on 'general good' rules in their respective MS and charges EIOPA with including on its website the hyperlinks to the websites of competent authorities where information on these 'general good' rules is published. Furthermore, full cross-border provision will still not be possible — or even desirable — because of the actual client needs that are serviced by the products and because of differences in behaviour and risk factors that affect product conditions. The EESC welcomes solutions that will help to mitigate the lack of portability of products and recommends that in some cases at least partial solutions could be found, such as possibilities for policy holders to pay only for the differentials between the higher coverage and the lower coverages in different MS.

2. *What are the barriers preventing firms from directly providing financial services cross-border and consumers from directly purchasing products cross-border?*

4.1.4 The most substantial supply-side barriers are listed in point 3.2. To overcome those, it is necessary to:

- simplify the cross-border legal procedures connected to the effective enforcement of court judgments,
- have common rules/standards for:
  - identification of customers, in connection with the know-your-customer and anti-money-laundering requirements,
  - identification of companies, based on how they conduct their business or — alternatively — suitable identification of end-beneficiaries,

<sup>(18)</sup> [http://ec.europa.eu/consumers/consumer\\_evidence/consumer\\_scoreboards/10\\_edition/docs/cms\\_10\\_factsheet\\_en.pdf](http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/10_edition/docs/cms_10_factsheet_en.pdf)

<sup>(19)</sup> The European Federation of Investors and Financial Services Users, *Pension Savings: The Real Return*, 2015 Edition, a research report by Better Finance.

<sup>(20)</sup> European Insurance and Occupational Pensions Authority (EIOPA), *Consultation Paper on the creation of a standardised Pan-European Personal Pension product (PEPP)*, 2015.

<sup>(21)</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19).

- financial products' online contracts (for example, funds, cash share purchases, etc.),
  - marketing and advertising of financial products and services (especially in the case of aggressive advertising campaigns),
  - distribution companies that deliver products to customers (insurance products, for example),
  - standardised minimum information requirements for confirming the source of funds,
  - transparency/comparability — minimum standardised information on products and services (provision of information not only about the expenses consumers will incur, but also about the benefits they will enjoy),
- take into account fiscal barriers, especially for savings and investment products, because they can have a big impact on profitability. Many products are developed, for example, in order to profit from opportunities created by fiscal regulators in order to encourage savings in a specific way (i.e. long-term savings are generally favoured but the thresholds or vehicles that receive this beneficial treatment differ very much from country to country),
- the communication to a host regulator by the home regulator is supposed to be sufficient to avoid imposing additional requirements or burdens, while at the same time maintaining the established level of consumer protection (e.g. insurance products). Moreover, action should be taken to avoid situations where suppliers incur additional costs in complying with local regulations.

4.1.5 The most significant demand-side barriers are addressed in point 3.3.

3. *Can any of these barriers be overcome in the future by digitalisation and innovation in the financial technology sector?*

4.1.6 Thanks to new technologies, digitalisation in particular, it is possible, for the first time, to make a real breakthrough in cross-border provision of financial products. They could play a considerable role in providing more and better-quality information, in increasing product transparency and comparability and in identifying customers. Also, they could offer cost-saving benefits, by removing the need of maintaining physically located contact points. However, they are no substitute for overcoming other important obstacles, such as the uneven level of harmonisation of legal regimes and consumer protection.

4. *What can be done to ensure that digitalisation of financial services does not result in increased financial exclusion, particularly of the digitally illiterate?*

4.1.7 There can be no doubt that, in the future, there will still be people who, for one reason or another, are unable to use digital technologies. This should not deter efforts to encourage the use of such technologies in the provision of financial products. This is because, firstly, traditional means of supplying such products will continue to exist for a long time and, secondly, such people will be able to access a wider range of products on the basis of well-regulated financial advice services.

5. *What should our approach be if the opportunities presented by the growth and spread of digital technologies give rise to new consumer-protection risks?*

4.1.8 The widespread use of digital technologies will undoubtedly create certain challenges for information security and data and consumer protection. Therefore, along with the various regulations governing the supply of — and demand for — financial products via such technologies, an assessment of the risks presented by these challenges should be conducted and ways of minimising them proposed.

6. *Do customers have access to safe, simple and comprehensible financial products throughout the European Union? If not, what could be done to provide such access?*

4.1.9 There is no commonly accepted definition for safe, simple and comprehensible financial products. However, the general understanding is that such products should possess characteristics such as price transparency, appropriateness and comprehensibility in the user's language for effective communication, possibilities for comparison with similar products, clarity, and straightforward outcomes. These are not easily achievable in so complex a world as the financial marketplace.

4.1.10 Products with these characteristics in the strict sense are rarely available on markets and as a result consumers do not have an easy access to them. This is true both for countries with well-developed financial markets and for those with less developed markets. The wide variety of products existing in some MS does not necessarily make things easier for consumers, because it can lead to confusion, to difficulty in deciding and to making the wrong choice in the end.

4.1.11 Access to such products can be provided by establishing a basic class of financial products<sup>(22)</sup> at European level that comply with specific standardised requirements depending on the needs they are targeted to satisfy. They should be certified and bear a specific name in order to be easily recognised by consumers. Such a class may include common products such as different savings accounts and fixed-term life insurance. The relatively high cross-border marketing rate of UCITS gives grounds to expect that PEPP could be created based on UCITS success factors and be included in the same class. The existence of such a class of products would increase confidence in financial markets.

7. *Is the quality of enforcement of EU retail financial services legislation across the EU a problem for consumer trust and market integration?*

4.1.12 In many countries, 'gold-plating'<sup>(23)</sup>, different interpretations of European legislation, delays in harmonisation, and differences in the transposition of European legislation into national legislation, as well as differences in the concrete application, have been observed, in a way that leads to excessively high administrative requirements and barriers. All these are obstacles to integration and have an adverse effect on consumer confidence.

4.1.13 European Supervisory Authorities (ESAs) are responsible for consumer protection. The EESC would encourage the implementation of this task, in compliance with the following principles:

- consumer mobility between different providers should not be an absolute aim: it always depends on consumer's choice and this choice is determined by different factors: quality and diversity of the products and services offered, potential complementarity of the offers, level of satisfaction, and so on,
- the practice of connected sales of packaged financial products should be exercised with caution and clear and transparent information should be provided to customers. Where such products are offered, they have to be traceable<sup>(24)</sup>.

4.1.14 Finally, the ESAs should always favour practices that are better for customers. Priority should be given to:

- reducing the complexity of the current regulatory framework,

<sup>(22)</sup> As described, for example, in Appendix 1 of the EESC own-initiative opinion 'Financial education and responsible consumption' (OJ C 318, 29.10.2011, p. 24).

<sup>(23)</sup> In its communication 'Better regulation for better results — An EU agenda' (COM(2015) 215 final, p. 7), the Commission defines 'gold-plating' as follows: 'Member States also often go beyond what is strictly required by EU legislation when they implement it at national level ("gold-plating").' The Commission adds in the same paragraph that: 'This may enhance the benefits but can also add unnecessary costs for businesses and public authorities which are mistakenly associated with EU legislation.' The INT Section is currently drafting an information report on 'Transposition practices' that deals precisely with the addition of national provisions to EU Directives. The European Parliament is also carrying out a study on 'Gold-plating in European Structural and Investment Funds'.

<sup>(24)</sup> OJ C 82, 3.3.2016, p. 1.

- ensuring the resources required for ESA activities,
- encouraging better financial literacy among consumers.

8. *Is there other evidence to be considered or are there other developments that need to be taken into account in relation to cross-border competition and choice in retail financial services?*

4.1.15 The Green Paper deals well with the currently predominant trends, namely weak cross-border competition in retail financial services and limited choice of financial products for consumers.

#### 4.2 **Helping consumers to buy financial products cross-border**

##### 4.2.1 *Knowing what is available*

###### 4.2.1.1 Better information for customers and helping them switch

9. *What would be the most appropriate channel for raising consumer awareness of the different retail financial services and insurance products available throughout the EU?*

4.2.1.1.1 Increasing financial literacy and the accessibility of financial advice are undoubtedly essential. Consumers should not only have accessible information, but also be able to understand it or to have access to high-quality and appropriate financial advice services.

4.2.1.2 In spite of the growing trend among consumers to use digital services to obtain information, a considerable proportion of them still prefer personal contact, especially when negotiating products. Given the current state of consumer knowledge, behaviour and preferences, however, banks could think of more suitable channels for increasing consumer knowledge of financial services — a pan-EU consumer website, for example. The sources of financing such a website should be further discussed, but they may combine the efforts of the national governments, local authorities and third party aggregators. When creating such a tool, the fact that the insurance comparison facilities belong primarily in a context of national cultural understanding should be taken into consideration. It will therefore be very challenging for a pan-European insurance comparison service to successfully cater for the diversity of users/clients in Europe, especially regarding comparison of the risk to be covered, which exists in a national and local cultural, legal, fiscal, social etc. context.

10. *What more can be done to facilitate cross-border distribution of financial products through intermediaries?*

4.2.1.2.1 The EESC supports efforts to make the market more effective, flexible and transparent and backs the present regulatory initiative's focus on better consumer protection. It takes the view that the quality of the services accompanying the provision of financial services could also be improved by means of better use of the advantages of digitalisation and by exploiting the potential of different intermediaries, with well-trained and qualified staff and an adequate methodology for providing complete, objective and comparable information for consumer choice.

11. *Is further action necessary to encourage comparability and/or facilitate switching to retail financial services from providers located either in the same or another Member State? If so, what action and for which product segments?*

4.2.1.2.2 The information provided should be precise, comprehensible and relevant to users. Flooding consumers with information should be avoided, as should oversimplifying the reality in order to stress better returns. A good example here is the practice for switching financial service providers in the United Kingdom, where the accuracy of the switch between the sending and receiving banks is guaranteed by an independent third party, which ensures that the switching process takes place simply, transparently and within seven working days. Another best practice is the portability of mortgage loans in Italy introduced in 2006 <sup>(25)</sup>.

<sup>(25)</sup> This was done without any charge for consumers and hundreds and thousands of households and SMEs are using this opportunity every year to renegotiate their mortgage loans thereby saving thousands of euros. This practice also inspired the adoption of the Mortgage Credit Directive —, Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

#### 4.2.1.3 Tackling complex and prohibitively high fees for foreign transactions

12. *What more can be done at EU level to tackle the problem of excessive fees charged for cross-border payments (e.g. credit transfers) involving different currencies within the EU?*

4.2.1.4 Regulation (EC) No 924/2009 of the European Parliament and of the Council<sup>(26)</sup> has already eliminated the differences in charges applicable to cross-border payments in euro with respect to corresponding payments in euro at national level. An ad hoc assessment could be conducted to check whether the application of this provision to all currencies within the EU (i.e. aligning cross-border and domestic fees for a payment denominated in a given currency) would make sense and benefit consumers. Regarding the information provided to payment users, under the new PSD2<sup>(27)</sup> payment services providers have to inform the client — the payment services user (PSU) — before it is bound by a contract or an offer, about all charges it has to pay to the PSP as well as the actual or reference exchange rate to be applied to the payment transaction, in the case where a currency conversion applies. Once the transaction has been executed, the PSD2 contains similar provisions on the information that PSPs have to provide to the payer and to the payee. The EESC believes that no further action is needed, as PSD2 already imposes clear transparency requirements on payment providers. Besides, the application of Regulation (EC) No 924/2009 on cross-border payments could be extended to other non-euro currencies in the EU.

13. *In addition to existing disclosure requirements<sup>(28)</sup>, is any further action needed to ensure consumers know what currency conversion fees they are being charged when they make cross-border transactions?*

4.2.1.5 The EESC believes that the PSD2 sets clear transparency requirements that will allow both payers and payees to be duly informed of the exchange rate applied prior and after making a cross-border transaction. This Directive has to be transposed into national law by 13 January 2018, therefore no further action is needed.

#### 4.2.2 Accessing financial services from anywhere in Europe

14. *What can be done to limit unjustified discrimination on residency grounds in the retail financial sector, including insurance?*

Provision of retail financial services abroad is not easy and could prove economically unviable for the operators concerned. Cultural differences between consumers with regard to willingness to take risk, behaviour, experience and financial literacy could prove too significant. Banks are aware that confidence is a key aspect of financial relations. For this reason, they may prefer to contact customers who share the same knowledge and have expectations that they understand. In any case, harmonisation of the rules listed in the answer to Question 2 will help considerably in this respect.

4.2.2.1 For insurers, residence is of significance because:

Local factors such as climate or seismography need to be taken into account when deciding, for example, the conditions and pricing of home insurance; without a certain critical mass, it is impossible to provide services on a convenient basis. Actuaries' models operate with a high margin of error when the number of events used for calculations is not high enough. Moreover, when hedging risks through reinsurance, the reinsurance models price the hedging differently based on locality.

— These elements make providing insurance services and products abroad more difficult than in those countries where there is enough volume of operations and this should not be considered as discrimination based on customers' place of residence.

<sup>(26)</sup> OJ L 266, 9.10.2009, p. 11.

<sup>(27)</sup> OJ L 319, 5.12.2007, p. 1.

<sup>(28)</sup> OJ L 271, 9.10.2002, p. 16; OJ L 176, 27.6.2013, p. 338; OJ L 267, 10.10.2009, p. 7; OJ L 319, 5.12.2007, p. 1; (COM(2013) 547 final — C7-0230/2013 — 2013/0264 (COD)). See Articles 59 and 60(3).

- Cross-border provision of certain insurance products is very challenging, almost not possible in cases where the actual client needs that are serviced by the products are strongly dependent on cultural diversity and on differences in behaviour and risk factors that are strictly nationally determined.
- The psychological aspect of services should be taken into account. The insurance service is rendered when the customer is actually experiencing problems. At this moment, he can be expected to need support and understanding. If he has contracted his insurance product through the internet with a company based abroad, and perhaps using a language which is not his mother tongue, he might feel insecure at the time he needs this support.
- Customers in some MS tend to prefer reimbursement in case of damages, while in other MS they prefer everything to be repaired.

#### 4.2.2.2 Increasing portability of products

### 15. *What can be done at EU level to facilitate the portability of retail financial products, such as life insurance and private health insurance?*

4.2.2.2.1 In general terms, insurance products that deliver a remuneration or simple pay-out would be more easily portable than those that deliver a service or claims handling.

4.2.2.2.2 Life insurance products are already portable to some extent in the sense that the customer is covered when travelling abroad, except in certain cases if he travels to high-risk countries. Local life insurance also provides him with coverage irrespective of where he is located. But there still remains the case when a policy holder moves to another country not as a traveller but as a permanent resident. In such a situation he should be able to continue with his insurance by adjusting the premium or the coverage of the policy. All these would be cases in which insurance products deliver a determined amount of money.

4.2.2.2.3 Other insurance products are not easily portable per se, because their conditions are intrinsically related to country elements. For instance, in the case of health insurance, the product design and pricing is pretty much dependent on the coverage provided by the public health system in each particular country.

4.2.2.2.4 Linked to this, there is also a question of scale: adapting the product specifically for the customer to the actual conditions that he might demand when living abroad is theoretically possible, but that would imply renouncing the possibilities of attaining economies of scale. The product would be too tailor-made to his case and the entity providing the product would be less competitive than actual local providers. The best option here would be to promote collaboration between insurance companies with a presence in different European countries.

4.2.2.3 Another case of insurance products that deliver services are home and car insurance. Those products that deliver damage repair or deal with car accidents require the insurance company to have agreements with service providers across the country, which requires a certain scale to be commercially viable. However, a feasible option is to promote cooperation with local (insurance) companies to offer this service in other countries.

#### 4.2.2.4 Facilitating access to — and recognition of — professional indemnity insurance across borders

### 16. *What could be done at EU level for facilitating service providers' access to mandatory professional indemnity insurance and its cross-border recognition?*

4.2.3 One way to enable access to mandatory professional indemnity on a cross-border basis would be to harmonise mandatory professional indemnity amounts and conditions.

#### 4.2.3.1 Giving people the trust and confidence to benefit from opportunities elsewhere in Europe

#### 4.2.3.2 Facilitating access to — and recognition of — professional indemnity insurance across borders

17. *Is there a need for additional action at EU level to increase the transparency and comparability of financial products (especially by means of digital solutions) with regard to increasing consumer confidence?*

4.2.3.2.1 The EESC finds the independent websites that provide information and enable comparison of the specific products and services offered by different providers in the various MS to be one possible good option to increase awareness. It strongly supports the idea of a purpose-built official website, which could be supported either by an administrator assigned at legislative level, with the providers obliged to themselves update the information at certain time intervals, or through a network created by consumer organisations in the MS. Different websites could also be linked in a decentralised, inter-connected system.

When digital solutions are used for comparison, the platforms should provide clear information for the purpose of comparing equivalent products and the risks consumers could face when using them. When there are more differences than the platform can compare (the main focus of platforms is usually price), the characteristics not compared should be clearly specified. All significant conditions relating to product differentiation should also be listed. Consumers should be clearly warned about the possible risks involved when using comparison platforms (for example, by aggregating their personal data).

4.2.3.2.2 The comparison should be of the significant parameters and should not be misleading. Use of personal data should be limited to the absolute minimum necessary to offer consumers benefit, while information should be provided in a way that is clear and easy to understand.

#### 4.2.3.3 Improving redress in retail financial services

18. *Should any measures be taken to increase consumer awareness of FIN-NET and its effectiveness, in the context of implementing the Alternative Dispute Resolution Directive?*

4.2.3.3.1 Out-of-court dispute resolution is a considerably more flexible procedure than court proceedings: cheaper, faster and with far fewer formalities. Such a procedure is particularly useful internationally and, in view of the desired increase in cross-border supply of — and demand for — financial services, FIN-NET should be given a larger role. Sadly, consumer awareness of what FIN-NET has to offer is comparatively low at this stage and measures should be taken to improve this. Moreover, not all EU MS — only 22 out of 28 — are members of FIN-NET<sup>(29)</sup>. If this situation persists, it will obviously not be possible for FIN-NET to be used as an infrastructure for facilitating the building of a single market for financial services. As such, the possibilities of regulatory requirement in this regard should be carefully considered.

19. *Do consumers have adequate access to financial compensation in the case of mis-selling of retail financial products and insurance? If not, what could be done to guarantee such access?*

4.2.3.3.2 In most cases, there is no such access. The concept of mis-selling is still largely not understood and it is not practically applied because of its unclear formulation and the lack of experience among regulatory authorities<sup>(30)</sup>. In many places, the tests for determining the financial products suitable for customers are formal and do not result in selection of the most suitable products for them.

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<sup>(29)</sup> FIN-NET currently has 56 members coming from 22 MS, with new organisations are constantly applying for membership — a process that can be expected to accelerate after the ADR Directive is adopted — Large Business and International Directive on Information Document Requests Enforcement Process, 28 February 2014.

<sup>(30)</sup> The concept of mis-selling is explained in detail in 3.7. This problem will be partially overcome with the application of the MiFID Directive and the stability test envisaged by it for certain types of products. See footnote 3.

4.2.3.3.3 It is possible to guarantee access to financial compensation if a single, precise and practical definition of 'mis-selling' is introduced and a pan-European regulatory practice is enforced to sanction such sales <sup>(31)</sup>.

4.2.3.4 Protection of victims where motor insurers are insolvent

20. *Is action needed to ensure that victims of car accidents are covered by guarantee funds from other MS in the event of the insurance company becoming insolvent?*

4.2.3.5 There is an example of best practice in Spain. The Spanish entity 'Consortio de Compensación de Seguros' acts as an insurer in the event that there is no insurance company that accepts the risk or in the absence of an insurance company — in the event of insolvency, for example, and always on a subsidiary basis. The guarantee of this entity only applies to Spanish entities. To ensure that victims of car accidents are covered at the same level, the EC will have to require a similar guarantee scheme in all MS. It could be envisaged to extend a similar instrument on a European basis to countries where it does not exist.

4.2.3.6 Increasing transparency and comparability of ancillary insurance

21. *What further measures could be taken to enhance transparency about ancillary insurance products and to ensure that consumers can make well-informed decisions to purchase these products? In relation to the car rental sector, are specific measures needed with regard to add-on products?*

4.2.3.6.1 The new Insurance Distribution Directive <sup>(32)</sup> has strengthened the requirements of transparency in the information for insurance distributors, including — although with certain restrictions (threshold) — for ancillary insurance intermediaries. Furthermore, five major car rental companies committed themselves in 2015 to improving their websites to better inform consumers about optional waivers and insurance products. These are good steps forward. MS will have until 23 February 2018 to transpose the Insurance Distribution Directive and it is thus too early to tell whether further measures are needed. At the same time, it seems advisable for the Commission to monitor whether the commitments of car rental companies have been met, which is not just about insurance products, and to consider further measures to enhance transparency and to prevent consumer detriment.

4.2.3.6.2 In the case of car rental sectors, it is important to take into account the fact that the requirements of the add-on insurance products are often differentiated depending on the risk profile of the renter (usually linked to a credit card limit) or depending on the motor claims ratio or other market features of the MS. But in any case, the pre-contractual information and the efforts to make different offers comparable are important for consumers and it would therefore be advisable to wait until the requirements of this Directive are fully in place to analyse whether further measures are needed.

### 4.3 **Creating new market opportunities for suppliers**

4.3.1 *Meeting the challenges and opportunities presented by digitalisation*

4.3.1.1 Helping firms make better use of digitalisation

22. *What can be done at EU level to support firms in creating and providing innovative digital financial services across Europe, with appropriate levels of security and consumer protection?*

4.3.1.1.1 The EESC welcomes the promotion of innovative digital financial services across Europe. However, it admits that banks are the biggest providers of financial services and they also need to be encouraged to actively take up the opportunities offered by the digital revolution. To that end, they must be subject to the same rules as their competitors providing similar services, which necessitates a review of the main layers of bank regulation in a considerable number of areas so that equal competitive conditions are provided in terms of:

<sup>(31)</sup> OJ C 271, 19.9.2013, p. 61 and OJ C 18, 19.1.2011, p. 24.

<sup>(32)</sup> OJ L 26, 2.2.2016, p. 19.

- prudential requirements,
- provision of payment services,
- applicability of the requirements to know-your-customer and anti-money-laundering procedures,
- recommendations with regard to security during payments,
- state-of-the-art electronic security.

#### 4.3.1.2 Enabling electronic signatures and identity verification

23. *Is further action needed to improve the application of EU-level AML legislation, particularly to ensure that service providers can identify customers at a distance, whilst maintaining the standards of the current framework?*

4.3.1.2.1 There are still differences between electronic identification regulations and the know-your-customer and anti-money-laundering requirements. Existing regulations require personal identification and personal evaluations to be carried out in order for customers to be accepted on a permanent basis. Such requirements limit the development of fully digital financial services, raising significant barriers to the taking on of new consumers and increasing costs.

4.3.1.2.2 Further action is needed to overcome the lack of a Europe-wide mechanism for electronic identification and signatures due to differences in national practices: Although the regulations set common standards for digital signatures in the MS, the way they are applied at national level by local operators impedes the cross-border recognition of digital signatures. Local digital operators are not interconnected and this limits their capacity to offer European consumers fully digitalised financial services.

24. *Is further action necessary to promote the uptake and use of e-ID and e-signatures in retail financial services, including as regards security standards?*

4.3.1.2.3 Yes, action is necessary with regard to:

- supporting the establishment of independent certifying agencies to verify the identity of digital customers and conduct investigations for personal recognition of customers,
- clarifying the contradictory aspects of the regulations regarding digital identification and anti-money-laundering and know-your-customer procedures,
- establishing cooperation between financial businesses and the European and national regulators on developing common standards for digital identification of signatures, which are also to be applied by public authorities and financial businesses,
- considering the possibility of adopting unified European digital identification and signatures, which will eventually also be the basis for consumer identification in financial institutions.

#### 4.3.1.3 Improving access to — and usability of — financial data

25. *In your opinion, what kind of data are necessary for creditworthiness assessments?*

4.3.1.3.1 Although there is general agreement about the aspects of a customer's financial situation that should be used for assessing creditworthiness, lenders use their own expert assessments and internal methods to assess and manage each particular case. For this reason, initiatives obliging banks or other credit institutions to share processed information that they acquire about their customers' creditworthiness should be avoided. At the same time, raw (non-processed) data could be shared — with the permission of the customer concerned and in compliance with EU data protection standards. This would improve the comparability of the creditworthiness assessment.

26. *Does the increased use of personal financial and non-financial data by firms (including traditionally non-financial firms) require further action to facilitate provision of services or ensure consumer protection?*

4.3.1.3.2 Financial institutions make efforts to become more familiar with consumer behaviour so that they can diversify and personalise their products and services more successfully. There are no clear rules, however, on how the collected data should be used, even when consumers have given their consent. The EESC finds it good to provide greater clarity about the applicability of the rules in this area in order to ensure consumer protection and, at the same time, enable consumers to benefit from financial innovations.

27. *Should requirements about the form, content or accessibility of insurance claim histories be made more stringent (for instance in relation to period covered or content), to ensure that firms are able to provide services cross-border?*

4.3.1.3.3 Insurance histories contain sensitive personal data from customers. The home insurance company cannot transmit this information to any other stakeholder, but only to the actual customer. It is up to the customer to provide this history to a new insurance company. This does not amount to creating a barrier to cross-border services, since the customer can take his history to a country that he might prefer. At the same time, the Commission, assisted by EIOPA, should explore ways to promote the standardisation of the exchange of claims histories between insurance companies and the acceptance of *bonus malus* systems.

4.3.1.4 Facilitating the provision of after-sales services

28. *Is further action required to support firms in providing post-contractual services in another Member State, without a subsidiary or branch office?*

4.3.1.4.1 Post-contractual services in another MS should not differ from those in the country where the products in question are available. This means that the product in question and related post-contractual services should be considered as a single entity for the cross-border supply of financial products. The application of this principle must be guaranteed, otherwise consumers will be put on an unequal footing. It is important that the relevant regulatory authorities monitor the application of this principle.

4.3.1.4.2 Platforms supporting businesses (firms) in offering their products cross-border should also include sections for post-contractual services. A practical way for such post-contractual services to be offered is for companies to be encouraged to form groups and work together to get a sufficient scale of operation.

4.3.1.5 Moving to harmonise procedures for personal insolvency, property valuation and collateral enforcement

29. *Is further action required to encourage lenders to provide mortgages or loans cross-border?*

4.3.1.5.1 The main problem in this area concerns the forced recovery of debts in the event of borrowers failing to meet their credit agreement obligations. In the light of this, lenders do not currently regard cross-border mortgage lending an attractive proposition, so additional action is needed to stimulate the EU's internal market in this area.

4.3.1.5.2 Mortgages and loans are among the financial products whose marketing across borders face numerous barriers that are difficult to overcome. It is likely that, of the whole range of financial services, these will be the products for which it takes longest to overcome the barriers. Consequently, at this stage, it is better to focus initial efforts on other retail financial services, where there are fewer barriers, and to gain practical experience and momentum through actively working on these.

4.3.2 *Compliance with differing regulatory requirements in host MS*

4.3.2.1 Making it easier for firms to meet legal requirements applicable in other MS

30. *Is action necessary at EU level to make practical assistance available from MS governments or competent national authorities (e.g. through 'one-stop shops'), in order to facilitate cross-border sales of financial services, particularly for innovative firms or products?*

4.3.2.1.1 Application of European legislation in many areas — such as, but not exclusively, in the offering of investment products — is inconsistent and contradictory in the various MS. As a result, assistance needs to be sought from national authorities in order to eliminate 'gold-plating'.

Another good initiative is the Solvit network, which gives businesses EU-level support when they encounter problems with public authorities that are not applying EU law correctly and 'Points of single contact' provide assistance to the firms regarding their obligations when providing services across borders<sup>(33)</sup>.

4.3.2.1.2 Capitalising on the Solvit experience, it makes sense for efforts to be made to achieve a solution targeted specifically at financial products, at better cooperation and coordination between national regulators, including help from regulators for innovative firms to understand their obligations.

31. *What steps would be most helpful to make it easy for businesses to take advantage of the freedom of establishment or the freedom of provision of services for innovative products (such as streamlined cooperation between home and host supervisors)?*

4.3.2.2 Fully exploiting freedom of establishment

For insurers, a local presence is often necessary in order to have a better knowledge of the on-the-spot risk and of the consumers to be covered. Freedom of establishment on the spot is therefore essential for insurers such as mutual insurance companies. The fact that there is no European recognition of forms of social economy enterprises, including mutual insurance companies, prevents the establishment of these kinds of enterprises in Member States which do not recognise them, thus holding back their cross-border development, as well as the development of markets and competition. The EESC calls on the Commission, the Council of the European Union, the European Parliament and the Member States to push forward recognition of the mutual model in the European Union.

4.3.2.3 Creating autonomous or more closely harmonised EU-wide regimes

32. *For which retail financial services products might standardisation or opt-in regimes be most effective in overcoming differences in MS' legislation?*

4.3.2.3.1 From the point of view of cross-border distribution, the following issues merit attention:

- customer identification via electronic certificates. The EESC believes that register of recognised issuers of electronic certificates needs to be kept at EU level (for example by the European Securities and Market Authority) when distance financial services are being provided,
- the possibility of financial service providers knowing customers' credit histories. Maintaining an EU-level credit register is crucial for the cross-border offering of financial services, especially those connected with extending credit,
- the procedures for seizing the collateral which is pledged for granting a loan. Resources and efforts should be channelled into creating a unified EU legislative framework for collateral enforcement in the cross-border provision of financial services,
- concerning insurance products, those that deliver indemnity are more easily standardised. The customer will receive an amount of money irrespective of where he is based. The company needs only to be able to assess the risk. Life insurance would be a good example. However, for those insurance products that deliver a service (such as damage repair, for instance), standardisation and portability are not possible. This is especially true for products such as health insurance products.

<sup>(33)</sup> [http://ec.europa.eu/internal\\_market/eu-go/index\\_en.htm](http://ec.europa.eu/internal_market/eu-go/index_en.htm)

33. *Is further action necessary at EU level in relation to the 'location of risk' principle in insurance legislation and to clarify rules on 'general good' in the insurance sector?*

4.3.2.3.2 The location of risk is usually the place of habitual residence of the insured person, with some exceptions in cases of real estate, where it is the location of the building. This principle is usually standardised worldwide and it has legal and tax implications for the parties involved. The EESC believes that the location of risk principle in insurance is fit for purpose. However, it understands that the rules on the 'general good' need to be revised, as they give MS the opportunity to adopt legislation that is likely to hinder cross-border distribution of insurance products.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards a modern, more European copyright framework**

**(COM(2015) 626 final)**

(2016/C 264/06)

**Rapporteur: Denis MEYNENT**

On 22 December 2015, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards a modern, more European copyright framework*

(COM(2015) 626 final).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 216 votes to 3, with 10 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC regrets that the Commission does not make more specific proposals in this communication and simply lists various angles without taking a position on them, which makes it harder to have a well-structured debate.

1.2 Copyright remains a fundamentally important way to protect and fairly pay authors and those involved in disseminating works and performances via interconnected digital networks.

1.3 The Committee calls for the Marrakesh Treaty to be swiftly ratified. Exceptions for teaching, scientific research and the exchange of knowledge should also be a priority, and it is also in favour of digitising orphan works.

1.4 The EESC is of the view that a united European position on private copying is possible and desirable. A large proportion of the revenue from private copying levies should logically be directed towards funding literary and artistic works and promoting cultural diversity, as well as towards public goods such as education and research, for example.

1.5 The EESC calls for a new legal context to promote the creation of copyright-protected work and, simultaneously, to enhance the contribution of new types of licence and new business models to building the European single market, while preserving freedom of contract and the right of authors and creators to reap the full benefit of their works.

1.6 The EESC considers a regulation to be the best instrument for establishing the digital single market. Existing legislation should also be consolidated.

1.7 The EESC encourages the Commission to conduct studies and in-depth research on business models linked to free licences, on their current and potential economic importance, on the revenue and jobs they could create in various fields, and on any legal proposals that would enhance their profile and use.

1.8 The EESC believes that Europe's cultural diversity is at the heart of European identity and that this diversity should be fostered and promoted among the Member States.

1.9 The fight against copyright violations should prioritise putting a stop to and penalising infringements on a commercial scale. To this end, it is vital that Member States' law enforcement bodies and judicial authorities work together and exchange information.

1.10 The transfer of value in the online environment that currently benefits self-proclaimed intermediaries who avoid creators' consent and remuneration should be addressed.

## 2. Commission proposals

2.1 The action plan examined here aims to modernise European copyright rules. The Commission's communication lays out the plan's key elements, aimed at delivering its digital single market strategy: broadening access to content across the entire EU, stipulating copyright exceptions, creating a fairer market, and combating commercial piracy, while also encouraging the long-term unification of copyright.

2.2 In particular, the communication includes a proposal for a regulation on cross-border portability of online content services<sup>(1)</sup>, which would constitute a new right for European consumers and should come into effect in 2017, the year when roaming charges will also be abolished in the EU.

## 3. Introduction

3.1 Movement of digital content between European countries accounts for a very small proportion of the total (4 %); most digital services are located in the USA, and the remaining movement takes place within national borders. The European digital single market is currently very undeveloped. Barriers still exist, and they represent a particular hindrance to cultural exchanges among many European linguistic minorities that are located on opposite sides of several national borders.

3.2 In his programme 'A new start for Europe'<sup>(2)</sup>, the president of the Commission made it a priority to establish a large-scale, connected digital market for all EU countries without national discrimination.

3.3 Copyright is the legal mainstay of creation and is the basis for the remuneration of authors, creators, performers and other right holders and, more globally, for the ecosystem of cultural and creative activities and industries. Copyright is a territorial law and differs between Member States. It confers exclusive and extensive rights everywhere for right holders, who receive revenue not just from licences, but also simply because a work could be copied onto other media or given to a third party by the purchaser of a licence, with no requirement to prove that a copy has actually been made (levies for private copying and taxation of blank media that could be used for making illegal copies). Some honest user activities, done in good faith, are even classed as criminal offences in some Member States, while being permitted in others.

3.4 There are minimal exceptions and limitations to copyright in any country. Copyright was invented in an era of printing on paper and was designed for the technology of that time — primarily book publication, but also newspapers, periodicals and sheet music — and is no longer entirely in step with a digital world of constantly evolving high-speed interconnected networks. It must be refined. In other areas, such as new ways of accessing music and audiovisual works, managing rights has become more complicated due to the fragmentation of repertoires, which should be resolved by the new Directive on collective management of copyright<sup>(3)</sup>. Little had changed between the time of wax discs and DVDs, particularly in terms of distributing or lending works. New technologies have ushered in a comprehensive paradigm shift, and almost all record and DVD shops have vanished, giving way to new forms of online distribution and lending. The same is true for cinema, television, and all art forms that can be put on the internet.

3.5 The fact that the relevant law has failed to meaningfully evolve prevents us from fully harnessing all of the possibilities opened up by the digitisation of works and intangible productions, and their subsequent circulation through an internet that is rapidly developing and becoming ubiquitous.

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<sup>(1)</sup> COM(2015) 627 final (see page 86 of this Official Journal).

<sup>(2)</sup> [http://ec.europa.eu/priorities/publications/president-junckers-political-guidelines\\_en](http://ec.europa.eu/priorities/publications/president-junckers-political-guidelines_en)

<sup>(3)</sup> OJ L 84, 20.3.2014, p. 72; OJ C 44, 15.2.2013, p. 104.

#### 4. General comments

4.1 The EESC regrets that the Commission does not make more specific proposals in this communication and simply lists various angles without taking a position on them, which makes it harder to have a well-structured debate.

4.2 In its opinion of 26 October 2006 <sup>(4)</sup>, the EESC called on the Commission to put forward proposals to promote and protect free licences such as the LGPL for technical documentation and the Creative Commons licence for literary and artistic works. But despite the importance of this issue — the vast majority of servers and server farms in the world operate under free licences such as Debian, or GPL in the case of GNU/Linux — it must be noted that the Commission has as yet made no proposals of this kind.

4.3 This is detrimental to the development of cross-border movements of data and services within the European single market. Indeed, the Creative Commons licence and the public domain constitute new universal spaces brought about by digitalisation and the interconnected network, while the fragmented state of the law throws up just as many other obstacles as border barriers to cross-border interaction.

4.4 Rather than constraining and stifling authors and creators, as well as users, the law should unlock the incredible potential of the internet for them. European legislation should enable the elimination of as many obstacles as possible that hinder cross-border interaction among linguistic minorities within the EU and provide easier access to services and works.

4.5 Rather than fearing such developments, right holders should make the most of the opportunities they offer. 'Free' does not automatically mean 'free of charge': open-source software, for example, allows for a different business model, revolving around the service and creating jobs, unlike some current practices that favour the owner's profits and legal protection.

4.6 The EESC once again encourages the Commission to conduct studies and in-depth research on business models linked to free licences, on their current and potential economic importance, on the revenue and jobs they could create in various fields, and on any legal proposals that would enhance their profile and use.

4.7 A great deal of consideration should be given to experiments such as making the following available on the internet under free licences: scientific publications; reports of research funded by public money; and university courses — such as all courses offered by MIT — so as to compensate for the disproportionate cost of higher education in some countries. These should be studied to gauge to what extent they might be implemented in the EU (MOOCs). In this way, higher education and culture become public goods helping to bring about a knowledge society, which we wish to develop in the EU.

4.8 Modes of production are changing, and intangible goods and services distributed by interconnected networks represent new directions for economic development and the creation of jobs and innovative businesses. Modes of consumption have started to change, and these new forms are rapidly gaining ground. However, we must be clear: in spite of this fact, the European single market does not yet exist in relation to the current providers of intangible services. This is mainly due to different preferences and cultural practices in different Member States, the language spoken by consumers, and also the fragmentation of copyright which does not make it any easier to develop the European market or to create multi-territorial, even European, licences.

4.9 The EESC calls for a new legal context to promote the creation of copyright-protected work and, simultaneously, to enhance the contribution of new types of licence and new business models to building the European single market, while preserving freedom of contract and the right of authors and creators to reap the full benefit of their works. These new models can be developed alongside the models set out in the WIPO treaties. This issue should be an integral part of the digital strategy announced by the Commission in May 2015 and of the plan to modernise copyright examined here.

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<sup>(4)</sup> OJ C 324, 30.12.2006, p. 8.

4.10 Exceptions represent another barrier. The EESC urges Member States to ratify the Marrakesh Treaty, which stipulates an exception for blind or visually impaired people, as soon as possible. The EU has signed this treaty, but only the individual Member States can ratify it so that it can enter into force. The EESC recommends that the Commission follow the opinion of the European Parliament of 9 July 2015 and urge the Member States to promptly ratify this important treaty, which was very difficult to negotiate due to the conservative viewpoints of certain stakeholders. The Committee also urges the European Council to make every effort to speed up the ratification process.

4.11 Additionally, more works that are accessible to blind or visually impaired people should be produced: over 95 % of books are not currently accessible to them.

4.12 Other exceptions connected to the digital age and networks should be taken into consideration, especially in relation to public research; the digitisation by university and public libraries of literary works that are in the public domain or are orphan works; and the lending of e-books and audio and visual resources, given the rapid spread of e-readers and a wide variety of new media. At the same time, it is important to note that some tech industries try to recapture protection for what is already in the public domain, restricting access for commercial strategies.

4.13 Geographical zoning is another obstacle to disseminating works. While affecting all potential users, it has a particular impact on the very many linguistic minorities in the EU, due to the differences between the political map and linguistic map of Europe, a historical legacy of the wars of the 19th and 20th centuries. The rise of populist and nationalist voices has lent an urgent political dimension to solving this problem. The European Charter for Regional Languages has been widely ratified but, to take one example, the current barriers significantly reduce the cultural impact of television broadcasts in regional languages.

4.14 The EESC believes that Europe's cultural diversity is at the heart of European identity and that this diversity should be fostered and promoted among the Member States.

4.15 These issues are key for the EESC and the Committee encourages the Commission to consider its proposals, which are in compliance with international copyright treaties and might open new prospects for completing the EU digital single market.

## 5. Specific comments

5.1 Substantial changes will be needed in the very near future, along the lines of the 16-initiative strategy published in May 2015 and of the preceding general comments that propose a major new initiative to promote public goods, interoperability and cross-border relations and free licences. In its opinions on digital contract rights (INT/775) and on the sharing economy and self-regulation (INT/779), the EESC recognises the importance of copyright for correctly determining the rights of stakeholders in terms of digital contracts and the sharing economy.

5.2 The EESC notes with interest that the Commission clearly states that EU copyright rules need to be adapted, so that all market players and citizens can seize the opportunities of this new environment, and that a more European legal framework is needed to overcome fragmentation and frictions within a functioning single market. The Committee endorses this aim, but notes that governments are defending the territoriality of copyright by saying that it is the only way to ensure that creative ventures are funded. Other ways exist and should be explored; the door should not be shut before the alternatives have at least been objectively assessed.

5.3 The Committee does not believe that inaction and rejection of change on copyright represent an adequate response to rapid technological change and innovations in services and distribution which are inevitably emerging and developing as the internet, networks and broadband develop. It shares the Commission's view that it will be necessary to, 'where required, adapt copyright rules to new technological realities so that the rules continue to meet their objectives'.

5.4 A large degree of variation is evident, and might become even more evident in future, with regard to exceptions that are closely related to education, research and access to knowledge. This can range from simple use as an example or illustration up to — in practice, if not in law — the unlimited provision of works, books or courses for educational purposes.

5.5 Directive 2001/29/EC of the European Parliament and of the Council <sup>(5)</sup> on copyright sets out a list of exceptions. Putting the items on this list into practice, and modifying them, should be discussed using the procedures of participatory democracy so as to make individual and collective opinion more receptive and to reach a consistent and unified European law relating to exceptions. The exceptions must be properly specified and defined so that they can be applied more easily. The EESC shares the Commission's view that exceptions for teaching, scientific research and the exchange of knowledge should be the priority; at the same time, looking ahead, other public goods should be studied.

5.6 The EESC is of the view that a united European position on private copying is possible and desirable. It will support action by the Commission in this regard, which should be taken as quickly as possible because national differences are a significant obstacle to the single market of electronic goods, while new media continue to emerge. Consistency is crucial for the free movement of goods incorporating such media. The distribution of revenue from levies on media should take into account that most of these media are not intended for copying copyright-protected works. Logically, therefore, a large proportion of this revenue should be directed towards funding artistic creation and the promotion of cultural diversity — as is already the case in some countries — and towards public goods such as education and research.

5.7 The Committee is convinced that the internet must retain its inherent principle of neutrality, in order to ensure that consumers remain totally equal, regardless of their economic power. Net neutrality is a founding principle of the internet. It ensures that telecoms operators do not treat their users' communications differently but remain simply conduits for information. This principle allows all users, regardless of their financial resources, to have access to the same network in its entirety. This definition, and a statement underlining the protection of this neutrality, should be clearly expressed in the EU legislation.

5.8 When fighting against copyright violations, infringements on a commercial scale, depriving creators of a large proportion of their revenue, should be stopped and penalised. The Committee has already issued several opinions on the problems in the fight against counterfeit goods and all forms of violation of copyright and related rights, and thus refers to these opinions, which it still considers to be wholly valid <sup>(6)</sup>.

5.9 Copyright remains a fundamentally important way to protect authors and those involved in disseminating works and performances via interconnected digital networks. Copyright must evolve to adapt to very rapid technological changes and innovations in distribution and services. This modernisation should happen in such a way as to safeguard the rights of creators and performers, to ensure they are fairly remunerated for their creative endeavours, to guarantee that they can reap the benefit of the commercial success of their works, and to keep protection and funding of works robust. In particular, the legal status of online platform services in terms of copyright must be reviewed. Although they are today the primary portal through which users access online content, platform services claim to be mere technical intermediaries and thus refuse to remunerate content creators. This undermines the efficiency of the market, distorts competition and drives down the overall value of online cultural content.

5.10 Refusing to adapt to the global nature of the internet, broadband and new consumer expectations runs the risk of devaluing a right that is beneficial to the progress of intellectual works and their dissemination. However, exceptions justified by other interested parties' rights whose social needs are changing — such as disabled persons, students and public libraries — will have to be accepted. The Member States, which have the largest degree of legal influence on the changes to come, will have to implement other developments to continuously 'Europeanise' copyright and related rights.

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<sup>(5)</sup> OJ L 167, 22.6.2001, p. 10.

<sup>(6)</sup> OJ C 230, 14.7.2015, p. 72; OJ C 44, 15.2.2013, p. 104; OJ C 68, 6.3.2012, p. 28; OJ C 376, 22.12.2011, p. 66; OJ C 376, 22.12.2011, p. 62; OJ C 18, 19.1.2011, p. 105; OJ C 228, 22.9.2009, p. 52; OJ C 306, 16.12.2009, p. 7; OJ C 182, 4.8.2009, p. 36; OJ C 318, 29.10.2011, p. 32; OJ C 324, 30.12.2006, p. 8; OJ C 324, 30.12.2006, p. 7; OJ C 256, 27.10.2007, p. 3; OJ C 32, 5.2.2004, p. 15.

5.11 The EESC considers a regulation to be the best instrument for establishing the digital single market, as the variety of national laws clearly leads to an almost complete stalemate which must be overcome by means of an inclusive dialogue between all stakeholders, including representatives of licences for free software and content and the new services and business models that they engender. Obstacles to multi-territorial licences must also be better analysed, and ways to overcome them improved.

5.12 Various interests and preconceived notions on the subject of copyright are so strong that only gradual progress, based on a rigorous assessment and proportional responses, may be possible. However, everything must be done to fully bring about the knowledge and information society which is the only way to extricate Europe from a crisis that is shaking the European ideal to its very foundations. In a dynamic social market economy, the general interest should prevail over a few special interests.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content’**

**(COM(2015) 634 final — 2015/0287 (COD))**

**and the**

**‘Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods’**

**(COM(2015) 635 final — 2015/0288 (COD))**

(2016/C 264/07)

**Rapporteur: Mr Jorge PEGADO LIZ**

On 18 and 21 January 2016 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the:

*Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content*

(COM(2015) 634 final — 2015/0287 (COD))

and the

*Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods*

(COM(2015) 635 final — 2015/0288 (COD)).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 146 votes to 61, with 44 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC agrees that a number of the matters raised in the Communication from the Commission (COM(2015) 633 final) now need to be regulated; these are set out in the proposal for a directive on certain aspects concerning contracts for the supply of digital content.

1.2 The EESC does, however, consider that other factors, which it identifies in this opinion, are far more important than contractual rights in contracts for the online sale of tangible goods. They have a greater impact and should be a higher priority with regard to the Commission’s objectives of creating a single digital market, and represent a greater obstacle to the development of cross-border trade.

1.3 Moreover, with regard to the aspects addressed, the EESC disagrees with the legal basis cited by the Commission, and proposes Article 169 TFEU instead.

1.4 It therefore follows that, in principle, the measures adopted should be based on minimum harmonisation, in line with paragraph 2(a) and paragraph 4 of that Article, which has been generally accepted by the European legislator.

1.5 The EESC only considers it appropriate to regulate these matters by means of two directives rather than a single instrument because of the urgency and timeliness of regulating the online sales of digital content.

1.6 It also believes that insufficient reasons are given for taking the option of targeted full harmonisation instead of others, such as model contracts certified by an EU mark or minimum harmonisation in line with Article 169 TFEU.

1.7 Regarding those aspects that are now to be regulated separately under the proposal on contracts for the online sale of tangible goods, it would be more appropriate to regulate them together during the review of Directive 1999/44/EC as part of the REFIT exercise on consumer law since they represent one of its chapters.

1.8 Furthermore, the Commission's proposal concerning the online sale of tangible goods establishes two systems, creating an unacceptable difference in the treatment of online and offline sales of goods.

1.9 In the event that the Commission's plans should be confirmed in their current form, the EESC sets out a series of improvements to the provisions of the proposals with a view to safeguarding consumers' rights against any erosion, ensuring in practice a high level of protection, as required by the TFEU.

1.10 This applies in particular to the rules on sales of digital content, which the EESC considers to be the priority and for which, for pragmatic reasons, it accepts the Commission's suggestion of targeted full harmonisation.

1.11 Nevertheless, this is where gaps in provision and regulatory shortcomings are to be found. They are incompatible with maximum harmonisation, creating insoluble problems for transposition and implementation in the Member States, for which solutions are sought through a raft of proposals on specific aspects.

## 2. Introduction: one communication — two proposals for directives

2.1 With this Communication, the Commission is taking the first step towards implementing the Digital Single Market strategy for Europe<sup>(1)</sup> and is carrying out one of the most important measures in its 2015 Work Programme<sup>(2)</sup> by proposing these two legal instruments, with the objective of ensuring 'better access for consumers and businesses to online goods and services across Europe':

- a) a proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content; and
- b) a proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods.

2.2 Being aware that the key aspects of these two proposals are, from a systematic point of view, closely linked to the consumer goods sales directive<sup>(3)</sup>, the Commission made it clear that they are 'as coherent as possible'. However, it explained that its decision to 'adopt two legislative instruments' was due to the fact that 'the specificity of digital content requires several rules to be regulated differently than the ones for goods' and that 'the fast technological and commercial development of digital content will require a review of the application of this Directive', and in order to justify its 'incorporation in a single legal instrument, namely the Directive on the supply of digital content'.

2.3 With these two proposals, the Commission is looking to achieve five objectives:

- a) Reducing costs resulting from differences in contract law;
- b) Creating legal certainty for businesses;
- c) Helping consumers to gain from online cross-border shopping in the EU;
- d) Reducing the detriment suffered by consumers with respect to defective digital content;

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<sup>(1)</sup> EESC opinion: OJ C 71, 24.2.2016, p. 65.

<sup>(2)</sup> COM(2014) 910 final.

<sup>(3)</sup> OJ L 171, 7.7.1999, p. 12.

e) Overall, balancing the interests between consumers and businesses and improving everyday life.

2.4 The Commission believes that the most appropriate method in both cases is 'targeted' harmonisation. It will be full harmonisation for contract rules covering the supply of digital content and the online sales of goods, and for key mandatory rights and obligations of the parties to a contract for the supply of digital content and the online sales of goods. This represents almost all of the Directive's provisions, with the exception of the 'rules on formation, validity or effect of contracts, including the consequences of the termination of a contract' and (Article 1(4) of the Proposal for a Directive on Distance Selling) certain aspects of its enforcement.

2.5 With regard to the scope of application, the Commission expressly limited this to contract law terms in a business to consumer interaction, because as mentioned in the Impact Assessment (IA, p. 23) there is no evidence to suggest that the differences in contract law hinder EU businesses from buying online from other Member States. In this connection, the Commission recognises that SMEs, as weaker parties with less bargaining power, also face contract law related difficulties especially when using digital content. However, taking into account in particular the positions expressed by stakeholders and Member States, the Commission has decided to look into this issue in the context of other initiatives announced in the Digital Single Market strategy.

2.6 With regard to the selected legal instrument, the Commission justifies its use of a directive instead of a regulation as in its view directives are more appropriate in that they leave Member States free to decide how to transpose them into national law. According to the Commission, this option, combined with targeted full harmonisation of mandatory consumer rights, will provide an appropriate balance between a high level of consumer protection at EU level and significantly increased opportunities for businesses.

2.7 The economic rationale which the Commission gives for the directives in hand is based on certain assumptions, of which the following stand out:

- a) the European e-commerce market still has significant untapped potential;
- b) the creation of a Digital Single Market will generate additional growth in Europe;
- c) EU businesses will be able to increase their competitiveness by selling more easily to a market that is much larger than their national markets;
- d) giving consumers uniform rights with a high level of consumer protection will increase their confidence to buy abroad;
- e) if the barriers related to contract law were lifted, around 122 000 more businesses would sell online across borders. Cross-border EU trade could increase by around EUR 1 billion. Increased online retail competition will lead to retail prices going down in all Member States, averaging — 0,25 % at EU level, which will directly increase household consumption in the EU by about EUR 18 billion;
- f) on top of that, a wider choice of products and services will translate into higher consumer welfare. Between 7,8 and 13 million additional consumers would start buying online across borders. Overall, real EU GDP would be expected to gain about EUR 4 billion per year.

2.8 However, in order to secure these supposed outcomes, the two directives proposed here are not enough; they are part of a larger package of measures, of which the Commission is specifically highlighting:

- a) The proposal for a Regulation on cross-border portability of online content services;

- b) Developing high-quality cross-border parcel delivery services;
- c) Abolishing geo-blocking;
- d) The entry into operation of the Online Dispute Resolution platform <sup>(4)</sup>.

2.9 Finally, the Commission explains the need to 'act now' before it is too late, since any delay regarding digital content entails a risk of national laws emerging, leading to fragmentation of the EU market and causing obstacles to both consumers and suppliers participating in cross-border transactions.

### 3. General comments

3.1 The economic and psychological rationale demonstrating the link between the proposed legislative measures and the increase in e-commerce and its repercussions on European growth are supposedly set out in the study appended to the IA. However, a detailed analysis thereof does not demonstrate with any certainty that the data on which it is based and the conclusions it draws are absolutely reliable, or that other factors might not affect them or other options not produce better results.

3.1.1 Even if some of the basic statistical data is correct — namely that 62 % (page 10) of European traders, equating to more than 122 000 businesses, and more than 13,5 % (page 13) of consumers, representing 8 to 13 million additional consumers, raising the total number to 70 million, would start buying online across borders if the alleged obstacles and additional costs resulting directly from the current legal system in force were to be removed — this does not allow us to determine with certainty an increase in the volume of trade warranting an associated estimated 0,03 % increase in European GDP, equivalent to around EUR 4 billion, as its necessary and exclusive consequence. In contrast, it is certain that every business will have to bear costs of EUR 7 000 on average to adjust their contracts to the new arrangements.

3.1.2 Furthermore, the same study does not properly quantify the fact that other additional factors — such as the language question or tax arrangements, quality, cost and availability of high speed internet services, the risk of fraud, legal costs, secure methods of payment, certification of identity and the good repute of sellers, lack of trust in judicial and extrajudicial conflict settlement procedures — will not continue to have a decisive influence on decisions to carry out cross-border online transactions, perhaps more than the current legal system (described in pages 7 and onwards, and 18 and onwards of the impact assessment).

3.1.2.1 Delays in transposition and difficulties in the application and the inefficiency of certain ADR systems set up under Directive 2013/11/EU <sup>(5)</sup> are particularly relevant in this respect, and are consequently mentioned in all the studies that the Commission has requested. This is often related to the lack of financial means in some Member States and, even more, to the apparent ineffectiveness of the ODR system set up under Regulation (EU) No 524/2013 <sup>(6)</sup>, which came into force on 15 February 2016, and which has proven crucial to the functioning of a Digital Single Market.

3.1.3 Moreover, the relative importance of the elasticity of supply and demand cannot be detected clearly in the calculation of market saturation in terms of perfect competition which, in any case, being purely theoretical, is essential for the credibility of the model, not to mention factors external to macroeconomic policy which are key in determining consumers' purchasing decisions, such as the consequences of austerity policies, by comparison with growth policies based on consumption and Keynesian-type investment.

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<sup>(4)</sup> OJ L 165, 18.6.2013, p. 1.

<sup>(5)</sup> OJ L 165, 18.6.2013.

<sup>(6)</sup> See footnote 5.

3.1.4 Lastly, the Commission's assessment puts the emphasis on the proposed model, and has not taken due account of the economic consequences of the other four models which could have been chosen (page 23 and onwards of the impact assessment), which would likewise help remove these same obstacles, in such a way as to enable comparative analysis. This applies in particular to option 5 — an optional European model contract combining an EU trust mark (page 25), despite being a simple and cheap option entailing little red tape (pages 38 and onwards); in other words, it would best correspond to the principles of the 'Better Regulation' package<sup>(7)</sup> and REFIT<sup>(8)</sup>. This option received support during preparatory consultations.

3.2 The grounds for opting for maximum harmonisation directives have likewise not been adequately explained. The EESC has generally stated that, when it comes to harmonising matters essentially related to the functioning of the single market, it prefers the use of regulations, which can be as detailed as necessary. However, it has also indicated that, in areas that have a particular impact on consumers' rights, its preference is for minimum harmonisation directives such as that flowing from the principle set out in TFEU Article 169(4).

3.2.1 On the contrary, the EESC has repeatedly spoken out against the Commission's over-riding tendency in recent years to adopt maximum harmonisation directives offering a low level of protection, barely responding to professionals' interests<sup>(9)</sup>.

3.2.2 In the present case, there is a whole series of questions which the directives do not address but which it is essential to harmonise, such as the age at which minors can conclude digital contracts (which, in the latest version of the Data Protection Directive is set between 13 and 16), the definition of categories of specific unfair terms for online contracts for which there is no provision in Directive 93/13/EEC<sup>(10)</sup>, the recent practice of 'pay now' buttons on the pages of certain social networks that do not connect to the website of a responsible platform and the inclusion, to be recommended, of a standard clause on co-regulation.

3.3 Suitable grounds have not been given either for the option of using two directives instead of just one, in that it unnecessarily duplicates legal provisions, meaning more effort has to go into transposing the directives so that they are consistent with each Member States' domestic provisions and obliging them to go further in interpretation of the directives. This would be completely understandable if the text of the directive on online sales of tangible goods was taken as a basis and the specific features of the sale of intangible goods were included in the exceptions to the basic arrangements, given that it is certain that the distinction between tangible goods and digital content is imperceptible, particularly when they are interlinked.

3.4 According to the Commission, the instrument selected was based on: 189 responses from all categories of stakeholders from across the EU; consultation of a group composed of 22 organisations representing a wide range of interests that met seven times; seminars with Member States; and meetings with national enforcement authorities at the Consumer Protection Cooperation committee meeting and with the national authorities responsible for consumer policy at the Consumer Policy Network meeting (May 2015), which subsequently challenged the validity of the sample on account of its small size<sup>(11)</sup>.

3.4.1 However, according to the known and published results<sup>(12)</sup> there is not a clear majority in favour of the option chosen: consumer organisations are clearly opposed to any form of the application of the seller's law, although the majority of business organisations and some academics support this option. For their part, the majority of Member States have cast doubt on the need for new legislation on distance purchases (which already includes online sales) and, in particular, on the appropriateness of the two directives, as it is difficult to extract precise and clearly defined guidelines. From an objective analysis of the responses to the consultations, at first glance it would appear that option 5 attracts a general consensus on the part of both professionals and consumers, depending of course on the content of the model contract rules to be agreed upon by the industry and on the degree of usage and acceptance of the trust mark by EU businesses, mainly because it is the one that entails the fewest costs for professionals.

<sup>(7)</sup> EESC opinion: OJ C 13, 15.1.2016, p. 192.

<sup>(8)</sup> EESC opinion: OJ C 230, 14.7.2015, p. 66.

<sup>(9)</sup> See EESC opinions: OJ C 108, 30.4.2004, p. 81, OJ C 317, 23.12.2009, p. 54 and OJ C 181, 21.6.2012, p. 75.

<sup>(10)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as subsequently amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011.

<sup>(11)</sup> EESC opinion: OJ C 383, 17.11.2015, p. 57.

<sup>(12)</sup> <http://ec.europa.eu/justice/newsroom/contract/opinion/>

3.5 Lastly, it is important to note that the EESC has had the opportunity to issue its views extensively on the subject of consumers' rights in digital matters in various opinions, and has defined a fundamental approach, according to which the same rights recognised in the 'physical' offline world (face-to-face contracts) should be consistent with the online environment, without prejudice to particular specific features or suitable forms of digital (intangible) content transactions, but always in the direction of strengthening, rather than diminishing or undermining such rights. The Commission's proposal concerning the online sale of tangible goods establishes two systems, creating an unacceptable difference in the treatment of online and offline sales of goods.

#### 4. Specific comments

4.1 Notwithstanding the previous comments, the EESC fully agrees with the need for and timeliness of the steps to regulate some of the matters dealt with in the proposed directives in hand, especially with regard to the online sale of digital content. With regard to the online sale of tangible goods, the EESC recommends duly adopting these measures as part of the REFIT process. In the observations set out in this opinion regarding the text of the proposals, due to an obvious lack of space, reference is made only to points where there is disagreement.

#### 4.2 Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the online and other distance sales of goods (COM(2015) 635 final — 2015/0288 (COD))

4.2.1 As regards the legal basis, in keeping with previous EESC opinions, consumer representatives — like most EESC members — consider that TFEU Article 169(2) would be a more appropriate basis, insofar as it is basically the definition and protection of consumers' rights that is at stake here, and not just completion of the single market. Certain EESC members, namely business representatives focused on completing the single market, agree with the Commission.

4.2.2 The directive option having been chosen, the EESC considers that it should be based on minimum harmonisation, along the lines of the current sales and guarantees directive (1999/44/CE), in that the option chosen here leads to greater 'fragmentation', less legal certainty and two classes of protection, it being certain that the 'improvements' introduced here would also have to apply to sales in the 'physical world'.

4.2.3 Owing to the complexity of consumer legislation, the proposal interacts with a series of other legislative instruments which it complements<sup>(13)</sup> — but requires an unnecessary and difficult task of interpretation, contrary to the sensible rules in the 'Better regulation' package, and creates added transposition difficulties in ensuring compatibility with existing national standards which have transposed or supplemented those Community standards, which vary from one Member State to another.

4.2.4 For this reason, the EESC would prefer for the rules contained in this proposed directive to be taken on board in the review of Directive 1999/44/EC as part of the REFIT Programme.

4.2.5 The following proposals are made for concrete amendments to a number of the provisions:

##### 4.2.5.1 Article 1 — Subject matter and scope

Procurement of certain online and distance services, such as leasing, should not be excluded from the subject matter and scope.

##### 4.2.5.2 Article 2 — Definitions

1. The concept of commercial guarantee should also cover other forms of compensation, otherwise they will not be deemed to be covered by the rules in Article 15.

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<sup>(13)</sup> Directive 2011/83/EU, OJ L 304, 22.11.2011, p. 64; Directive 2009/125/EC, OJ L 285, 31.10.2009, p. 10; Directive 2010/30/EU, OJ L 153, 18.6.2010, p. 1.

2. The concept of a tangible movable good has not been positively defined, which gives rise to different interpretations by Member States.
3. Also not excluded are other types of products with their own legislation, such as pharmaceuticals and medical appliances, which are excluded from the application of other consumer protection rules.
4. It is not established if online platforms might be considered as 'sellers'.
5. Neither is there a definition of the concept of producer for the purpose of their being directly liable to consumers under the terms of Article 16.

#### 4.2.5.3 **Article 3 — Level of harmonisation**

The level of harmonisation should be minimum, with all the necessary consequences for the regime.

#### 4.2.5.4 **Articles 4 and 5 Conformity with the contract**

1. The durability criterion should be incorporated <sup>(14)</sup>, influencing the period of validity of the guarantee.
2. Definition of the conformity requirements should be worded in the negative, so as to expressly exempt consumers from having to prove that the good does not conform to requirements: the onus here should be on the seller.
3. The wording of exceptions to the article establishes a generic exclusion of seller liability which cannot be enforceable against consumers without prejudice to the right of recourse (applicable to the case of VW).

#### 4.2.5.5 **Article 7 — Third party rights**

Add at the end: '... except where expressly agreed between parties and set out in detail in the terms of the contract'.

#### 4.2.5.6 **Article 8 — Relevant time for establishing conformity with the contract and reversal of the burden of proof**

1. Add at the end of paragraph 2: 'except in situations where the particular complexity of the installation requires more time, agreed with the seller'.
2. The rights attributed in the proposal to sellers should be passed on to any bona fide possessor.

#### 4.2.5.7 **Article 9 — Consumer's remedies for the lack of conformity with the contract**

1. The provision excludes as an initial option the possibility of the good being returned immediately and payment reimbursed, which would go against consumer rights in various Member States, with significant variations (Greece, Portugal, Ireland, United Kingdom, Denmark and Lithuania).
2. The notion of 'reasonable time' is a subjective one, and provides leeway for differing transpositions on this key subject, which is incompatible with maximum harmonisation. For example, in countries such as Bulgaria, France, Portugal and Luxembourg, the time period is 30 days; in Hungary, Romania, Greece and Estonia it is 15 days. The provision should establish a period corresponding to the maximum applying in some EU countries - 15 days.
3. The term 'impossible' in paragraph 3(a) should be replaced with 'technologically impossible'.

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<sup>(14)</sup> See EESC opinion: OJ C 67, 6.3.2014, p. 23.

4. Likewise, the notion of 'significant inconvenience' is also subjective and should be removed or replaced with the wording found in Austrian law: 'the least inconvenience possible' and accompanied by the possibility of a similar temporary replacement being made immediately available to the consumer until the repair is completed.
5. The Commission proposal has not taken into consideration the existing requirement in various national legislations (France, Malta, Greece, Romania, Portugal and Slovenia) obliging manufacturers to maintain an adequate stock or ensure the timely delivery to sellers of spare parts for the expected lifetime of the product, a matter linked to built-in obsolescence and the guarantee period for the replaced part.
6. The Commission should establish the obligation of the seller to provide a temporary replacement.

#### 4.2.5.8 **Article 10 — Replacement of goods**

1. The Commission has not provided for suspension of the legal guarantee during the repair or replacement period, which happens in most Member States' national legislation. The same goes for periods of mediation, arbitration and legal recourse.
2. Where there is a replacement, the replaced good should benefit from a new and identical guarantee period as of the moment it is delivered.

#### 4.2.5.9 **Article 11 — Consumer's choice between repair and replacement**

1. The term 'significant' should be removed, for the reasons set out above.
2. In the event of 'recurrent' defects, consumers should automatically have the possibility of terminating the contract.

#### 4.2.5.10 **Article 13 — The consumer's right to terminate the contract**

1. The obligation on the consumer to pay for the use, deterioration or loss of a good in the event of the contract being terminated is highly questionable.
2. Moreover, the Court of Justice has already indicated that in the event of the right to replacement being exercised, consumers may not be required to pay compensation for using the defective product (Quelle case <sup>(15)</sup>).
3. It is not clear what amount is to be reimbursed when the purchase has been made for an overall price for various goods without distinction.

#### 4.2.5.11 **Article 14 — Time limits**

The period should take into account the existing guarantee periods in some Member States (Finland, Netherlands, Sweden and the United Kingdom) which take into account the durability and built-in obsolescence of products.

#### 4.2.5.12 **Article 15 — Commercial guarantees**

1. Add a new indent (d) in paragraph 1: other guarantees offered by the seller on behalf of third parties which aim at providing a guarantee (equipment insurance, brand guarantees, etc.).
2. Information should also be included on the possibility of passing on commercial guarantees to third parties.

#### 4.2.5.13 **Article 16 — Right of redress**

1. The lack of harmonisation on this aspect constitutes an important source of diverging application of the directive, with harmful consequences for trade.
2. The rule should be to provide for direct joint and several liability on the part of the manufacturer with regard to the consumer in cases where the latter opts for repair or replacement of the good.

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<sup>(15)</sup> Case C-404/06 — Judgment of the CJEU of 17 April 2008 (First Chamber), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1461850459727&uri=CELEX:62006CC0404>

3. Provision should also be made with respect to sellers seeking redress against producers, entitling the seller to the full amount of the costs incurred.
4. As in the previous points, provision should be made for joint and several liability on the part of online platforms where consumers have acquired goods.

#### 4.2.5.14 **Article 17 — Enforcement**

Non-harmonisation of supervision in enforcing the directive is one of the main obstacles to effective consumer protection and fair competition.

### 4.3 **Proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM(2015) 634 final — 2015/0287 (COD))**

4.3.1 As the Commission itself states, the reasons for the proposal, the collection of expertise and the impact assessments concern both proposals since the two are envisaged as a package with common objectives. For this reason issues of a general character common to both proposals will not be repeated, and the EESC will limit itself to comments relating to specific aspects. It is nevertheless important to point out here that, in general, this proposal warrants the EESC's agreement in principle, particularly as regards:

- a) Special protection for consumers in online purchasing of intangible goods, commensurate with the increased complexity of products, lack of transparency in negotiation, greater threats to data security, privacy and protection, particular forms of unfair practices and unfair terms, hidden costs, prices that vary depending on location and the less substantial nature of the means employed (internet, mobile phones, social networks, etc.).
- b) The urgent need to establish clear rules in an area where it appears only one Member State (United Kingdom) possesses specific regulations on this type of contract.
- c) The appropriateness of pursuing maximum harmonisation, at a high level of protection for consumers, limited to B2C contracts, which, moreover, would be better achieved through a regulation.
- d) The need to define the legal nature of this type of contract in a uniform fashion.
- e) The need for overall approximation to a whole raft of other measures outlined in the Digital Single Market strategy, comprising in particular the initiatives related to the cross-border portability of content, role of platforms, the Free Flow of Data, European Cloud, the VAT-related burden, as well as actions ensuring portability and the interoperability of content, and taking account of the entry into operation of the Online Dispute Resolution platform<sup>(16)</sup> and the review of Regulation (EC) No 2006/2004 of 27 October 2004 on consumer protection cooperation between national authorities responsible for the enforcement of consumer protection laws.
- f) Special attention to the protection of individuals with regard to the processing of personal data, governed by Directive 1995/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(17)</sup> and Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector<sup>(18)</sup>. These provisions are fully applicable to supplies of digital content, insofar as this entails the processing of personal data.
- g) The review of the regulatory package on electronic communications services.
- h) The need to pay particular attention to cloud computing contracts.

<sup>(16)</sup> OJ L 165, 18.6.2013, p. 1.

<sup>(17)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(18)</sup> OJ L 201, 31.7.2002, p. 37.

4.3.2 Set out below are some concrete amendments to a number of the provisions in the proposal, which comprises 24 articles (and not 20, as incorrectly indicated in several language versions):

#### 4.3.2.1 *Article 1 — Subject matter*

The clear nature of the ‘contracts for the supply of services’ as the subject matter, clearly demonstrated in the definitions of ‘digital content’ and ‘supply’ in Article 2(1) and (10) of this proposal, reinforces the proposal set out with regard to Article 1 of the previous proposal for a directive.

#### 4.3.2.2 *Article 2 — Definitions*

The EESC would reiterate its suggestion to include individual professionals in the definition of consumers.

#### 4.3.2.3 *Article 3 — Scope*

1. The EESC can accept that payments be made in kind (against ‘counter-performance other than money’) as long as this is defined in a precise manner in terms of content; where personal or other data is provided it will be necessary to specify which data and under what conditions and in what circumstances.
2. It will also be necessary to clarify if certain services such as pay TV are included, as well as *Google* and *Facebook Messenger*, and whether certain physical access platforms or the internet of things come under tangible or intangible goods.
3. It is not clear whether the exclusion referred to in paragraph 5(a) also covers healthcare, gambling and financial services. This requires greater clarification, as otherwise it will create legal uncertainty.
4. It is not clear whether this scope also covers ‘hidden payments’, that is to say services provided for free but which can, while being carried out, include other services which themselves have to be paid for.
5. The scope of the data in Article 3(4) needing to be processed should cover not only the performance but also the ‘conclusion’ of the contract, and the processing of this data should be permitted under the conditions laid down by the law on personal data.
6. It is also essential to clarify the difference between products and services provided online, and those which are entirely tied in with tangible goods, as is the case with wearables and the internet of things, where most of the procedures are at digital level, without prejudice to the existence of a tangible good at the heart of the procedure.
7. It should be made clear that the data centre services, especially cloud computing, ought to be clearly identified in this proposal, irrespective of these being free or subject to charge, given that these services are often associated with other services or products supplied to consumers, and there is thus a risk that they might be excluded from the scope of the directive.
8. It will also be necessary to clarify if the combination of digital content services with communication services such as *Facebook Messenger* or *Google Hangout* are included since these are not currently regulated by Directive 2002/21/EC on electronic communications services, and it has been understood that some of these services should in fact be deemed to be electronic communications services, with increased consumer protection.

9. Likewise, the distinction between situations in which the data obtained are only for the performance of the contract or for meeting legal requirements is unclear. The EESC therefore suggests, as a precautionary measure, that the directive should apply to all services supplied by providing personal data, with the sole exception of those services where the supplier explicitly demonstrates that the data are only for the performance of the contract or meeting legal requirements.
10. Again, in point 4, it will be necessary to clarify when the collection of personal data is for performance of a contract or meeting legal requirements, given that in other sectors such as telecommunications and energy, personal data, although authorised for the performance of contracts, are often used for marketing campaigns carried out by the companies themselves and, in particular, whether this applies to other types of counter-performance apart from money.

#### 4.3.2.4 **Article 4 — Level of harmonisation**

The EESC accepts the reasons for proposing maximum harmonisation, as long as a higher level of protection is guaranteed for consumers.

#### 4.3.2.5 **Article 5 — Supply of the digital content**

The overlap between the obligation in paragraph 2 to ‘supply immediately’ and the consumer directive (2011/83/EU), which for immediate supply requires the consent of the consumer, thus waiving the 14-day right of withdrawal from the agreement (Article 16(m) of the directive) causes a lack of clarity — it seems appropriate to harmonise rules in this field, in order to eliminate the risk of overlapping rules which would be to the detriment of businesses and consumers.

#### 4.3.2.6 **Article 6 — Conformity**

1. Paragraph 1(b): delete ‘where relevant’.
2. Paragraph 1(b): add ‘or could legitimately expect’ after ‘for which the consumer requires it’.
3. Paragraph 2(b): delete ‘where relevant’.

#### 4.3.2.7 **Article 9 — Burden of proof**

Paragraph 3: delete ‘possible and’.

#### 4.3.2.8 **Article 11 — Remedy for the failure to supply**

The wording does not take account of the model for supplying content in fixed-term packages — where lack of access to a single film is difficult to assess proportionately in the context of the cost of an entire package. It also does not take account of the possibility of providing other content at the same price level (preferred by users).

#### 4.3.2.9 **Article 12 — Remedies for the lack of conformity with the contract**

Paragraph 2: replace ‘within a reasonable time’ with ‘without undue delay’.

#### 4.3.2.10 **Article 13 — Termination**

1. Paragraph 2(b): replace ‘the supplier shall take all measures which could be expected in order to refrain from ...’ with ‘the supplier shall refrain from’.
2. Indents (c) (d) and (e) come under copyright rules which are not yet available.

4.3.2.11 **Article 16 — Right to terminate long term contracts**

The period should be only 6 months.

It must be expressly stated that this is to be free of any charge.

Brussels, 27 April 2016.

*The President  
of the European Economic and Social Committee  
Georges DASSIS*

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## APPENDIX

I. The following point of the section opinion was modified to reflect a compromise amendment adopted by the Assembly, although at least one quarter of the votes cast were in favour of retaining the original wording (Rule 54(4) of the Rules of Procedure):

a) **Point 3.4.1**

*However, according to the known and published results there is not a clear majority in favour of the option chosen: consumer organisations are clearly opposed to any form of the application of the seller's law, although the majority of some business organisations and some academics support this option. For their part, the majority of Member States have cast doubt on the need for new legislation on distance purchases (which already includes online sales) and, in particular, on the appropriateness of the two directives, as it is difficult to extract precise and clearly defined guidelines. From an objective analysis of the responses to the consultations, at first glance it would appear that option 5 attracts a general consensus on the part of both professionals and consumers, depending of course on the content of the model contract rules to be agreed upon by the industry and on the degree of usage and acceptance of the trust mark by EU businesses, mainly because it is the one that entails the fewest costs for professionals.*

**Outcome of the vote:**

For: 115

Against: 91

Abstentions: 18

II. The following compromise amendments were rejected by the Assembly, although at least one quarter of the votes cast were in favour of adopting them (Rule 54(4) of the Rules of Procedure):

b) **Point 4.2.1**

*As regards the legal basis, in keeping with previous EESC opinions, most EESC members, including consumer representatives — ~~like most EESC members~~ — consider that TFEU Article 169(2) would be a more appropriate basis, insofar as it is basically the definition and protection of consumers' rights that is at stake here, and not just the completion of the single market. ~~Certain EESC members, namely~~ business representatives more focused on the necessity for entrepreneurs to have a set of clear rules to comply with, on completing the single market, agree with the Commission.*

**Outcome of the vote:**

For: 110

Against: 110

Abstentions: 10

Rule 56(6) of the EESC's Rules of Procedure states that if the vote is a tie (an equal number of votes for and against), the chairman of the meeting shall have a casting vote. Pursuant to this rule, the chairman decided to reject the proposed compromise amendment.

c) **Point 4.2.2**

*The directive option having been chosen, most EESC members, including consumer representatives, ~~at the EESC~~ considers that it should be based on minimum harmonisation, along the lines of the current sales and guarantees directive (1999/44/CE), in that the option chosen here leads to greater 'fragmentation', less legal certainty, and two classes of protection, it being certain that the 'improvements' introduced here would also have to apply to sales in the 'physical world'. EESC business representatives, however, agree with the proposal to apply maximum harmonisation, for alleged reasons of clarity in application of rights in the single market.*

**Outcome of the vote:**

For: 102

Against: 115

Abstentions: 14

**d) Point 4.2.5.3**

Article 3 — Level of harmonisation

Most EESC members, including consumer representatives, state that the level of harmonisation should be minimum, with all the necessary consequences for the regime. Business representatives favour maximum harmonisation.

**Outcome of the vote:**

For: 112

Against: 114

Abstentions: 12

**e) Point 4.2.5.4**

Articles 4 and 5 Conformity with the contract

1. The durability criteria should be incorporated, influencing the period of validity of the guarantee.
2. Most EESC members, including consumer representatives, state that the definition of the conformity requirements should be worded in the negative, so as to expressly exempt consumers from having to prove that the good does not conform to requirements: the onus here should be on the seller. Business representatives however, recommend that the definition of conformity requirements should be worded generally. For them, the main criterion for establishing conformity should be whether the goods correspond to what was deemed agreed (e.g. regarding type, quantity, quality and other characteristics).
3. The wording of exceptions to the article establishes a generic exclusion of seller liability which cannot be enforceable against consumers without prejudice to the right of recourse ~~(applicable to the case of VW)~~.

**Outcome of the vote:**

For: 99

Against: 126

Abstentions: 13

**f) Point 4.2.5.7**

Article 9 — Consumer's remedies for the lack of conformity with the contract

1. Consumer representatives notice the provision excludes as an initial option the possibility of the good being returned immediately and payment reimbursed, which would go against consumer rights in various Member States, with significant variations (Greece, Portugal, Ireland, United Kingdom, Denmark and Lithuania). Business representatives agree — in line with maximum harmonisation — that this option has not been provided for.

2. Consumer representatives feel the notion of 'reasonable time' is a subjective one, and provides leeway for differing transpositions on this key subject, which is incompatible with maximum harmonisation. For example, in countries such as Bulgaria, France, Portugal and Luxembourg, the time period is 30 days; in Hungary, Romania, Greece and Estonia it is 15 days. The provision should establish a period corresponding to the maximum applying in some EU countries — 15 days. Business representatives state that the notion of 'reasonable time' is objective legal wording, and at the same time provides leeway for application in differing situations.
3. The term 'impossible' in paragraph 3(a) should be replaced with 'technologically impossible'.
4. Consumer representatives likewise feel the notion of 'significant inconvenience' is also subjective and should be removed or replaced with the wording found in Austrian law: 'the least inconvenience possible' and accompanied by the possibility of a similar temporary replacement being made immediately available to the consumer until the repair is completed. Business representatives refer to the fact that this well-known legal wording provides leeway for application in differing situations.
5. The Commission proposal has not taken into consideration the existing requirement in various national legislations (France, Malta, Greece, Romania, Portugal and Slovenia) obliging manufacturers to maintain an adequate stock or ensure the timely delivery to sellers of spare parts for the expected lifetime of the product, a matter linked to built-in obsolescence and the guarantee period for the replaced part.
6. ~~The Commission should establish the obligation of the seller to provide a temporary replacement.~~

**Outcome of the vote:**

For: 100

Against: 135

Abstentions: 2

**g) Point 4.2.5.10**

Article 13 — *The consumer's right to terminate the contract*

~~1. Business representatives request that the provision of Directive 1999/44/EC, art.3§ 6 would be added, providing the consumer is not entitled to have the contract rescinded if the lack of conformity is minor.~~

1. The obligation on the consumer to pay for the use, deterioration or loss of a good in the event of the contract being terminated is highly questionable.
2. Moreover, the Court of Justice has already indicated that in the event of the right to replacement being exercised, consumers may not be required to pay compensation for using the defective product (Quelle case).
3. It is not clear what amount is to be reimbursed when the purchase has been made for an overall price for various goods without distinction.
4. Business representatives request that the provision of Directive 1999/44/EC, art.3§ 6 would be added, providing the consumer is not entitled to have the contract rescinded if the lack of conformity is minor.

**Outcome of the vote:**

For: 110

Against: 118

Abstentions: 18

**h) Point 4.2.5.10**

Article 13 — *The consumer's right to terminate the contract*

1. Most EESC members, including consumer representatives, feel the obligation on the consumer to pay for the use, deterioration or loss of a good in the event of the contract being terminated is highly questionable. Business representatives, however, support this provision.
2. *Moreover, the Court of Justice has already indicated that in the event of the right to replacement being exercised, consumers may not be required to pay compensation for using the defective product (Quelle case).*
3. *It is not clear what amount is to be reimbursed when the purchase has been made for an overall price for various goods without distinction.*

**Outcome of the vote:**

For: 101  
Against: 132  
Abstentions: 10

**i) Points 1.3 and 1.4**

1.3 *Moreover, with regard to the aspects addressed, ~~the~~ most EESC members, including consumer representatives, disagrees with the legal basis cited by the Commission, and proposes Article 169 TFEU instead. It therefore follows that, in principle, the measures adopted should be based on minimum harmonisation, in line with paragraph 2(a) and paragraph 4 of that Article, which has been generally accepted by the European legislator.*

1.4 *~~It therefore follows that, in principle, the measures adopted should be based on minimum harmonisation, in line with paragraph 2(a) and paragraph 4 of that Article, which has been generally accepted by the European legislator. However, business representatives agree with the legal basis cited by the Commission, since internal market issues are deemed to be dominant ~~at stake~~ and companies argue that they need one set of clear rules to comply with.~~*

**Outcome of the vote:**

For: 111  
Against: 123  
Abstentions: 12

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**Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament and the Council on public procurement rules in connection with the current asylum crisis**

**(COM(2015) 454 final)**

(2016/C 264/08)

**Rapporteur: Erik SVENSSON**

On 14 October 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

*Communication from the Commission to the European Parliament and the Council on public procurement rules in connection with the current asylum crisis*

(COM(2015) 454 final).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 220 votes to 1 with 9 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC takes careful note of the Commission's explanatory communication — which does not contain any changes — in view of the current climate in which, as described, contracting authorities are under intense pressure to solve urgent problems arising from the refugee and asylum crisis.

1.2 The EESC hopes that both the current directive and the newest one may allow for significantly shorter deadlines for submitting tenders and for direct procurement, thereby providing sufficient scope for swifter processing.

1.3 The EESC would nevertheless stress that it is important:

- to ensure a high degree of transparency and take extra care in documenting the procedure,
- to refrain from making inappropriate use of this legislative flexibility,
- to endeavour to opt for solutions that facilitate subsequent integration and additional support,
- that contracts awarded in an emergency are of short duration.

1.4 The importance of the non-profit sector as an adjunct to public authority procurement cannot be overestimated. Thanks to the efforts of this sector, many countries have been able to help and support far more people than would otherwise have been possible.

1.5 Even though the regulatory framework allows for swifter processing, the EESC believes it is important to cut red tape that results in lengthy procurement procedures.

1.6 In the light of new and growing threats, contracting authorities should consider using a separate procurement procedure for security and insurance.

1.7 The EESC would observe that a similar problem arises regarding refugees who chose **not** to seek asylum on arrival, as they are also in urgent need of health and other care and protection.

1.8 The EESC stresses that public procurement in connection with the asylum and refugee crisis should also take into consideration other services that prepare and facilitate integration at a future date.

1.9 The EESC requests and recommends that the Commission also clarify in this communication the question of public procurement in connection with the present refugee crisis, or else issue an additional communication on public procurement in response to the refugee crisis.

## 2. Gist of the Commission document

2.1 The European Union currently faces numerous challenges due to a sudden sharp increase in arrivals of asylum seekers. Not least, Member States have to respond rapidly to meet the most immediate needs of asylum seekers (housing, supplies and services). European public procurement rules provide all the necessary tools to satisfy those needs under the provisions of the current Directive 2004/18/EC <sup>(1)</sup> (the 'directive') as well as under the newest public procurement Directive 2014/24/EU <sup>(2)</sup>.

2.2 This Communication does not create any new legislative rules. It encompasses the Commission's interpretation of rules covering: (i) contracts for infrastructure (housing), which can be provided either by renting existing buildings not requiring extensive adaptations (i.e. building works) or by constructing *ex novo* or refurbishing existing buildings, with a threshold of EUR 5 186 000; (ii) contracts for supplies such as tents, containers, clothes, blankets, beds and food, with a threshold of either EUR 1 35 000 (previously EUR 1 34 000) or EUR 209 000 (previously EUR 207 000), depending on the nature of the contracting authority; (iii) contracts for services such as cleaning, health, catering and security, with the same thresholds as for the supplies contracts. Although applicable in full to all services, particular procurement rules apply to the 'light regime' (a special regime for social and other specific services). For such services, the applicable threshold has been set at EUR 750 000.

2.3 For contracts falling within the scope of the directive, the contracting authority can choose to award the contract following an **open** or a **restricted** procedure. The minimum deadline to submit an offer in an open procedure is 52 days, but it can be reduced to 40 days by using electronic means. In a restricted procedure, the general deadlines are 37 days to submit a request for participation and an additional 40 days to submit a tender after selection by the contracting authority of those admitted to submit a tender.

If urgency requires it, the directive allows for a substantial reduction of the general deadlines using either: (a) an 'accelerated restricted procedure', in which the deadlines to submit a request for participation are 15 days and to submit an offer 10 days; or (b) a 'negotiated procedure without publication', which allows for awarding contracts to provide for asylum seekers' needs in the most urgent cases.

2.4 Contracting authorities will have to assess on a case-by-case basis which procedure they choose for the award of contracts aimed at providing for the immediate needs of asylum seekers (housing, supplies or services).

## 3. General comments

3.1 The EESC takes careful note of the Commission's communication and agrees with its basic stance that Member States must be able to respond swiftly to the most immediate needs of asylum seekers.

3.1.1 The EESC observes that this communication does not contain any changes, but instead provides constructive clarifications and explanations.

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<sup>(1)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, 30.4.2004, p. 114); EESC Opinion (OJ C 193, 10.7.2001, p. 7).

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65); EESC Opinion (OJ C 191, 29.6.2012, p. 84).

3.2 The EESC considers it very appropriate and efficient on the Commission's part to clarify at this stage its views regarding the applicability of the current rules, since many countries — although to varying degrees — have received an unprecedented number of asylum seekers and the contracting authorities, both national and regional, are under severe pressure.

3.3 The EESC shares the view expressed by the Commission in the communication that the provisions of the current Directive 2004/18/EC and the new Directive 2014/24/EU, which has to be transposed into national law by 18 April this year at the latest, are basically sufficient to cope with the increasing numbers and time constraints caused by the current asylum situation.

3.3.1 It is of the utmost importance that public procurement rules should not present an obstacle to dealing with the present situation and offering protection commensurate with asylum legislation. The areas most at risk are housing, health, security and catering.

3.3.2 The EESC hopes that the new directives — and hence the new national rules — may allow for significantly shorter deadlines for submitting tenders, thereby providing sufficient scope for swifter processing.

3.3.3 Direct procurement is also allowed in situations of extreme urgency, even if at times this means going above the threshold.

3.4 The EESC would point out, however, that it is extremely important to exercise a high degree of transparency and to take extra care to document procedures when using accelerated procedures or direct procurement.

3.4.1 If the law on public procurement is to continue to enjoy the backing of companies as well as trade unions and civil society in general, it is vital that no party — be it the authorities or suppliers — exploit the flexibility in the rules in an inappropriate manner. This is why it is so important to already make provision for the possibility of a review during the course of procedures. An *ex post* evaluation mechanism could be considered as a means of ensuring correct implementation.

3.4.2 It is important to emphasise that, even in urgent situations, efforts should be made to opt for solutions that facilitate subsequent integration and additional support. This is especially the case for vulnerable groups such as unaccompanied children, pregnant women and people with disabilities.

3.5 It should be stressed that, in emergency situations such as those we are witnessing in some EU countries as a result of the asylum crisis, there is always a risk that contracting authorities and suppliers alike will try to find ways of cutting corners.

3.6 It is important that contracts awarded on the grounds of an emergency (under the 'accelerated restricted procedure' or the 'negotiated procedure without publication') should be of short duration, so that standard practice can be resumed as quickly as possible.

#### 4. Specific comments

4.1 It is important to stress that the non-profit sector has been of vital assistance in complementing the public authorities' calls for tender. It has played a crucial role in the countries that have taken the most asylum seekers, i.e. Germany and Sweden. Without the contribution of the non-profit sector, we would not have been able to cope with arrivals on the scale we are now seeing.

4.1.1 The scope for direct procurement means that players who would otherwise find it harder to win public sector contracts (including non-profit organisations) can also compete.

4.2 Even though the regulatory framework allows for rapid processing, however, the public authorities (all too) frequently take too long over it. Red tape can lead to lengthy procurement procedures.

4.3 It may be appropriate to provide a concrete example from the EU Member State which in proportion to its size has, along with Germany, received the highest number of asylum seekers, especially from Syria.

4.3.1 In November 2015 the Swedish Government examined the case for amending the law in order to be able to cope with the acute asylum situation there.

4.3.2 The contracting authorities in Sweden replied that the procurement rules in the EU Directive made it possible both to respond sufficiently swiftly in the event of extreme urgency and to take account of the public interest and provide for a sensible balance of interests.

4.4 The EESC believes that in order for the contracting authorities to be able to respond by matching quality with due speed, a market survey should be conducted to map out potential and available suppliers and identify expected costs before the situation becomes critical.

4.5 The EESC emphasises that it is important for the contracting authorities not to delay contracts, but rather to conclude them with due speed as called for by the circumstances.

4.6 Experience shows that security and insurance costs have increased substantially (they have as much as tripled) in reaction to threats and recent events.

4.7 In order to reduce uncertainty in the area of procurement and increase the range of potential solutions available, contracting authorities should consider separate procurement procedures for security and insurance.

#### **5. Comments and observations on matters not covered in the Commission communication**

5.1 The EESC would observe that a similar problem arises regarding refugees who chose **not** to seek asylum on arrival. Here too there is an urgent need for health and other care and protection, in addition to meeting the most pressing human requirements.

5.2 In the EESC's view, when awarding contracts for housing, care and services for asylum seekers and other refugees, public authorities must also take into consideration services that prepare for/facilitate daily life and the possibility of integration in the future. Examples of priority services in this respect are language courses and, ideally, vocational training.

5.2.1 Practical examples already exist of procurement that includes language classes, driving lessons and similarly important activities provided by the non-profit sector, churches and civil society associations.

5.3 In countries with limited financial resources, where there is a risk that the authorities will not pay for services contracted, it is crucial for payments to actually be made.

5.4 Finally, the EESC believes that it is essential for the Commission to provide further clarification in its communication regarding the broader picture, **either** by expanding its comments on public procurement to include both the asylum and the refugee crisis **or** by issuing an additional communication on public procurement in response to the refugee crisis.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons’**

**(COM(2015) 750 final — 2015/0269 (COD))**

(2016/C 264/09)

**Rapporteur: Mr Paulo BARROS VALE**

On 14 December 2015, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the:

*Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons*

(COM(2015) 750 final — 2015/0269 (COD)).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 176 votes to 8 with 20 abstentions.

## **1. Conclusions and recommendations**

1.1 While weapons-related issues are always controversial, the recent tragic events in Europe have added even more heat to the debate. Nevertheless, the assessment of the revision of the directive must necessarily be more dispassionate and objective, analysing security and market issues in a balanced fashion and leaving the crucial question of fighting terrorism and organised crime to other discussions more suited to the gravity of these issues.

1.2 The *Study on Firearms* <sup>(1)</sup> drawn up by the United Nations Office on Drugs and Crime estimates that there were some 875 million firearms in existence in 2007. Only 3 % of these were held by law enforcement services and 23 % by the military. In an industry of this size, it is up to the legislator to identify and impose measures which are capable of mitigating the latent hazard inherent in the possession of such vast numbers of weapons.

1.3 While supporting the adoption of this directive, which clarifies definitions and introduces new requirements and more consistent rules on marking and destroying weapons, the EESC would also advocate measures that it believes would help increase public safety.

1.4 In contrast with the situation in other sectors where the European Union has issued a great deal of legislation, this has not been the case for the arms industry, where the rules have fallen short of what could have been achieved in terms of security and the tracing of arms and individuals involved in criminal acts. We must therefore be firm on the objectives to be achieved in an area as sensitive as security.

1.5 Since not only weapons traceability but also ammunition traceability is important, the EESC believes that in the medium/long term, thought should be given to encouraging the industry to start placing indelible marks on bullets, somewhere the marks cannot be destroyed upon use. If technically possible, such data and the other data on weapons, to be made available on interoperable databases by the authorities, would contribute greatly to improving the efficiency of investigations. These databases must not be restricted to forming national registers, but should rather operate at European level, being built up and accessed by the authorities of each Member State.

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<sup>(1)</sup> United Nations Office on Drugs and Crime, *Study on Firearms 2015 — A study on the transnational nature of and routes and modus operandi used in trafficking in firearms*.

1.6 The EESC argues that Europe could look into the possibility of following the example of the Australian and UK buyback programmes, which would take several thousand weapons out of circulation. While there may be no proven direct link between the number of weapons in circulation and the number of offences committed, it is statistically probable that fewer crimes and accidents would occur, and even that fewer weapons would fall into the hands of criminals.

1.7 The technological development of 3D printing constitutes a danger since it can be used to manufacture weapons that are just as lethal as those made by conventional methods, but are impossible to control or track. Furthermore, these weapons are mostly made of materials that traditional security systems cannot detect. This issue urgently needs to be put on national security agendas so that concerted preventive measures can be taken against the uncontrolled proliferation of lethal weapons.

## 2. Background

2.1 Amidst acute security concerns, the Commission has published a proposal to amend Council Directive 91/477/EEC <sup>(2)</sup>, as amended by Directive 2008/51/EC <sup>(3)</sup>, on control of the acquisition and possession of weapons.

2.2 This review is being undertaken in the context of the European Agenda on Security, adopted on 28 April 2015, which seeks to ensure an effective and coordinated response at European level to security threats. The European Agenda on Security has identified differences between countries' legislation as being an obstacle to effective controls and cooperation between national police forces, and has called for a review of legislation on firearms and of the rules on deactivation.

2.3 The objective of the directive is to guarantee public safety and facilitate the functioning of the internal market in firearms by establishing the rules to adopt for all stages of a firearm's life cycle, from production to destruction.

2.4 The directive establishes the minimum requirements that each Member State should impose as regards the acquisition, possession and transfer of the different categories of firearms, including those used for hunting and shooting sports.

2.5 As a basis for the review of the current legal framework, three evaluations were carried out on the legislation currently in force, which identified a need to adopt EU-wide minimum rules on illicit firearms trafficking and to revise the directive in force in order to:

- harmonise the rules for the marking of firearms;
- adopt common standards and procedures and introduce registration requirements for deactivated firearms;
- establish procedures for the convertibility of alarm/signal weapons and replicas;
- promote the exchange of knowledge between Member States and develop and maintain databases on the manufacture, possession and deactivation of weapons; and
- define a common approach to the classification of hunting and sporting firearms.

2.6 The Commission took into account the views of stakeholders, namely the representatives of associations of European manufacturers of civilian firearms and ammunition, civilian firearms retailers, hunters, collectors, NGOs, research centres, etc. Member States and NGOs agreed that the proposed directive would help to prevent the diversion of firearms to the illegal market. However, private sector representatives were concerned by amendments to the categories of firearms and the impact thereof on small and medium-sized firms.

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<sup>(2)</sup> Council Directive 91/477/EEC, OJ L 256, 13.9.1991, p. 51; EESC opinion: OJ C 35, 8.2.1988, p. 25.

<sup>(3)</sup> Council Directive 2008/51/EC, OJ L 179, 8.7.2008, p. 5; EESC opinion: OJ C 318, 23.12.2006, p. 83.

2.7 The stakeholders consulted by the Commission believed that the reactivation of deactivated weapons was a relevant source of weapons for criminal use and considered the harmonisation of deactivation rules to be a priority in order to fight this practice.

2.8 The stakeholders consulted agreed on the need for the exchange of information between Member States, for the harmonisation of definitions and for the establishment of minimum standards for deactivation guidelines.

### 3. General comments

Recent tragic events have precipitated the debate on the sale and use of weapons. Although public safety, which is increasingly under threat from terrorism, cannot be confused with the possession of weapons, and there is a pressing need to take decisive action to counter the ease with which people can get hold of firearms, which continue to fall into the hands of radical groups, criminal organisations and disturbed individuals whose motives are incomprehensible, who then use these firearms to perpetrate barbaric crimes. Neither can ordinary crime, suicides and accidents involving firearms be overlooked.

3.1 The EESC welcomes the clarifications currently being proposed since they make a significant improvement to the directive being amended. These proposals do not seek to ban firearms but to harmonise the rules on the acquisition and possession of weapons throughout their life cycle in order to regulate the market and ensure safety.

Nevertheless, after consulting stakeholders such as police forces, industry, the trade, users, collectors and NGOs concerned with public safety, the EESC believes that, in view of the ongoing security concerns, legislation on this issue needs to be more ambitious. The Commission should not simply draft legislation as an immediate response to recent acts of terrorism, but when doing so should also seek to resolve safety issues relating to legal firearms.

3.2 Various studies have been carried out on arms control. While some of these indicate that restrictions on weapons reduce violence<sup>(4)</sup>, accidents<sup>(5)</sup> and suicides<sup>(6)</sup>, others assert that allowing citizens without a criminal record or mental health problems to keep weapons reduces violent crime and does not lead to a significant increase in suicides or accidents<sup>(7)</sup>.

3.2.1 Australia provides an excellent example of weapons control. Following an incident where a man entered a cafe and killed 35 people and wounded 23 others with two weapons, in 1997 Australia embarked upon one of the most substantial overhauls on record of its laws on the use and possession of weapons. This led to a visible reduction in firearm-related deaths. It banned certain types of weapons, introduced a requirement to provide a genuine reason for possessing a weapon (which could not be purely for self-defence) and financed a national buyback programme. This initiative led to the surrender of 700 000 weapons and, in conjunction with the new restrictions, to a drastic fall in firearm-related homicides<sup>(8)</sup>.

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<sup>(4)</sup> Hepburn, Lisa; Hemenway, David. Firearm availability and homicide: A review of the literature. *Aggression and Violent Behavior: A Review Journal*, 2004; 9:417-40, quoted by Harvard T.H. Chan School of Public Health: <http://www.hsph.harvard.edu/hicrc/firearms-research/guns-and-death/>

<sup>(5)</sup> Miller, Matthew; Azrael, Deborah; Hemenway, David. Firearm availability and unintentional firearm deaths. *Accident Analysis and Prevention*. 2001; 33:477-84, quoted by Harvard T.H. Chan School of Public Health: <http://www.hsph.harvard.edu/hicrc/firearms-research/gun-threats-and-self-defense-gun-use/>

<sup>(6)</sup> Miller, Matthew; Hemenway, David. Gun prevalence and the risk of suicide: A review. *Harvard Health Policy Review*. 2001; 2:29-37, quoted by Harvard T.H. Chan School of Public Health: <http://www.hsph.harvard.edu/hicrc/firearms-research/gun-ownership-and-use/>

<sup>(7)</sup> John R. Lott, David B. Mustand. *Crime, Deterrence, and Right-to-Carry Concealed Handguns* University of Chicago Law School, May 1998.

<sup>(8)</sup> Alpers, Philip, Amélie Rossetti and Marcus Wilson, 2016, *Guns in Australia: Total Number of Gun Deaths*, Sydney School of Public Health, The University of Sydney. GunPolicy.org, 7 March. Accessed 10 March 2016, at: [http://www.gunpolicy.org/firearms/compareyears/10/total\\_number\\_of\\_gun\\_deaths](http://www.gunpolicy.org/firearms/compareyears/10/total_number_of_gun_deaths)

3.2.2 The reasoning behind the Australian buyback programme was that the large-scale availability of weapons made it easier for people to act on homicidal impulses and commit mass murder.

3.2.3 Like Australia, following random shootings which resulted in 15 fatalities and a further 15 wounded, the United Kingdom also banned the use of certain types of weapons, introduced mandatory registration for owners and funded a buyback programme. This did not have the same impact on the number of firearm-related deaths as in Australia<sup>(9)</sup>.

3.2.4 The most recent major study on arms control, published in February 2016, examined 130 other studies carried out in ten different countries between 1950 and 2014<sup>(10)</sup>. The authors believe that although the data does not demonstrate that restrictive laws reduce violence, it does suggest that in some countries there is a link between the implementation of laws restricting access to various types of weapons and a reduction in firearm-related fatalities. The introduction of laws that restrict the conditions for acquiring firearms (e.g., background checks) or accessing weapons (e.g., storage) is also associated with lower rates of intimate partner homicides and accidental child deaths, respectively.

3.3 The EESC believes that these examples and studies should be reflected in strict rules for obtaining a licence to use and carry a weapon, and for acquiring arms and ammunition, in a ban on certain types of weapons, as well as in their deactivation, and even in programmes set up by Member States to buy back weapons in order to destroy them.

#### 4. Specific comments

4.1 This initiative shows due regard for the principles of subsidiarity and proportionality. A directive is the appropriate form as it is doubtful that the Member States are ready to accept a regulation.

4.2 The EESC welcomes this directive's amendments to a number of articles in the previous directive; they lend clarity and introduce new requirements that significantly improve the previous rules.

4.3 The EESC supports the introduction of mandatory medical tests, that meet minimum European quality requirements, to assess physical and mental health for issuing or renewing licences to use and carry a weapon — a practice which many Member States have already adopted. However, it would point out that the directive could also set requirements regarding the frequency of training in the handling of firearms and on the safe storage (in particular with gun cabinets as is already mandatory in some Member States) and safe transportation of weapons and their components.

4.4 The European Union has been able to issue a great deal of legislation in many areas. A good example of this is the automotive industry, which was obliged to meet safety requirements (safety for occupants and the environment) by investing heavily in research and development. The concept of marking weapons and components is also being extended. The EESC suggests going somewhat further in the medium/long term with respect to marking bullets and assessing the possibility of encouraging the industry to place an indelible mark somewhere where it cannot be destroyed upon use, such as inside the ammunition, in order to ensure full traceability. Since it is normally bullets and not weapons that are left behind at crime scenes, marking of this type could be a valuable source of information in police investigations.

4.5 With regard to databases on firearms, the EESC supports the new wording, which extends the scope of records on firearms to include the destruction of these arms. This contributes added value and is an important tool for control and investigation purposes. The Commission should provide the authorities with support to ensure real-time access to these registers in all Member States, making it easier to gather evidence and enabling the quick, efficient exchange of information in order to identify and locate firearms.

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<sup>(9)</sup> Alpers, Philip, Marcus Wilson, Amélie Rossetti and Daniel Salinas, 2016, *Guns in the United Kingdom: Total Number of Gun Deaths*, Sydney School of Public Health, The University of Sydney. GunPolicy.org, 23 February. Accessed 10 March 2016, at: [http://www.gunpolicy.org/firearms/compareyears/192/total\\_number\\_of\\_gun\\_deaths](http://www.gunpolicy.org/firearms/compareyears/192/total_number_of_gun_deaths)

<sup>(10)</sup> Julian Santaella-Tenorio, Magdalena Cerdá, Andrés Villaveces and Sandro Galea, *What Do We Know About the Association Between Firearm Legislation and Firearm-Related Injuries?* Published by Oxford University Press on behalf of the Johns Hopkins Bloomberg School of Public Health.

4.6 Semi-automatic firearms for civilian use which 'resemble weapons with automatic mechanisms' are also classified as prohibited. The term 'resemble' is not sufficiently objective since clear criteria must first be established as to what types of 'resemblance' would warrant these weapons being classified as prohibited firearms.

4.7 Alarm and signal weapons, salute and acoustic weapons as well as replicas are now to be classified under Category C as subject to declaration. Although this is already the case under the laws of some countries, the EESC is not sure that it is appropriate since, in addition to the fact that the UN Protocol does not classify them as firearms, in those countries whose legislation does not yet make it mandatory to declare them, this will entail significant administrative costs for a type of weapon that does not seem to present a particularly significant public safety risk.

4.8 The public safety risks presented by these and other weapons, such as air guns, should be assessed in a study on the hazards they entail and the possibilities of converting them into more lethal weapons. This study could serve as a basis for new technical and legal rules on the safety, transformation, conversion, deactivation and destruction of weapons.

4.9 In a digital society it is important to consider the danger presented by online weapons and ammunition trading. Facebook and Instagram have announced restrictions on the sale of weapons on their social networks, banning their users from advertising or dealing in weapons through posts, discussion groups or private messages. The EESC believes that, despite provisions that only dealers and brokers will be allowed to trade in certain weapons and ammunition online, only face-to-face transactions should be authorised in order to ensure strict control by the relevant authorities.

4.10 Technological innovation has brought with it the advent of 3D printers. Weapons have not been excluded from this technology and instructions and programmes for printing lethal weapons soon appeared on the internet. In the absence to date of legislation to regulate the printing of weapons, this technology constitutes a real threat which has yet to be given the importance it deserves. Nations must come together to discuss this issue, monitor the network and even control the acquisition of materials used to produce these types of weapons, and give serious thought to banning their production.

4.11 Under the directive, the Member States would be able to authorise bodies concerned with the cultural and historical aspects of weapons, and recognised as such, to keep in their possession category A firearms acquired before the date of entry into force of the directive, provided they have been deactivated. The EESC believes that special arrangements for applying the directive should be envisaged in the case of collections held in museums whose activities are recognised as being of importance by the Member States, provided that safety and public order are not jeopardised. Such arrangements would impose strict rules regarding the display, registration, storage and handling of weapons, but would prevent the destruction of Category A firearms of significant historical value.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council relating to certain aspects of company law (codification)’**

**(COM(2015) 616 final — 2015/0283 (COD))**

(2016/C 264/10)

**Rapporteur: Jorge PEGADO LIZ**

**Co-rapporteurs: Roger BARKER and Christophe LEFÈVRE**

On 29 April 2016, the Council decided to consult the European Economic and Social Committee, under Article 50(1) and (2)(g) of the Treaty on the Functioning of the European Union, on the:

*Proposal for a Directive of the European Parliament and of the Council relating to certain aspects of company law (codification)*

(COM(2015) 616 final — 2015/0283 (COD)).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 223 votes to 2, with 8 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC fully supports the consolidation, codification and thereby simplification of the text of the proposal relating to certain aspects of company law (COM(2015) 616 final), which is in line with what it has suggested on several occasions in its opinions.

1.2 Having closely examined each of the consolidated texts and each of the proposals for new codified texts, the EESC can confirm that it found no formal errors, with the exception of the minor issues mentioned in point 4.2.

1.3 The EESC recommends that the correlation table that appears in Annex IV be drawn up with two entries, enabling the new articles to be compared with the old articles, not just the old ones with the new ones.

1.4 The EESC would also have wished for a more ambitious exercise that aimed to codify aspects that are still spread across other legislative instruments, particularly those referred to in the directives listed in point 4.4.

1.5 When the new text is revised, the Committee calls for the proposals it has issued over the years regarding each of the directives covered by the Commission exercise, particularly in the opinions referred to in point 4.8, to be duly taken into account.

## **2. Objective and purpose of the Commission proposal**

2.1 The explanatory memorandum of the Commission proposal (COM(2015) 616 final of 3 December 2015) states that:

‘The purpose of this proposal is to undertake a codification of Sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC), Eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC), Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies, Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.’

2.2 As this is a codification exercise, the Commission stresses that 'the new Directive will supersede the various acts incorporated in it; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself', which does not preclude this codification from being undertaken 'in full compliance with the normal procedure for the adoption of acts of the Union.' This observation justifies the EESC opinion, even if this is a 'fast-track procedure (...) for the fast-track adoption of codified instruments' as provided for by 'an interinstitutional agreement dated 20 December 1994' between the European Parliament, the Council and the Commission, which is still in force and which has been reinforced by the latest interinstitutional agreement concluded between those institutions <sup>(1)</sup>.

2.3 The aim of this exercise of compiling, systematising and codifying European company law is to make EU standards governing this area of law easier to interpret, transpose, apply and implement.

2.4 In many of its opinions, the EESC has suggested, recommended and called for the European legislator to work towards this goal and has always supported its endeavours. The EESC must therefore unreservedly endorse the exercise initiated by the Commission in this proposal, as this is an area where simplification will benefit everyone: businesses, workers, consumers and the public at large but also and in particular judges, lawyers, solicitors and generally speaking anyone whose profession entails the application of company law.

### 3. Origin and development of company law in the European Union

3.1 The legal bases of an embryonic company law can be found in Articles 48 to 66 of the original Treaty of Rome of 1957, which founded the EEC. The idea of approximating national legislation on certain aspects of company law only appeared with the Treaty signed in Maastricht on 7 February 1992, in particular in the new wording of Articles 94 to 97 (from the Single European Act) on the approximation of laws with a view to completing the single market, and in the new wording of Articles 39 to 55 EC (replacing the former Articles 48 to 66 EEC).

3.2 Thus, from the first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent (OJ L 65, 14.3.1968, p. 8), dozens of directives, regulations and recommendations have sought to 'regulate' certain aspects of company law in Europe connected to the completion of the single market, either by approximating national laws or by trying to harmonise these laws, without ever purporting to create a real 'unifying code' of company law in Europe.

3.3 The exercise that the Commission is undertaking with this proposal does not even aim to codify all of the directives relating to the various aspects of company law. In fact, it only deals with the issues covered by the following six directives:

- the sixth Council Directive of 17 December 1982 based on Article 54(3)(g) of the Treaty, concerning the division of public limited liability companies (82/891/EEC),
- the eleventh Council Directive of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (89/666/EEC),
- Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies,
- Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent,
- Directive 2011/35/EU of the European Parliament and of the Council of 5 April 2011 concerning mergers of public limited liability companies,

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<sup>(1)</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-575.118%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>

- Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

3.4 This exercise was carried out on the basis of a preliminary consolidation of the text, in the 23 official languages, of Directives 82/891/EEC, 89/666/EEC, 2005/56/EC, 2009/101/EC, 2011/35/EU and 2012/30/EU and the instruments amending them, with the correlation between old and new numbering appearing in a correlation table in Annex IV to the future directive.

#### 4. Evaluation of the proposal

4.1 As pointed out above, the EESC fully supports the consolidation, codification and thereby simplification of the text resulting from this work.

4.2 Having closely examined each of the consolidated texts and each of the proposals for new codified texts, the EESC can confirm that it found no formal errors, with the exception of the following observations:

- the codification of recital 3 of Directive 2005/56/EC reads ‘specified’ instead of ‘laid down’,
- the second paragraph of Article 10 of Council Directive 89/666/EEC has not been codified in the proposal for a directive,
- in recitals 48, 62, 65, 66 and 80, the Commission should confirm whether the references to particular legislative texts actually correspond to the most recent measures adopted in the respective areas (e.g. the reference to the Market Abuse Directive in recital 48 should be replaced by a reference to the Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC)),
- the title of Chapter III should specify that the disclosure in question is made ‘to protect third parties’; if on the other hand the disclosure in question also benefits shareholders, then should Directive 2013/24/EU and Directive 2014/95/EU not also be mentioned in Article 13(f)?

4.3 The EESC recommends that the correlation table that appears in Annex IV be drawn up with two entries, enabling the new articles to be compared with the old articles, not just the old ones with the new ones.

4.4 The EESC would also have wished for a more ambitious exercise that aimed to codify aspects that are still spread across other legislative instruments, particularly those referred to in the following directives:

- Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies,
- Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies,
- Directive 2004/25/EC of 21 April 2004 on takeover bids,
- Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees,
- Directive 2009/102/EC of the European Parliament and of the Council of 16 September 2009 in the area of company law on single-member private limited liability companies,
- Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents,

- Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts,
- Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies.

4.5 In the Commission work programme for 2015 (COM(2014) 910 final, Annex III, point (45)), the Commission also announced the codification of Directive 2009/102/EC in the area of company law on single-member private limited liability companies.

4.6 The EESC welcomes the fact that the Commission took into account some recommendations of the working group dealing with the simplification of company law as part of the SLIM initiative on the simplification of the First and Second Company Law Directives, in Directives 2003/58/EC and 2006/68/EC.

4.7 The EESC has had the opportunity to draw up opinions on each of the directives covered by the Commission exercise, which have not always been wholly taken into account. The Committee would also like to see the Commission take due account, when revising the new text, of proposals which the Committee has already made over the years and which have not featured in the current exercise.

4.8 These include:

- Opinion of 24.9.1987, OJ C 319, 30.11.1987, p. 61, rapporteur: Mr Jean Pardon,
- Opinion of 28.4.2004, OJ C 117, 30.4.2004, p. 43, rapporteur: Ms María Candelas Sánchez Miguel,
- Opinion of 30.5.2007, OJ C 175, 27.7.2007, p. 33, rapporteur: Ms María Candelas Sánchez Miguel,
- Opinion of 25.2.2009, OJ C 218, 11.9.2009, p. 27, rapporteur: Ms María Candelas Sánchez Miguel,
- Opinion of 15.6.2011, OJ C 248, 25.8.2011, p. 118, rapporteur: Mr Miklós Pásztor,
- Opinion of 12.12.2012, OJ C 44, 15.2.2013, p. 68, rapporteur: Ms Lena Roussenova.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market**

**(COM(2015) 627 final — 2015/0284 (COD))**

(2016/C 264/11)

**Rapporteur: Mr Bernardo HERNÁNDEZ BATALER**

On 8 and 21 January 2016 respectively the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the:

*Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market*

(COM(2015) 627 final — 2015/0284 (COD)).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 162 votes to 6 with 1 abstention.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission's initiative to address 'cross-border portability'. Cross-border portability basically involves enabling users and consumers of audiovisual online content services, which they access legally in their country of residence, to continue to use these services when they are temporarily present in another EU Member State.

1.2 The Committee also agrees that a regulation is needed to address portability since it is a cross-border activity. It also makes sense to establish a period of *vacatio legis* after which clauses restricting portability in existing contracts would cease to apply. For this purpose, six months would be a reasonable period for the service providers concerned to adapt their delivery systems to the new situation.

1.3 The EESC considers it necessary for a subscriber's 'Member State of residence' to be clearly defined in order to ensure that the other Member States can be identified by default as countries where the subscriber is temporarily present. The simple reference in Article 2 to the 'Member State where the subscriber is habitually residing' may not be enough, and it could prove necessary to assess other criteria on temporary status, living environment, etc., by providing a non-exhaustive list of indicators to establish the time-related link based on residence. In any event, the Committee considers that where users qualify as customers or subscribers to a service and are shown to be linked to a Member State and identified by their IP address or internet connection or other equivalent indicator, this should ensure cross-border portability.

1.4 Regarding the nature and conditions of portable services, it is clear that the proposal covers these services, whether paid for or free of charge, although in the latter case, always provided that the Member State is 'verified'. With particular regard to free services, the EESC believes that the portability of these services should be guaranteed if the Member State is 'verifiable', in other words, provided that it can be verified without incurring additional costs for the provider.

1.5 The legal provisions should explicitly state that any loss or deterioration in delivery affecting the range of services available, accessibility on devices and the number of users would constitute non-compliance. Minimum quality of access should also be ensured, and should at least be the same as the base or benchmark standard for local lines in the Member State where the user is staying, in order to avoid promoting unfair practices and conditions involving surcharges such as guaranteed 'premium' access. Merely informing users about the standard of quality to expect cannot be considered sufficient. These obligations should also be explicitly mentioned in the legal provisions, and not only in the recitals of the regulation.

## 2. Introduction

2.1 The second priority of the European Commission's political guidelines of 15 July 2014 was the development of a 'Connected Digital Single Market'. This was the basis for adopting the Communication on *A Digital Single Market Strategy for Europe* <sup>(1)</sup>. The EESC issued an opinion supporting this priority <sup>(2)</sup> because it believed that it could give new impetus to digital policy in the European Union.

2.2 Essentially, the Commission was advocating 'preventing unjustified geo-blocking' so that EU consumers and businesses can take full advantage of the single market in terms of choice and lower prices.

2.3 The United Nations Conference on Trade and Development (Unctad) recently decided to adopt revised guidelines for consumer protection (UNGCP) in order to update them in light of recent technological developments, including e-commerce and 'digital consumption'. These are areas where greater protection for online privacy is needed and the principle of fair consumer protection must be incorporated.

2.4 With a view to developing the above-mentioned digital single market strategy, the Commission has also adopted a communication on the modernisation of copyright rules and on digital sales contracts and the supply of digital content, on which the EESC will set out its views.

2.5 The proposal for a regulation on cross-border portability also fits into this framework. It consists in enabling the users of online content services in a given EU Member State to access the same content while temporarily present in another Member State. Portability is seen as an important step towards providing users with broader access to audiovisual content. This is something which the Commission considers to be a key objective for developing the digital single market strategy.

2.6 EU subscribers to these types of services are currently finding them difficult or impossible to access while abroad, even if they are still in the EU, not for technological reasons but because of something quite different: the problem of geo-blocking, based on the licensing practices of right holders or the commercial practices of service providers. Cross-border portability is also hindered by the high roaming costs which European consumers and users are being charged and which will soon be a thing of the past thanks to the Commission's proposal.

## 3. Gist of the proposal

3.1 The purpose of the proposed regulation under consideration, as set out in Article 1, is to ensure the cross-border portability of online content services in the internal market. In other words, any user in the Union who receives online content legally in their country of residence should also be able to access this content while temporarily present in another Member State.

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<sup>(1)</sup> COM(2015) 192 final.

<sup>(2)</sup> OJ C 71, 24.2.2016, p. 65.

3.2 Article 2 sets out various definitions concerning the nature of the service and parties involved: ‘subscriber’, ‘consumer’, ‘Member State of residence’, ‘temporarily present’, ‘online content service’ and ‘portable’. Online content services are defined as audiovisual media services or services that give access to works, other protected subject matter or transmissions of broadcasting organisations. Provision of these services may be linear or on-demand, and either against payment or free of charge.

3.3 Article 3 of the proposal indicates that the requirement for providers of a portable service to enable portability in other States does not mean that they have to maintain the same quality standards provided in the Member State of residence, unless the provider expressly undertakes to guarantee them. The provider must, however, inform subscribers of the quality of the service delivered.

3.4 According to Article 4, the provision of a service, as well as access to and use of the service by a subscriber, is deemed to occur in the Member State of residence for the purposes of legislation on audiovisual media services, intellectual property and the protection of databases.

3.5 Article 5 establishes that contractual provisions between right holders and service providers and between service providers and subscribers that are contrary to existing requirements concerning cross-border portability shall be unenforceable. Right holders may require the service provider to make use of effective means to verify that the service is being provided in conformity with the regulation, provided that the means are reasonable and proportionate.

3.6 Article 6 specifies that subscribers’ personal data must be processed in compliance with the applicable EU legislation in this area (Directive 95/46/EC and Directive 2002/58/EC)<sup>(3)</sup>.

3.7 According to Article 7, the regulation will apply not only to contracts concluded after its entry into force, but also retroactively to contracts concluded and rights acquired before the date of its application if they are relevant to the provision of, access to or use of the service.

3.8 Article 8 sets the date from which the regulation will apply, namely six months following its publication.

#### 4. General comments

4.1 The Committee welcomes the Commission’s initiative to address ‘cross-border portability’, which basically involves enabling users and consumers to access audiovisual online content services registered in one EU Member State when they are temporarily present in another.

4.2 The EESC believes that this measure is an important aspect of the Commission’s strategy to establish a digital single market since it removes barriers to the free provision of services and free competition between businesses. Furthermore, since it covers commercial aspects, it can strengthen economic, social and territorial cohesion by facilitating the integration of different groups of organised civil society.

4.3 The proposal for a regulation published by the Commission on 9 December 2015 therefore seeks to remove obstacles to cross-border portability by requiring providers to allow this for services that are legally rendered and are portable within their domestic market.

4.4 The choice of legal instrument (a regulation) is justified by the supranational dimension of the activity to be regulated and the need for equivalent and simultaneous implementation across all Member States. The proposal is consistent with Article 56 TFEU, which provides that ‘restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended’.

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<sup>(3)</sup> OJ L 281, 23.11.1995, p. 31 and OJ L 201, 31.7.2002, p. 37.

4.5 The EESC agrees that the internal market (Article 114 TFEU) is the appropriate legal basis due to the scope and inherently cross-border nature of the services under consideration in the proposal for a regulation and the need for consistency with other EU policies, in particular with regard to the cultural aspects (Article 167 TFEU) and promoting consumer interests (Article 169 TFEU). It is important for the proposal to be interpreted in accordance with the right to respect for private and family life, and the rights to protection of personal data, freedom of expression and freedom to conduct a business.

4.6 The proposal covers content that is: distributed by broadcasting organisations or information society service providers; linear or on-demand; downloaded, streamed or delivered by other means; provided by large companies or by SMEs; against payment (subscription) or free of charge. In this last instance, the registered user's state of residence has to be verified (for example, via the IP address or internet connection). Cross-border transactions of other goods and services are not covered by the regulation where the strictly audiovisual content is merely incidental.

4.7 The objective of the proposal for a regulation is to meet public needs and expectations concerning the digital environment more effectively as it will enable EU consumers to use audiovisual content which they are entitled to access when travelling between EU countries. It thus develops the market in audiovisual content whilst maintaining a high level of protection for right holders (of copyright and related rights), as well as facilitating the transmission of major events and information.

4.8 The Commission stresses the benefits that the initiative can provide in this respect for consumers and, in the long term, for suppliers. The preamble to the proposed regulation states that cross-border portability does not merely contribute to promoting the interests of consumers. It also has a number of advantages for the holders of creative and performance rights and of rights pertaining to reproduction, communication to the public and making audiovisual content available, by providing holders with greater legal certainty and enabling them to respond better to users' expectations.

4.9 In any event, the Commission places particular emphasis — undoubtedly in response to concerns raised by providers and right holders during the public consultation — on their rights and activities. To this end, it points out that: the proposal does not substantially affect the licensing of rights or business models; since contracts that are contrary to the obligation to provide for cross-border portability will be unenforceable, right holders and service providers will not be obliged to renegotiate contracts; and (with regard to premium audiovisual and sports content) portability does not extend the range of service users and as such does not challenge the territorial exclusivity of licences.

4.10 The legal provisions, and more particularly Article 5(2), should specify that in addition to being reasonable and not beyond what is necessary to achieve their purpose, the 'effective means' used to ensure the adequate delivery of online content services must also comply with or be consistent with the rights and principles enshrined in the Charter of Fundamental Rights of the European Union, which should be explicitly mentioned.

4.11 The delivery of services through cross-border portability is put on the same footing as delivery in the country of residence. This would be a 'legal fiction' for the purposes of copyright and related rights, reproduction, communication to the public, making content available or re-using it, content catalogue, range of devices, number of users permitted and range of functionalities. It should be specified that this must always be achieved with due regard to the principle of technological neutrality. The scope of application and the definitions set out in the proposal for a regulation also need to be clarified, especially with regard to defining its subjective scope. This must in any event be based on clear and identifiable criteria, which are necessary to ensure legal certainty and the predictability of the rules.

4.11.1 However:

— the obligation is restricted or subject to certain conditions of proportionality when this could involve disproportionate costs for service providers. This means that service providers are not obliged to provide for portability where the subscriber's country of residence is not verified;

- the obligation to ensure compliance with right holders' rights is also restricted; and
- above all, service providers do not need to take any measures to guarantee a similar quality of content delivery as in the country of residence unless they have explicitly undertaken to do so, but quality must not be below the standard of online access available in the country where the user is staying. The reason for this is that a quality guarantee could entail disproportionate additional costs for service providers arising from differences between the Member States' telecommunications capacity and infrastructure.

4.12 On this last point, the derogation from the obligation to ensure a certain standard of quality combined with the possibility of offering premium services that do guarantee this standard against payment of a surcharge could encourage service providers to adopt unfair practices. This would devalue or undermine the quality of the basic service, virtually transforming the content into a commodity whereas the profit is linked to charges for the service. The legal provisions of the regulation should at least explicitly mention that the quality provided must under no circumstance be below the standard of online access available in the country where the user is staying.

4.13 Finally, it should be noted that the Commission intends the regulation to be applied retroactively. This means that any terms and conditions in previously negotiated commitments that prevent or restrict portability will cease to apply. In addition, agreements between these parties to ensure the application of the principle of cross-border portability are encouraged.

4.14 The EESC proposes a new definition of 'partially portable' service which should be applied to quality-sensitive online services in cases when low quality of local internet makes online content service unusable for subscribers in particular areas. A similar application of this term has been presented on page 8 of the Impact Assessment <sup>(4)</sup>.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(4)</sup> SWD(2015) 270 final.

**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 575/2013 as regards exemptions for commodity dealers’**

**(COM(2015) 648 final — 2015/0295 (COD))**

(2016/C 264/12)

**Rapporteur: John WALKER**

On 12 January 2016 and on 18 January 2016, the Council and the European Parliament, 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 (EU) No 575/2013 as regards exemptions for commodity dealers*

(COM(2015) 648 final — 2015/0295 (COD)).

The Section for the Single market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 13 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 224 votes to 1, with 5 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC accepts the need to amend Capital Requirements Regulation (EU) No 575/2013 and approves the proposed amendments.

1.2 The EESC looks forward to giving its opinion on the revised Regulation in due course.

## **2. Introduction**

2.1 The following paragraphs, which are taken from the preamble to the draft Regulation, explain the requirement concisely.

2.2 Regulation (EU) No 575/2013 exempts investment firms whose main business consists exclusively of the provision of investment services or activities in relation to the financial instruments set out in points 5, 6, 7, 9 and 10 of Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council and to whom Council Directive 93/22/EEC did not apply on 31 December 2006 (‘commodity dealers’) from large exposures requirements and from own funds requirements. Those exemptions apply until 31 December 2017.

2.3 Regulation (EU) No 575/2013 also requires the Commission to prepare, by 31 December 2015, a report on an appropriate regime for the prudential supervision of commodity dealers. Furthermore, that Regulation requires the Commission to prepare a report on an appropriate regime for the prudential supervision of investment firms in general by the same date. Where appropriate, those reports are to be followed by legislative proposals.

2.4 The review of the prudential treatment of investment firms (‘investment firms review’), including commodity dealers is currently underway but has not been completed yet. The finalisation of the review and the adoption of new legislation that may be required in light of that review will be concluded only after 31 December 2017.

2.5 Under the existing regime, after 31 December 2017 commodity dealers will become subject to the large exposures requirements and own funds requirements. This could force them to significantly increase the amount of own funds that they need to have in order to continue their activities and could therefore increase the related costs of performing those activities.

2.6 The decision to apply large exposures requirements and own funds requirements to commodity dealers should not come as a result of a lapsed exemption. Instead, that decision should be a thoroughly reasoned one, based on conclusions of the investment firms review, and clearly expressed in legislation.

2.7 A new time limit until which the exemptions apply should therefore be established. Regulation (EU) No 575/2013 should be amended accordingly.

### 3. EESC perspective

3.1 The EESC accepts the fact that the Regulation contains nothing more than an amendment to change the deadline, as per paragraph 2.7 above, from 31 December 2017 to 31 December 2020.

3.2 The EESC regrets that the Commission has not been able to meet the deadlines it set itself, referred to in paragraph 2.4 above. However, it considers that prudential requirements should be established by detailed analysis and review. The exemptions presently available to Commodity Brokers should not be removed simply because an arbitrary deadline has been missed.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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**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(2016) 25 final — 2016/0010 (CNS))**

**and the**

**proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market**

**(COM(2016) 26 final — 2016/0011 (CNS))**

(2016/C 264/13)

**Rapporteur: Petru Sorin DANDEA**

**Co-rapporteur: Roger BARKER**

On 9 and 10 February 2016, the Council decided to consult the European Economic and Social Committee, under Articles 113 and 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(2016) 25 final — 2016/010 (CNS))

and the

*Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market*

(COM(2016) 26 final — 2016/011 (CNS)).

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 14 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 28 April 2016), the European Economic and Social Committee adopted the following opinion by 126 votes with 7 abstentions.

## **1. Conclusions and recommendations**

1.1 The EESC welcomes the Commission's initiative which proposes to implement the rules set out in the OECD's BEPS action plan uniformly across the Member States. This initiative helps combat aggressive tax planning, a practice used by some multinational corporations which erodes Member States' tax bases by an estimated EUR 50 to 70 billion each year.

1.2 The Committee takes the view that, in order to safeguard the competitiveness of European businesses, the attractiveness of the EU as an investment location and the consistency of the international tax system in this period of slow and fragile post-crisis economic recovery, the measures taken should align with what has actually been agreed at OECD level and implemented by other international partners.

1.3 In the Committee's view it is important to strive to establish a genuine level playing-field and a uniform system that is implemented in the same way in all Member States. The risk of fragmentation should be contained, since this could now compromise the effectiveness of the measures proposed.

1.4 The EESC considers that financial corporations should not be excluded from the scope of the anti-tax-avoidance directive. The EESC recommends that the Commission and the Member States step up international negotiations in the framework of institutions such as the OECD or the G20, to ensure uniform implementation at EU and OECD levels and also explore whether and how the proposed rules can also be applied to financial corporations.

1.5 The EESC supports the proposal and suggest that Member States should agree to settlement through staggered payments only when the transfer is not intended solely to reduce the corporation's tax bill.

1.6 The EESC recommends that the switch-over clause should be applied directly to all taxpayers who have generated income in jurisdictions acknowledged to be tax havens.

1.7 The EESC supports the rules on controlled foreign companies set out in the proposal for a directive.

1.8 Given that aggressive tax planning is largely carried out by large multinational corporations, the EESC considers that the anti-tax-avoidance directive and the directive on administrative cooperation should not apply to SMEs.

1.9 Given the requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC recommends that the Commission include in the provisions of the directive on administrative cooperation the requirement that Member States disclose the reports on financial results which will be subject to the automatic exchange of information.

1.10 The EESC urges the Commission to finish drawing up the list of countries or regions which refuse to apply good governance standards in tax matters. The EESC considers that this list should be flanked by penalties applicable to corporations which continue to operate in these jurisdictions.

1.11 The EESC recommends that the Commission and the Member States set a shorter deadline for implementing these rules which implement the commitments made during the negotiations on the OECD's BEPS process uniformly across the EU.

1.12 Given the potential impact on the investment climate in Europe, the EESC would have welcomed an impact assessment in the draft directive, as is standard practice in proposals where substantive changes are proposed.

## 2. The European Commission proposal

2.1 In January 2016, the European Commission presented the anti-tax-avoidance package, part of the Agenda for fairer, more transparent and more effective corporate taxation <sup>(1)</sup>.

2.2 The package comprises an umbrella communication <sup>(2)</sup> setting out the political, economic and international backdrop to the fight against aggressive tax planning, and the main components of the package: a proposal for an anti-tax-avoidance directive <sup>(3)</sup>, a proposal for a directive amending the directive on administrative cooperation <sup>(4)</sup> (DAC), a Commission recommendation on tax treaties <sup>(5)</sup> and a communication on the EU's external strategy <sup>(6)</sup> on cooperation with third countries in the area of tax governance.

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<sup>(1)</sup> [http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/anti\\_tax\\_avoidance/timeline\\_without\\_logo.png](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/anti_tax_avoidance/timeline_without_logo.png)

<sup>(2)</sup> COM(2016) 23 final.

<sup>(3)</sup> COM(2016) 26 final.

<sup>(4)</sup> COM(2016) 25 final.

<sup>(5)</sup> C(2016) 271 final.

<sup>(6)</sup> COM(2016) 24 final.

2.3 The umbrella communication sets out the political, economic and international backdrop to the anti-tax-avoidance package. The package includes measures to transpose parts of the OECD's BEPS (Base Erosion and Profit Shifting) action plan as well as some additional new measures at EU and Member-State levels.

2.4 The proposal for an anti-tax-avoidance directive lays down rules against tax avoidance practices that directly affect the functioning of the internal market. They address deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules, and a framework to tackle hybrid mismatches.

2.5 The proposal for a directive amending the directive on administrative cooperation contains measures to implement Action 13<sup>(7)</sup> of the OECD's BEPS action plan in the Member States. These address improving the mechanism for the automatic exchange of information between Member State tax administrations and include information on year-end results for multinational corporations among the types of information to be exchanged.

2.6 The Commission recommendation included in the anti-tax-avoidance package addresses reinforcing the provisions of the tax treaties signed by the Member States in order to reduce aggressive tax planning practices.

2.7 The Commission communication on the external strategy sets out a tighter and more consistent framework for relations with third countries in the area of tax good governance.

### 3. General and specific comments

3.1 The Committee takes the view that, in order to safeguard the competitiveness of European businesses, the attractiveness of the EU as an investment location and the consistency of the international tax system in this period of slow and fragile post-crisis economic recovery, the measures taken should align with what has actually been agreed at OECD level and implemented by other international partners.

#### *The anti-tax-avoidance directive*

3.2 In the Committee's view it is important to strive to establish a genuine level playing-field and a uniform system that is implemented in the same way in all Member States. The risk of fragmentation should be contained, since this could now compromise the effectiveness of the measures proposed.

3.3 The proposal for a directive calls for the uniform implementation across the Member States of the rules set out in the OECD's BEPS action plan<sup>(8)</sup>, which aims to combat aggressive tax planning at global level. As it has pointed out in previous opinions<sup>(9)</sup>, the EESC welcomes the Commission's initiative and supports its efforts to combat aggressive tax planning, a practice used by some multinational corporations which erodes Member States' tax bases by an estimated EUR 50 to 70 billion each year.

3.4 The EESC endorses proposed rules limiting the deductibility of interest payments in the corporate sector. However, it is important that the EU rules are in line with OECD rules and their implementation in the United States and other significant economic jurisdictions. An internationally-coordinated approach would help curb the aggressive tax planning activities of certain multinational corporations that pay 'inflated' interest to subsidiaries located in low-tax jurisdictions. The EESC recommends that the Commission and the Member States step up international negotiations in the framework of institutions such as the OECD or the G20, to ensure uniform implementation at EU and OECD levels and also explore whether the proposed rules can also be applied to financial corporations.

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<sup>(7)</sup> <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>

<sup>(8)</sup> <http://www.oecd.org/ctp/beps-actions.htm>

<sup>(9)</sup> See EESC opinion *The fight against tax fraud and tax evasion* (OJ C 198, 10.7.2013, p. 34).

3.5 As regards the rules on exit taxation, the EESC supports the proposal and suggests that Member States should agree to settlement through staggered payments only when the transfer is not intended solely to reduce the corporation's tax bill.

3.6 The EESC recommends that the switch-over clause should be applied directly to all taxpayers who have generated income in jurisdictions acknowledged to be tax havens.

3.7 The EESC supports the rules on controlled foreign companies set out in the proposal for a directive.

3.8 Given the damage done to Member States' tax bases by aggressive tax planning, the EESC recommends that the Commission and the Member States set as short a deadline as possible for implementing the directive in respect of those elements which are in line with commitments made in the BEPS process as part of the OECD/G20 agreements. The EESC considers the three-year deadline set by the proposal for a directive to be excessive.

3.9 Given the potential impact on the investment climate in Europe, the EESC would have welcomed an impact assessment in the draft directive as is standard practice in proposals where substantive changes are proposed.

#### ***Directive amending the Directive on administrative cooperation (DAC)***

3.10 Given the serious impact of tax fraud and tax evasion, the EESC endorses the rules laid down by the proposal for a directive amending the Directive on administrative cooperation. Reports on corporations' financial results are included in the categories of information subject to automatic exchange of information between Member State tax administrations, which will enhance the effectiveness of this instrument which is used to combat tax fraud, tax evasion and aggressive tax planning.

3.11 The EESC considers that the reports referred to in the proposal for a directive should not be demanded from SMEs — where they would impose a disproportionate cost impact — but remain limited to the category of large multinational corporations referred to in the proposal. Limiting this requirement to multinational corporations with a consolidated revenue exceeding a certain amount could prove counterproductive and discriminatory.

3.12 The changes proposed by the proposal for a directive promote the uniform transposition of Action 13 of the OECD's BEPS action plan across the Member States. The EESC endorses the Commission's position whereby aggressive tax planning can only be combated at global level.

3.13 Given the repeated requests from civil society organisations for greater transparency with regard to the taxation of multinational corporations, the EESC recommends that the Commission include in the provisions of the directive the requirement that Member States disclose the data presented in the reports which will be subject to the automatic exchange of information.

#### ***Commission recommendation on tax treaty abuse***

3.14 The Commission recommendation aims to transpose Actions 6 and 7 of the OECD's BEPS action plan which propose changes to the Model Tax Convention with a view to reducing the possibility of abuse by multinational corporations.

3.15 The EESC supports the two anti-abuse clauses proposed by the Commission in the recommendation. Including these clauses in the treaties signed by the Member States both with other Member States and with third countries will significantly reduce the possibility that revenue generated by multinational corporations will evade taxation through treaty shopping.

#### ***Communication on an external strategy for effective taxation***

3.16 The Commission communication comprises the external EU strategy on effective corporate taxation, in view of the global nature of tax evasion and aggressive tax planning. The EESC endorses the approach taken by the Commission.

3.17 The Commission proposes to coordinate the approach taken by the Member States to third countries, as regards issues linked to tax transparency. The EESC endorses the Commission's position, given that piecemeal implementation of standards of tax good governance by the Member States with regard to third countries has not delivered convincing results in the fight against aggressive tax planning.

3.18 Given the pace of change in the global tax environment, the EU's criteria for tax good governance need to be updated. The Commission has proposed new criteria for tax good governance in Annex I to the communication. The EESC welcomes the Commission's initiative and encourages the Council to approve the new criteria.

3.19 The EESC has endorsed <sup>(10)</sup> the notion of an EU list of jurisdictions which refuse to apply good governance standards in tax matters. Currently, most Member States have their own systems of lists and penalties for financial transactions involving these jurisdictions. The EESC considers that an EU list with clear criteria for identifying uncooperative jurisdictions and penalties uniformly applicable by all Member States would be a much more effective instrument for combating tax evasion and aggressive tax planning. The EESC therefore endorses the measures set out by the Commission in this strategy.

Brussels, 28 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(10)</sup> See EESC opinion *Tax transparency package* (OJ C 332, 8.10.2015, p. 64).

**Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Closing the loop — An EU action plan for the circular economy’**

(COM(2015) 614 final)

**‘Proposal for a directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste’**

(COM(2015) 596 final — 2015/0276 (COD))

**‘Proposal for a directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste’**

(COM(2015) 595 final — 2015/0275 (COD))

**‘Proposal for a directive of the European Parliament and of the Council amending Directive 1999/31/EC on the landfill of waste’**

(COM(2015) 594 final — 2015/0274 (COD))

and on the

**‘Proposal for a directive of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment’**

(COM(2015) 593 final — 2015/0272 (COD))

(2016/C 264/14)

**Rapporteur: Mr Cillian LOHAN**

On 2 December 2015, 14 December 2015 and 15 December 2015 respectively, the Commission, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 192(1), 114 (1) and 304 of the Treaty on the Functioning of the European Union, on the:

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Closing the loop — An EU action plan for the circular economy (COM(2015) 614 final)*

*Proposal for a directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (COM(2015) 596 final — 2015/0276 (COD))*

*Proposal for a directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste (COM(2015) 595 final — 2015/0275 (COD))*

*Proposal for a directive of the European Parliament and of the Council amending Directive 1999/31/EC on the landfill of waste (COM(2015) 594 final — 2015/0274 (COD))*

*Proposal for a directive of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment (COM(2015) 593 final — 2015/0272 (COD)).*

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April), the European Economic and Social Committee adopted the following opinion by 192 votes to 4 with 12 abstentions.

## 1. Conclusions and recommendations

1.1 The EESC is hopeful that the Commission's ambition to boost transition to a circular economy will be a first step to achieving a paradigm shift in behaviour and practice. It recalls its opposition to the withdrawal of the previous Circular Economy Package published in 2014.

1.2 The EESC also welcomes the fact that the Commission took on board some of its recommendations on the 2014 Package (the focus on the upstream part of the product lifecycle for example). However, there is room for improvement when it comes to the level of ambition of the package. The targets from the 2014 Package provided greater economic and environmental benefits<sup>(1)</sup>. The EESC recommends reinstating the targets of the 2014 Package on waste treatment, while making sure they can be cost-effectively achieved. Overall, the delay of 18 months does not seem warranted by the scope or ambition content of the new Package when compared to the previous Package.

1.3 Circular economy policies should ensure that circles are long-lasting, small, local, clean. For specific industrial activities the size of the loops can tend to be large.

1.4 The Commission's proposals do not address sufficiently the social and labour-related benefits and risks of the transition to a circular economy<sup>(2)</sup>. It does not provide for the necessary adaptation, through training and education, of the workforce. The most vulnerable sectors and workers need to be identified so that a full complement of supports structures can be established for them.

1.5 The EESC welcomes the inclusion of the mandatory reporting on use of adequate economic instruments to drive the achievement of the waste reduction targets but this should be applied in a broader context. The use of economic instruments to drive the transition should be made stronger and more systemic.

1.6 The Committee is willing to explore the feasibility of an open European platform for the circular economy bringing together stakeholders and civil society from the public, semi-public or private sectors involved in resource-efficiency, hosted by EESC. This platform would provide opportunities for exchanging and raising awareness around best practices.

1.7 Education in all its forms at all levels will form an essential part of the transition to a circular economy. This must include the identification of the training needs of workers who needs to be part of an immediate change as well as the longer term action of educating future generations.

1.8 The transition to the circular economy must deliver for the business community. Measures to support SMEs have been identified in NAT/652<sup>(3)</sup>. Access to finance will be an issue for SMEs and entrepreneurs wanting to take advantage of the opportunities that open up in the circular economy space.

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<sup>(1)</sup> SWD(2015) 259 final.

<sup>(2)</sup> OJ C 230, 14.7.2015, p. 99.

<sup>(3)</sup> OJ C 230, 14.7.2015, p. 99, in particular point 5.

1.9 The foreseen revision of the Eco-design Directive must take the full life cycle of the product into account, including: durability, reparability, availability/affordability of spare parts, unconditional disclosure of repair and service information by manufacturers. The EESC emphasises the need to have the principles of eco design applied to all manufacturing sectors. This would facilitate the economically and technically viable recovery of the raw materials and component parts of products as their use was discontinued. The example of electronic goods especially mobile phones is commonly used to highlight this.

1.10 More comprehensive labelling is required to include life expectancy of products. It is not enough to examine the possibility of the existence of planned obsolescence. The EESC reiterates its call on policy-makers to consider a total ban on products with built-in defects designed to end the product's life <sup>(4)</sup>.

1.11 Behaviour change can be best achieved through clear price signals, *i.e.* by offering convenience and competitive pricing to consumers. Products or services which adhere to the principles of circularity should be differentiated in price in a clear way on the basis of availability/scarcity of resources or how the product is designed. These can initially be achieved through Extended Producer Responsibility (EPR) schemes and/or green taxation. The EESC emphasises the importance of viability testing of any new measure.

1.12 The EESC welcomes the introduction of minimal requirements for EPR schemes; however, it is necessary to further clarify roles and liabilities of the various stakeholders along the chain. The EPR schemes should be mandatory for adoption by Member States.

1.13 Support mechanisms that allow poorer people access to higher quality (and initially higher cost) goods and services need to be developed. These may include a government-backed lending scheme, or a manufacturer-backed financing scheme exclusively applied with lower rates to products with a certain minimum life expectancy, and designed to incorporate all elements of circularity.

1.14 Specific policy tools such as deposit return schemes and integrated management systems have been shown to be effective and should be encouraged as part of the package. Reduced rates or exemption on VAT for recycled products as well as reuse and repair activities can incentivise entrepreneurs to be active in this space, and offer consumers a competitively priced product, which will help promote widespread behavioural change. Subsidies should shift to support use of secondary raw materials, and encourage the application of the principles of eco-design across all manufacturing sectors.

1.15 Governments and their institutions should take a lead role in applying Green Public Procurement to all purchases of products and services within their power. The greenest option should be chosen by default, with any other option requiring justification.

1.16 Separate collection of waste streams is critical for achieving circularity. The addition of the binding requirement to immediately provide a separate collection for bio waste is welcomed. The requirement in the directive should be strengthened for all separate collection, so that it becomes mandatory unless a specific exemption is granted where there is a practical feasibility constraint.

1.17 Food waste reduction can only be achieved with the inclusion of milestones along the road to reaching the SDG No 2. The development of a mechanism to quantify food loss and waste should be included in the annex with a specific deadline, building on the work already done <sup>(5)</sup>.

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<sup>(4)</sup> OJ C 67, 6.3.2014, p. 23.

<sup>(5)</sup> See for instance the FP7 EU FUSIONS project: <http://www.eu-fusions.org/index.php>

1.18 Circular economy concepts cannot develop in isolation. There is a need for an oversight body, such as the Resource Efficiency Platform, with a remit to ensure that other sectoral strategies coming from the Commission are in harmony with the principles of a circular economy.

1.19 The Semester process through the Country Specific Recommendations can be used to ensure implementation at Member State level, and ensure prioritisation of a transition to a circular economic model.

## 2. Introduction

2.1 On 2 December 2015, the European Commission unveiled a revised package on the circular economy. The proposals include a non-legislative section including a Communication *Closing the loop — An EU action plan for the Circular Economy* and a section proposing a series of modifications to the European existing legislation on waste treatment and recycling.

2.2 The new proposals replace the previous package which the European Commission, headed by José Manuel Barroso, issued in July 2014 in the framework of the EU2020 Flagship Initiative 'A Resource Efficient Europe'. The new package has some improvements — in particular, it is more comprehensive and covers all stages of the product lifecycle — and some areas where ambition has been reduced. There is a danger that the package becomes recycling focussed, and does not introduce policy tools that match the desire to achieve a new economic model of circularity. Increased recycling rates are not synonymous with a more circular economy. Overall, the delay of 18 months does not seem warranted by the scope or ambition content of the new package when compared to the previous package.

## 3. General comments

3.1 Switching from a linear extract-transform-use-throw away economy to a circular one where waste can be turned into resources is a critical challenge for Europe. It makes the economy more sustainable and reduces its environmental footprint through better resource management, reduced extraction and pollution; it also enables businesses to gain a competitive edge thanks to a better management of raw materials, while making the economy less dependent on imported — potentially critical and rare — materials; it also provides new economic opportunities and new markets, within and outside Europe, and leads to the creation of new local jobs.

3.2 The recognition of the need to transition to a circular economy is welcome. The challenge is to achieve a systemic change if the full potential of the multiple economic and social benefits are to be realised. Policies in favour of a circular economy should ensure that the loops are durable, small, local, clean. However, the size of the loops can be variable. In a circular economy using is more important than owning; product-service systems and collaborative consumption patterns can contribute in a very positive way in this respect and will be further developed in two upcoming EESC opinions. A circular economy is not just a linear economy where we try to feed the waste back in to production but aims to achieve a complete reshuffle of the economy, where the very concepts of liability and ownership need to be redefined. Such elementary changes must be implemented while being cognisant of the interconnected global context of the existing economic model. It is rarely fruitful to act only at a regional level when dealing with global issues and a global initiative needs to be started.

3.3 The effects on the economy from a transition to a circular economy must be continually analysed. As outdated business practices become obsolete those most affected must be identified and offered the support to ensure a just and fair transition to a circular economy. The social and labour-related benefits and risks must be addressed <sup>(6)</sup>.

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<sup>(6)</sup> OJ C 230, 14.7.2015, p. 99, in particular point 4.

3.4 There is a lack of economic instruments to drive the transition. The EESC has identified the need for a combination of market-based instruments and regulatory instruments to achieve a resource efficient economy <sup>(7)</sup>. Article 4.3 requires Member States to make use of economic instruments, and includes a reporting mechanism at 18 months and again after 5 years. This could be strengthened to include a 3 year interim report and a recommendation to use green taxation. The development of best practice instruments in Member States should be shared and adoption encouraged through the European Semester process.

3.5 The Commission needs to provide more clarity about the coherence of different action plans issued in previous years and their interrelation in terms of hierarchy and cross compliance: the Roadmap to a Resource Efficient Europe <sup>(8)</sup>, the 7th Environment Action Programme (EAP) to 2020 <sup>(9)</sup> and the EU Action Plan for the Circular Economy. Many of the activities brought forward by the recent Action Plan have already been mentioned in the previous initiatives. A full assessment of the successes and failings of previous initiatives is critical.

3.6 The Circular Economy package is a step in the right direction. However, a critical question remains: is the sum of the measures sufficient to shift European economies from the current development path (which will also increase resource efficiency) to a truly circular model which would decouple economic prosperity from the use of natural resources (absolute decoupling) and multiply economic and social benefits <sup>(10)</sup>? The action plan needs to be suited to addressing the underlying systemic challenges and create a sufficient framework to start the transition <sup>(11)</sup>.

3.7 The EESC welcomes the impact assessment which accompanies the Commission's legislative proposals on waste <sup>(12)</sup>. The reduced benefits in terms of economics, employment and emissions reduction of this Package over the withdrawn Package are noted. A cost benefit analysis on the non-legislative Action Plan would be useful in identifying the most effective and proportionate measures to achieve a transition to a circular economy <sup>(13)</sup>.

3.8 Implementation is the key to success. The EESC calls for a specific body responsible for coherence and for cross compliance, similar to the Resource Efficiency Platform <sup>(14)</sup> which fed into the 7th EAP and the Circular Economy Package.

3.9 The Committee acknowledges the efforts of the Commission to involve a broad range of stakeholders and experts, as called for in the opinion NAT/652 <sup>(15)</sup>. The transition to a circular economy is a long-term process and needs ownership at all levels and sectors. The Commission underlines its intention to actively engage stakeholders in the implementation of the Action Plan <sup>(16)</sup>; the detail of this will be critical.

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<sup>(7)</sup> OJ C 226, 16.7.2014, p. 1.

<sup>(8)</sup> COM(2011) 571 final.

<sup>(9)</sup> Decision 1386/2013/EU.

<sup>(10)</sup> Ellen MacArthur Foundation, McKinsey, *Growth within: A circular economy vision for a competitive Europe*, p. 32, p. 39, [http://www.mckinsey.com/client\\_service/sustainability/latest\\_thinking/growth\\_within\\_-\\_a\\_circular\\_economy\\_vision\\_for\\_a\\_competitive\\_europe](http://www.mckinsey.com/client_service/sustainability/latest_thinking/growth_within_-_a_circular_economy_vision_for_a_competitive_europe)

<sup>(11)</sup> For systemic challenges, see European Environment Agency, *The European environment — State and Outlook 2015*, synthesis report, 2015, p. 141, <http://www.eea.europa.eu/soer>

<sup>(12)</sup> SWD(2015) 259 final

<sup>(13)</sup> Proposed examples for reference include: Ellen MacArthur Foundation, McKinsey, *Growth within*, *op. cit.*, p. 34, table 1, selected literature on the macroeconomic impact of the circular economy, including *Circular Economy & Benefits for Society*, report by the Club of Rome, October 2015 (EN), <http://www.clubofrome.org/?p=8851>

<sup>(14)</sup> [http://ec.europa.eu/environment/resource\\_efficiency/re\\_platform/index\\_en.htm](http://ec.europa.eu/environment/resource_efficiency/re_platform/index_en.htm)

<sup>(15)</sup> OJ C 230, 14.7.2015, p. 99, point 1.3.

<sup>(16)</sup> COM(2015) 614/2, p. 20.

3.10 The EESC repeats its offer put forward in its NAT/652 opinion for the Committee to actively promote networks of civil society actors advocating the transition to a circular economy model and also explore the setting up and management of a European forum for the circular economy. There are a number of existing forum which offer a technical sectoral perspective. The EESC is well positioned to offer a visible forum to facilitate key stakeholder reporting and engagement on the circular economy. This can be organised in collaboration with the Commission to establish a cross sectoral, multi stakeholder engagement platform. The EESC already has a Migration Forum which may form a suitable model to replicate.

3.11 The role of workers in the transition and after transition in a circular economy model and creation of quality jobs are critical. The EESC stated its position<sup>(17)</sup> that *despite the Green Employment Initiative<sup>(18)</sup> the withdrawn Package didn't sufficiently address the specific socioeconomic benefits and challenges of the circular economy*. This still holds true for the 2015 Package. Industries and businesses that will be affected negatively by the transition must be the focus of some of the support in order to ensure a just transition. Workers must be protected, and allowed to benefit from the many opportunities<sup>(19)</sup> afforded by the new circular model.

3.12 Education needs to extend to all levels from primary schools to companies, SMEs, investors and financiers. Education and training need to be linked in a coherent program that addresses the identified socioeconomic challenges. Education will be one of the drivers of wholesale behaviour change and can help establish a new generation of responsible consumers with accurately priced, convenient, high quality, ethical consumption options.

3.13 The transition to the circular economy must deliver for the business community. Measures to support SMEs have been identified in NAT/652<sup>(20)</sup>. Access to finance will be an issue for SMEs and entrepreneurs wanting to take advantage of the opportunities that open up in the circular economy space. The Cohesion fund, European Structural and Investment Funds, the European Strategic Investment Fund, as well as thematic funds such as LIFE and COSME, are a possible source of financing, and within these, specific financing options should be made available.

## 4. Specific comments

### 4.1 Production

4.1.1 The expected revision of the Eco-Design Directive<sup>(21)</sup> must take the full life cycle of the product into account, including: durability, planned obsolescence (or 'life expectancy'), reparability, availability/affordability of spare parts, unconditional disclosure of information by manufacturers.

4.1.2 The Eco-Design Directive currently only applies to energy-related products. In previous publications<sup>(22)</sup>, mobility, housing and food have been identified as being responsible for 70-80 % of the adverse environmental impact. This highlights the need for the eco-design principle to be applied across all sectors. This is a critical cross cutting element. In particular, for development of regional SMEs in the opportunistic areas of repairing, reusing, preparing for reuse and recycling, the source material needs to have been designed with multiple varied uses and dismantling and reprocessing in mind.

<sup>(17)</sup> OJ C 230, 14.7.2015, p. 99, point 4 and OJ C 230, 14.7.2015, p. 91, points 1.5 and 4.8.

<sup>(18)</sup> COM(2014) 446 final.

<sup>(19)</sup> European Parliament, *Leasing Society*, November 2012, study available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/492460/IPOL-ENVI\\_ET%282012%29492460\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/492460/IPOL-ENVI_ET%282012%29492460_EN.pdf)

<sup>(20)</sup> OJ C 230, 14.7.2015, p. 99, in particular point 5.

<sup>(21)</sup> 2009/125/EC.

<sup>(22)</sup> COM(2011) 571 final, *Resource-Efficiency Roadmap*, chapter 5.

4.1.3 Extended Producer Responsibility (EPR) schemes should take fully into consideration all the loops. It is recognised that regulating material efficiency is a more complex matter than energy efficiency but the challenge must be met with an innovative approach. New EPR incentives must ensure that they translate into a substantive change in behaviour at the producer level, which translates into consumer level behaviour change. Manufacturers should be obliged to communicate the expected lifetime of their products.

4.1.4 SME-friendly sectoral symbiosis on the basis of local economic and social ecosystems with the support of regional green industry policies will need support and promotion in the delivery phase of the transition. The first phase of circularity will involve regional economies with a multitude of SMEs. Increased use of industrial by-products as raw materials for other industries shall contribute to a more efficient use of resources. Information is lacking on how the Commission will use the amended Article 5 of Directive 2008/98/EC on waste in order to achieve this objective.

4.1.5 The circular economy can develop further, at a later stage, to support Europe's sustainable reindustrialisation. A developmental phase with a clear industrial dimension, based on standardisation, to ensure it can be an efficient, large-scale model has potential to emerge.

4.1.6 A genuine circular economy focuses on ownership and liability. Producers should be encouraged to develop functionality-based business models where leasing and selling goods as services become a standard practice, where all costs are internalised. This is the link between production of goods and services for a circular model with the establishment of a 'performance economy' where business models take full consideration of resource scarcity.

4.1.7 The potential of reuse and repair activities in terms of economic activities and local job creation could be better exploited through better cooperation with products' manufacturers. In particular information on products and availability and affordability of spare parts during a minimum amount of time after the product is introduced on the market are key elements which could help repair and reuse operators expand. Voluntary schemes for better cooperation involving manufacturers should be encouraged and legal requirements for disclosure of information on products could be explored. Similarly, reuse and repair operators should have an easier access to end-of-life products to drive innovation and job creation in the sector.

4.1.8 The EESC welcomes the fact that the Commission views built-in obsolescence as an issue to address. Planned obsolescence can be effectively countered by promoting innovative business models which are services/performance focussed. In a previous opinion dedicated to sustainable consumption and products' lifetime<sup>(23)</sup>, the Committee called on policy-makers to consider a total ban on products with built-in defects designed to end the product's life. A mere Horizon 2020 testing programme to identify planned obsolescence practices, as put forward in the Action Plan, is insufficient to fully address this issue. The EESC calls on the Commission to rapidly come forward with more ambitious proposals.

## 4.2 Consumption

4.2.1 Behaviour change can be achieved by offering convenience and competitive pricing to consumers. Products or services which adhere to the principles of circularity should be differentiated in price on the basis of availability/scarcity of resources or how the product is designed. These can initially be achieved through EPR schemes and/or green taxation. The EESC emphasises the importance of viability testing of any new measure.

4.2.2 The EESC looks forward to the Commission proposal to rationalise green labels and prevent false green claims. Accurate labelling of the critical information required by purchasers will facilitate better choices being made by consumers and allow decisions to be made by consumers on truly comparable aspects of a product. For example, a more expensive initial price for a kitchen appliance may actually be the more economical choice over time due to longevity, quality and the performance of the appliance.

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<sup>(23)</sup> OJ C 67, 6.3.2014, p. 23. See also SIRCOME agency, University of South Brittany and University of South Bohemia, *The Influence of Lifespan Labelling on Consumers*, study commissioned by the EESC, March 2016.

4.2.3 The access and affordability, for all consumers, to the higher performing appliances is an issue. Support mechanisms that allow poorer people access to higher quality initially higher cost goods and services need to be developed. This could take the shape of a government-backed lending scheme, or a manufacturer-backed financing scheme exclusively applied with lower rates to products with a certain minimum life expectancy, and designed to incorporate all elements of circularity. This issue would be addressed by a move away from ownership towards a leasing type model for products.

4.2.4 The circular option must be affordable for the consumer. Typically a product of higher quality with a longer life expectancy will cost more for the initial purchase. However over the lifetime of the use of the product, this cost disadvantage commonly evens out. Improved labelling and information coupled with financial instruments that incentivise longer life, cleaner component parts, improved ability to repair and to disassemble for reuse, will incentivise behaviour change.

4.2.5 The 7th EAP (paragraph 41 (d)) provides for the creation of a more coherent framework for sustainable consumption and production and the setting of targets for the reduction of the overall impact of consumption. The UN SDG No 12 on Sustainable Consumption and Production is referenced but the need for targets identified in the 7th EAP is not reflected in the Action Plan or the annex.

4.2.6 The potential of the digitalisation of the economy for reducing the environmental footprint of consumption and production and increase multiple use and repair must be linked to achieving transition to circularity.

4.2.7 Responsible consumer choices require meaningful consumer information. Therefore the development of a product environmental footprint methodology is to be welcomed. However, testing was already mentioned in the Resource Efficiency Roadmap in 2011 <sup>(24)</sup>.

4.2.8 The EESC calls for stand-alone, quantitative targets for reuse, separate from those for recycling. The necessary conditions must be created in order to meet these targets.

4.2.9 Boosting reuse and repair schemes could be a good example for the use of economic instruments. The application of lower VAT rates to products that are prepared for reuse or repaired and sold should be examined. This would transform the competitiveness of repaired goods, driving innovation and entrepreneurial activity in the area.

4.2.10 In the field of collaborative consumption messages from previous EESC opinions should be considered <sup>(25)</sup>. Promising developments provided by the latest scientific research, especially regarding behavioural sciences and the 'nudge' concept, should be factored in to help consumers make more responsible choices; the Committee will deliver shortly an opinion on this topic.

4.2.11 Green Public Procurement is an important driver to promote sustainable consumption. An assessment of the current share of GPP compared to total public consumption is needed. Currently the default option for public procurement is the lowest price. This default should be set as the green option, so that any option other than the green one would require extenuating circumstances and a suitable explanation.

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<sup>(24)</sup> Chapter 3.1.

<sup>(25)</sup> OJ C 177, 11.6.2014, p. 1.

### 4.3 Waste management

4.3.1 Proper implementation of the existing European legislation on waste across the EU is essential. The EESC reiterates its support to the waste hierarchy and urges all public and private stakeholders to fully implement it.

4.3.2 The legislative part of the Circular Economy Package amending various directives on waste has clearly been weakened compared to the proposal made in 2014. The EESC notes that the Commission proposal is also not matching the ambitious targets on waste prevention and recycling called for by the European Parliament in July 2015 <sup>(26)</sup>.

4.3.3 The proposal of an obligation of Member States to introduce economic instruments to promote the waste hierarchy <sup>(27)</sup> and to take waste prevention measures <sup>(28)</sup> is to be appreciated. However, it is not clear whether Member States will have to revise existing waste prevention programmes with regard to the new provisions <sup>(29)</sup>.

4.3.4 The EESC believes that EPR schemes should be mandatory for adoption by Member States. It welcomes the introduction of minimal requirements for EPR schemes considering the very different performances of EPR schemes across EU Member States. Nonetheless, these provisions could be enhanced so that minimum requirements are further harmonised, in particular by clarifying roles and responsibilities of stakeholders across the value chain as well as their financial liability. In addition, legislators should consider including specific EPR requirements into the Packaging and Packaging Waste Directive <sup>(30)</sup> to make them more effective.

4.3.5 The EESC notes that the Parliament had called for prevention targets for municipal, commercial and industrial waste, but the legislative proposal does not provide any of these.

4.3.6 The recycling targets for municipal waste and packaging waste for 2030 have been reduced compared to the previous proposal, although the accompanying staff working document <sup>(31)</sup> comes to the result that higher recycling targets are associated with greater financial, societal and environmental benefits <sup>(32)</sup>. It is acknowledged that the Commission has set up an elaborate implementation strategy addressing the specific circumstances of individual Member States and combining the measures with financial instruments of the EU Cohesion Policy and other instruments <sup>(33)</sup>.

4.3.7 Ireland has made quick progress, over 10 years, going from almost 100 % landfill to meeting all its recycling targets. There is a waste prevention plan, and 3 regional waste plans in place. Ireland was a world leader in introducing a plastic bag tax, which has been since adopted around the world. There are still difficulties to overcome, such as the almost complete control of the waste management activities by the private sector, and the replacement of landfill with incineration in too many cases. As a model for what can be achieved quickly Ireland remains a strong example. This highlights the lack of a need for such a broad derogation for achieving the targets for an additional 5 years for some Member States.

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<sup>(26)</sup> A8-0215/2015.

<sup>(27)</sup> Article 4(3) Directive 2008/98/EC.

<sup>(28)</sup> Article 9 Directive 2008/98/EC.

<sup>(29)</sup> Article 29 Directive 2008/98/EC.

<sup>(30)</sup> Directive (EU) 2015/720

<sup>(31)</sup> SWD(2015) 259 final.

<sup>(32)</sup> SWD(2015) 259 final, pp. 13, 15 and 17.

<sup>(33)</sup> Commission staff working document SWD(2015) 260 final.

4.3.8 Separate collection of waste streams seems indispensable in order to ensure closing loops with high quality secondary raw materials. Article 11(1) of Directive 2008/98/EC on waste requires separate collection schemes for at least paper, metal, plastic, glass by 2015. The previous proposal strengthened that by introducing separate collection for bio-waste by 2025 under Article 25. Instead of these strict separate collection requirements the new proposal entails a 'soft' — in practice less effective — provision requiring separate collection 'where technically, environmentally and economically feasible and appropriate'. The EESC calls for this to be strengthened. Given the new provision on separate biowaste collection will enter into force without an adequate transition period, such an explicit 'escape clause' may result, at Member States level, in a complete lack of achieving the ambition in practical terms.

4.3.9 It is important to note that high recycling rates alone will not conserve the resource in the scenario of fast moving products, such as aluminium drinks containers, with a production to disposal lifecycle of anywhere between 3 weeks and 6 months<sup>(34)</sup>.

4.3.10 The EESC welcomes the Commission's efforts to harmonise definitions and calculation methodologies to ensure the collection of reliable and comparable data. It is essential to make sure that the proposed definitions, in particular the definitions of 'preparation for reuse' and 'final recycling process'<sup>(35)</sup>, do not create barriers and/or obstacles for economic stakeholders involved in reuse and recycling. These definitions should instead closely reflect their needs and help develop their activities.

#### 4.4 *From waste to resources*

4.4.1 With the uncertainty about the quality of secondary raw materials and the legal uncertainties in the interaction of legislation on waste, products and chemicals, the Commission is addressing major obstacles for a functioning of the secondary raw materials market. The Commission does not evaluate why the vehicle of the current Directive 2008/98/EC on waste, the establishment of 'end-of-waste' criteria has not proven to be successful.

4.4.2 There must be a distinction made between responsibility for the performance of products and the associated warranties/liabilities and the responsibility for the component parts of the products. The former will be a driver for consumer behaviour change. The latter is critical for the preservation of resources, and for the removal of waste from the system. Extended liability for the component parts of a product would mean that wasted resources continue to have an owner with not only a liability but also a competitive advantage for reuse of the resource.

4.4.3 Stronger measures to increase the demand for secondary raw materials are required. The Commission had committed in the Resource Efficiency Roadmap to more ambitious measures, such as assessing the introduction of minimum 'recycled material rates' for key products.

4.4.4 Improving the use of secondary raw materials in the production of new goods might also be a field for public-private partnerships at EU level, such as the European Innovation Partnership on Raw Materials. Some European sectors seem to be ready for commitments on the circular economy. For example, the European paper industry recently announced that they will commit to increasing the current paper recycling rate of nearly 72 %<sup>(36)</sup>.

#### 4.5 *Priority areas*

The EESC notes the seemingly arbitrary allocation of five priority areas, with a very notable exclusion of the identification of 'water' as a priority area.

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<sup>(34)</sup> EEA report on Circular Economy, page 25.

<sup>(35)</sup> Article 1 Directive 2008/98/EC.

<sup>(36)</sup> <http://www.cepi.org/pressrelease/CircularEconomyDec2015>

### *Plastics*

4.5.1 The EESC welcomes the announcement of a strategy for plastics due in 2017 and looks forward to having a detailed input into this.

4.5.2 It will be critical to address the issue of marine pollution from plastics in this strategy and specific targets for this area will be required. The specific action to reduce marine litter identified in the annex, in line with the SDG, will be greatly enhanced by the setting of a quantifiable target in the plastics strategy.

4.5.3 There is also an opportunity to address the issue of ownership and EPR specifically in relation to plastics. This is critical given that we are now living in a geological epoch, the Anthropocene, likely to be officially recognised by the levels of plastics in the geological strata now being formed.

### *Food waste*

4.5.4 The EESC does not accept that the measurement of food waste is too difficult to achieve nor that the setting of target in this area is premature. The work has already been done on establishing the criteria for assessing the levels of food waste<sup>(37)</sup>.

4.5.5 The reference to the SDG is not enough on its own to achieve a reduction in food waste. Milestones need to be included with timelines for achievement, so that progress can be measured in the run up to 2030, with interim reviews.

### *Critical raw materials*

4.5.6 The often cited example of the mobile phone highlights the issue around the recovery of critical raw materials. Such a ubiquitous product will provide an interesting barometer for the success of many aspects of the Circular Economy Package, from eco-design to obsolescence to recovery of critical raw materials.

### *Construction and demolition*

4.5.7 The backfilling option must be removed.

4.5.8 Existing buildings must be managed as the resources that they are, with strategies in place to maximise the reuse and recycling of the abundant resources contained within.

### *Other areas*

4.5.9 Water as a resource should be an important part of the circular economy<sup>(38)</sup>. The use of closed loops, reducing waste, and removal of pollutants are essential aspects of water resource management in a circular model. Details of how this will be achieved are required.

## **4.6 Monitoring progress towards a circular economy**

4.6.1 In the previous Circular Economy Package<sup>(39)</sup>, the Commission had announced that it would assess the Resource Efficiency platform's recommendation to introduce a headline target for resource efficiency in the review of the Europe 2020 Strategy. This would be a way to integrate this aspect into key policy sectors. The outcome of these assessments should be published and a usable metric for monitoring development of the circular economy should be developed.

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<sup>(37)</sup> See for instance the FP7 EU FUSIONS project: <http://www.eu-fusions.org/index.php>

<sup>(38)</sup> European Commission, *The Junction of Health, Environment and the Bioeconomy: Foresight and Implications for European Research & Innovation Policies*, 2015, p. 43.

<sup>(39)</sup> COM(2014) 398 final, p. 14.

4.6.2 The European Semester process is an existing mechanism that can use both the Country Specific Analysis of Investment Challenges, and the Country Specific Recommendations to use the data from the Annual Growth Survey and other databases to promote the implementation of the circular economy initiatives and the transition from the current unsustainable linear model. The European Semester process and its toolbox should be used as the policy instruments to drive the implementation and promotion of the circular economy. The greening of the European Semester process is a critical element in achieving the goals set. The EESC calls for an assessment of the phasing out of environmentally harmful subsidies, and the inclusion of a recommendation that fiscal options should be used to promote the circular economy, such as the use of environmental taxes.

4.6.3 The cross sectoral nature of the Circular Economy requires a cross sectoral monitoring body to be established. This would need to have a remit to examine the horizontal integration required as well as the vertical integration necessary to implement the action plan.

4.6.4 Each Member State should identify a specific point of contact for reporting on implementation for the transition if it is to happen on the scale that the Commission has identified as being required.

Brussels, 27 April 2016.

*The President  
of the European Economic and Social Committee  
Georges DASSIS*

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**Opinion of the European Economic and Social Committee on the Amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries**

(COM(2016) 34 final — 2012/0060 (COD))

(2016/C 264/15)

**Rapporteur: Mr Mário SOARES**

On 29 January and 4 February 2016 respectively, the European Commission and the European Parliament decided to consult the European Economic and Social Committee, under Articles 207 and 304 of the Treaty on the Functioning of the European Union, on the:

*Amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries*

(COM(2016) 34 final — 2012/0060 (COD)).

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 27 April 2016), the European Economic and Social Committee adopted the following opinion by 223 votes to three, with seven abstentions.

## **1. Conclusions and recommendations**

1.1 The EU carried out a more ambitious integration and liberalisation of European public procurement in connection with the revision of the Government Procurement Agreement (GPA), trade negotiations with third countries and recently concluded trade agreements. These reforms have resulted in European public procurement being more open to companies from developed and emerging countries, but these countries have not responded to this opening with equivalent action and EU companies still encounter restrictive and discriminatory practices in third countries. This openness is particularly necessary given that public procurement represents approximately 20 % of global GDP and that, in the context of the current crisis, public infrastructure investment and works and supply contracts in developed and emerging economies will be key drivers of economic growth in the coming years.

1.2 In several of its opinions, the European Economic and Social Committee (EESC) has endorsed the European Union's goal of opening up public procurement in all countries to international competition. The Committee has also stressed the need to simplify the rules on public purchasing, particularly for SMEs, but also the need to ensure compliance with the principles of transparency, non-discrimination and equal treatment. It has also called on several occasions for the social and environmental dimensions as well as respect for fundamental human rights and consumer protection to be duly strengthened in the conduct of European trade policy, in accordance with Article 207 of the Treaty on the Functioning of the European Union, which calls for greater coherence with the principles and objectives of the Union.

1.3 The Committee understands the Commission's concern to ensure greater openness of public procurement to EU companies in third countries, and it recognises the leverage potential of the amended proposal for a Regulation on the access of third-country goods and services to the Union's internal market in public procurement, which is the subject of this opinion.

1.4 The Committee considers that the proposal for a Regulation can be a first step towards achieving greater openness of public procurement, for example in the current negotiations in the context of the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA, and in the negotiations for a trade agreement with Japan or the negotiations for China's accession to the World Trade Organization (WTO) Government Procurement Agreement, as public procurement in these countries is less open than in the European Union, but also vis à vis countries which are not signatories to the GPA, like Russia, Brazil and Argentina.

1.5 However, the Committee is aware that there are profound disagreements in the Council and the European Parliament on the relevance and effectiveness of the proposal for a Regulation.

1.6 The Committee stresses the absolute need to ensure that competition with third-country businesses in the context of public procurement is free and undistorted. The EESC doubts, however, that the current proposal for a Regulation can achieve the objective of the balanced opening-up public procurement in third countries. The Committee believes that the new proposal for a Regulation is unambitious, its scope being limited to a price adjustment for contracts of a value equal to or greater than EUR 5 000 000, and points out that only 7 % of public purchasing contracts exceed EUR 5 000 000 in value. It also considers that the maximum penalty of 20 % of the price of the tender is insufficient and should be examined on a case-by-case basis. The Committee suggests applying adjustment measures to prices for contracts whose estimated value is equal to or greater than EUR 2 500 000.

1.7 The Committee also wonders whether the prohibition on Member States applying restrictive measures going beyond those laid down in the Regulation is not equivalent to *de facto* liberalisation of access for non-EU companies to public procurement below the threshold of EUR 5 000 000, without reciprocal access for EU companies. The Committee therefore stresses the urgent need for balanced opening of, and reciprocal access to, public purchasing between the EU and third countries.

1.8 The Committee also deplores the fact that the proposal for a Regulation contains no reference to the objective of sustainable development, although the Commission highlights this objective as a key element of its Trade for All Communication, and although it has stated on several occasions that it will take account of sustainable development in all relevant areas of free trade agreements (energy, raw materials and public procurement) <sup>(1)</sup>.

1.9 The Committee regrets the abolition of Articles 85 and 86 of Directive 2014/25/EU by the new Regulation because these provisions are more ambitious and more in tune with the objective of taking sustainable development into account, since they include a social dimension relating to the difficulty for European companies of winning public procurement contracts in third countries as a result of non-compliance with international labour law provisions in these countries. The Committee also believes that it would be useful to reflect further on the possible inclusion of some of their elements in the current proposal for a Regulation.

1.10 The Committee therefore believes that the Regulation should develop a more ambitious approach to promoting the objectives of sustainable development, respect for fundamental rights and consumer protection in public procurement procedures in third countries. In the Committee's view, the failure to comply with these fundamental rules could have a negative impact on the competitiveness of European enterprises, and it considers that the definition of restrictive measures or practices in Article 2 of the proposal should include failure to comply with these fundamental rules. The Committee also believes that the report to be submitted by the Commission by 31 December 2018 at the latest, and at least every three years thereafter (Article 16 of the proposal), should relate not only to economic operators' access to procurement procedures in third countries but also to compliance in procurement procedures in third countries with social and environmental rules, respect for fundamental human rights and consumer protection; the Commission's reports on the implementation of the Regulation should also take account of these factors.

1.11 The EESC expects the current proposal for a Regulation to stress that companies from third countries participating in public procurement procedures in the EU are required to comply with provisions promoting respect for sustainable development and the strengthening of the social and environmental dimensions as well as fundamental human rights, consumer protection, and the social and professional integration or reintegration of people with disabilities, as set out in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU on public procurement. This respect is essential for free, undistorted competition in the internal market.

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<sup>(1)</sup> See COM(2015) 497 final.

1.12 The Committee strongly supports the non-application of the Regulation to least developed and more vulnerable countries within the meaning of the GSP Regulation<sup>(2)</sup>, but reminds the Commission that further steps should be taken to promote the participation of the least developed and more vulnerable countries in EU public procurement.

1.13 The Committee also endorses the non-application of the Regulation to European SMEs. However, it wishes to remind the Commission that SMEs need special assistance for access to both cross-border markets in the EU and public procurement in third countries.

## 2. Context

2.1 The Committee has been asked by both the Commission and the European Parliament to adopt an opinion on the Amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

2.2 Public procurement spending is generally estimated at around 20 % of global GDP. In the context of the current crisis, public infrastructure investment and works and supply contracts in developed and emerging economies are likely to be a key driver of economic growth in the coming years.

2.3 The EU has progressively integrated and opened up its public procurement through greater liberalisation in connection with the revision of the WTO's Government Procurement Agreement, which entered into force in April 2014, and trade negotiations with third countries (in particular recently concluded trade agreements (for example the EU-Korea, EU-Central America, EU-Colombia/Peru, EU/Moldova, EU-Georgia and EU-Ukraine agreements)).

2.4 However, European companies still encounter restrictive and discriminatory practices in third countries. These are due to a number of factors:

- certain other countries that are signatories to the GPA (signed by 43 WTO members) have not entered into commitments as significant as the EU's. Thus, the EU has opened up 80 % of its public procurement, while the other developed countries have opened up only 20 %. The EU has opened up public procurement for an amount of around EUR 352 billion to tenderers from countries which are parties to the GPA, whereas more than 50 % of global public procurement by value is closed to competition, which means that the EU's exports are limited to EUR 10 billion, a loss of around EUR 12 billion;
- China is still negotiating its accession to the Agreement, even though it undertook to join the Agreement on its accession to the WTO in 2001. Russia also undertook to begin negotiations to accede to the Agreement within four years of its accession to the WTO in 2012. Russia's integration into the GPA may take even longer than China's;
- a number of major actors which are members of the G20 (Brazil, India, Argentina) do not wish to join the GPA, and bilateral negotiations with these countries are unlikely to be completed in the near future.

2.5 It should also be noted that many of the EU's trade partners maintain preference for their national producers or products, or preference for SMEs (e.g. the Buy American Act in the USA, the Buy Chinese policy in China, preferential margins imposed by law in Brazil and regional preferences in Australia), which effectively prevents EU companies from participating in this public procurement<sup>(3)</sup>.

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<sup>(2)</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council.

<sup>(3)</sup> Opinion of the European Economic and Social Committee on Third country state-owned enterprises in EU public procurement markets (OJ C 218, 23.7.2011, p. 31).

2.6 European companies are often unable to participate effectively in public purchasing in third countries by cross-border barriers (such as different certification and standardisation rules, licensing procedures, non-transparent or discriminatory procedures etc.) which are all the more technically complex and problematic, the longer the process of identifying, analysing and eliminating them and the more restrictive the relevant standards and practices. This has already been pointed out in a previous Committee opinion.

2.7 The situation is complicated by the EU's lack of leverage for obtaining a substantial opening-up of public procurement in third countries; for several years the EU has been trying to develop an instrument making it possible to introduce restrictions in the absence of reciprocity or in the event of discriminatory and restrictive measures being imposed on European companies by third countries.

2.8 It should be noted, however, that the EU has been and is able to restrict access to EU public procurement for companies from countries which do not grant EU companies the same treatment that their companies enjoy in the EU in relation to public procurement in the water, energy, transport and postal services sectors. This facility has, however, never been used. **Directive 2004/17/EC** (as amended by **Directive 2014/25/EU which enters into force on 18 April 2016**) made it possible to reject tenders containing more than 50 % of products originating in third countries with which the EU has not concluded international agreements (Article 58), and for the Commission (Article 59) to propose that the Council decide to suspend or restrict, for a specific period, access to public procurement in the European Union for companies from countries which do not grant the same treatment as that enjoyed by their companies in the EU, or for countries where these difficulties arise from non-compliance with international labour standards. These provisions are taken over in Articles 85 and 86 of Directive 2014/25/EC.

2.9 The general directive on public contracts **2004/18/EC** (as revised by **Directive 2014/24/EU**) does not contain any comparable provisions; as a result, different practices existed and still exist in the various Member States with regard to foreign tenderers and bids containing products or services originating in third countries. Some Member States practised equal treatment, while in others this depended on the existence of international obligations arising from the WTO's GPA or bilateral treaties.

2.10 To remedy the lack of provisions in the general directive on public contracts and the fact that some third countries do not want to open their public procurement to international competition, but benefit from relatively easy access to the European market, in 2012 the Commission submitted a proposal for a Regulation introducing some reciprocity into access to public procurement.

2.11 The Commission's first 2012 proposal reiterated the general principle that foreign goods and services benefiting from EU market access commitments are treated in the same way in procurement procedures as goods and services originating in the EU; it also extended this treatment to goods and services originating in the least developed countries.

For goods and services not benefiting from market access commitments, the proposal was based on two pillars:

- **The decentralised pillar (Article 6)** which allowed the contracting entity to notify the Commission of its intention to reject a tender where the value of goods and services not covered by international commitments exceeded 50 % of the total value of goods and services included in the tender. The Commission could give its consent if there was a lack of substantial reciprocity between the EU and the country from which the goods and services originated. The Commission would also approve the exclusion where the goods and services concerned fell within the scope of a market access reservation expressed by the EU in the context of an international agreement.

- **The centralised mechanism (Article 8 to 13)**, which allowed the Commission to initiate an investigation. An investigation could be initiated by the Commission on its own initiative or at the request of a Member State or an interested party, in order to verify the existence of restrictive procurement practices in third countries. The Commission was allowed to consult with the country concerned in order to resolve the problem and improve the conditions for EU companies' access to the market of that country or, in the event of failure, to impose temporary restrictive measures. Such restrictive measures could in principle consist of the exclusion of tenders where more than 50 % of the goods or services originated in the third country concerned (closure of the European market) or the application of a mandatory price penalty to tendered goods and services originating in the third country concerned. The investigation by the Commission had to be concluded within a period of nine months. In duly justified cases, the period could be extended by three months.

2.12 In 2014 the Parliament adopted a report<sup>(4)</sup> expressing some opposition to the decentralised procedure. According to the Parliament, only the Commission, and not local authorities, can decide to exclude a tender, as international trade is an exclusive competence of the EU. It has therefore proposed that the decentralised procedure be integrated into the centralised procedure. Other points of disagreement were also raised, such as the lack of reciprocity regarding compliance with social and environmental rules and core ILO standards and the non-definition of lack of substantial reciprocity. Parliament also proposed a presumption of lack of reciprocity in the event of failure to comply with international labour law provisions. Parliament is also concerned that the Regulation does not defend European environmental and social rules.

2.13 The first reading in the Council did not result in a decision. Some fifteen Member States did not fully agree with the proposal and formed a blocking minority. The main countries involved were Germany, the United Kingdom, the Netherlands and Sweden, as well as certain Eastern European countries. They expressed a concern that such an instrument could be seen as protectionist at global level. The countries supporting the proposal, led by France, obtained a technical discussion in 2014, and it was hoped that a consensus could be reached during the Italian presidency (in the second half of 2014). Unfortunately, however, this did not happen and the Commission adopted a revised proposal in January<sup>(5)</sup> in the hope of breaking the deadlock in the Council.

### 3. General comments

3.1 The Commission is presenting the new proposal in order to correct certain negative effects of the previous proposal. In the new proposal, the Commission is abolishing the decentralised procedure, which was criticised for imposing a heavy administrative burden and promoting a degree of fragmentation of the internal market. It is also abolishing the option of total closure of the European market, while retaining the option to impose, following a Commission investigation, 20 % price penalties on tenders consisting of more than 50 % goods and services originating in countries applying restrictive or discriminatory practices. This price adjustment measure only applies to contracts with an estimated value equal to or greater than EUR 5 million, which the Commission believes would reduce the risk of retaliation by third countries. The proposal also provides that the price adjustment measure will not apply to European small and medium-sized enterprises (SMEs) or to bidders or products originating in the least developed and more vulnerable countries, as defined by the Regulation on the generalised system of preferences (GSP).

3.2 On various occasions, the EESC has endorsed the European Union's goal of greater openness of public procurement in all countries to international competition, but the Committee has also stressed the need to ensure compliance with the principles of simplification of rules on public procurement, transparency, non-discrimination, equal treatment, social and environmental responsibility and respect for fundamental rights<sup>(6)</sup>.

3.3 The Committee understands the Commission's concern to ensure greater openness of public procurement to EU companies in third countries. The Committee also shares the view that a proposal for a Regulation of this kind can be a first step in the public procurement negotiations in the context of the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA, in the trade negotiations with Japan and the negotiations for China's accession to the GPA, as public procurement in these countries is less open than in the European Union, but also vis à vis countries which are not signatories to the GPA, like Russia, Brazil and Argentina.

<sup>(4)</sup> P7\_TA (2014)0027.

<sup>(5)</sup> COM(2016) 34 final.

<sup>(6)</sup> Opinion of the European Economic and Social Committee on International public procurement, adopted on 28 May 2008, rapporteur Mr Malosse (OJ C 224, 30.8.2008, p. 32); and Opinion of the European Economic and Social Committee on Third country state-owned enterprises in EU public procurement markets (OJ C 218, 23.7.2011, p. 31).

3.4 The EESC doubts, however, that, once adopted, the Regulation can achieve the objective of opening up public procurement in third countries. The Committee believes that the new proposal for a Regulation is unambitious, its scope being limited; its impact on the openness of public procurement in third countries is very uncertain and could also be very limited.

3.5 According to the Commission itself, only 7 % of all public procurement procedures are for an amount of more than EUR 5 000 000. However, they represent 61 % of EU public procurement procedures by value. However, given that the Regulation will apply only to those contracts not covered by EU international commitments, it is worth asking what proportion of public procurement which will be covered, in particular after the possible accession of China to the GPA and the possible finalisation of the negotiations with the USA and Japan. It may apply only to a very small number of contracts and a very small number of countries, which would significantly reduce the benefit of the Regulation. The Committee suggests applying price adjustment measures to contracts with an estimated value equal to or above EUR 2 500 000.

3.6 It is also regrettable that, in the proposal for a Regulation, there is no reference to sustainable development, which the Commission nevertheless highlighted in its Trade for All Communication, in which it says that it will take account of sustainable development considerations in all relevant areas of free trade agreements (e.g. energy, raw materials and public procurement) <sup>(7)</sup>. The social and environmental dimensions as well as respect for fundamental human rights and consumer protection need to be duly strengthened in the conduct of European trade policy, in accordance with Article 207 of the Treaty on the Functioning of the European Union, which calls for greater coherence with the principles and objectives of the Union.

3.7 The new Directives 2014/23/EU, 2014/24/EU and 2014/25/EU on public procurement and concessions aim to promote respect for sustainable development and the strengthening of the social and environmental dimensions as well as fundamental human rights, consumer protection, and the social and professional integration or reintegration of people with disabilities. This respect is essential for free, undistorted competition in the internal market. The EESC thinks that it will be helpful if the current proposal for a Regulation stresses that companies from third countries participating in public procurement procedures in the EU are bound to comply with these provisions.

3.8 The Commission indeed speaks of restrictive measures or practices but makes no reference to the difficulty of winning public contracts in third countries as a result of non-compliance by competitors with social and environmental rules, and with fundamental human rights and consumer protection rights. In the Committee's view, the failure to comply with these fundamental rules could have a negative impact on the competitiveness of European enterprises, and it considers that the definition of restrictive measures or practices in Article 2 of the proposal should include failure to comply with these fundamental rules. The Committee also believes that the report to be submitted by the Commission by 31 December 2018 at the latest, and at least every three years thereafter (Article 16 of the proposal), should relate not only to economic operators' access to procurement procedures in third countries but also to compliance in procurement procedures in third countries with social and environmental rules, respect for fundamental human rights and consumer protection; the Commission's reports on the implementation of the Regulation should also take account of these factors.

3.9 The success of the new Regulation seems doubtful in view of the divisions in the Council which are the source of the deadlock. Indeed, the removal of the decentralised pillar could lead to a new deadlock, particularly in view of the other changes.

#### 4. Specific comments

4.1 The Committee welcomes the clarification provided by Article 1(5) of the proposal for a Regulation that Member States may not apply restrictive measures in respect of third country economic operators, goods and services beyond those provided for in the Regulation. This has the advantage of bringing greater uniformity to the application of EU public procurement rules to foreign operators. The Committee wonders, however, whether this prohibition does not amount to *de facto* liberalisation of European public procurement, without any *quid pro quo*, for third-country businesses below the EUR 5 000 000 threshold. Currently, some Member States apply restrictions on public procurement not covered by international obligations, and Article 85 of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors expressly provides for the possibility of rejecting tenders where more than 50 % of the value of products originates in countries with which the EU has not concluded international commitments. This article will be deleted by the proposal for a Regulation.

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<sup>(7)</sup> See footnote 1.

4.2 The Committee fully endorses the non-application of the Regulation to the least developed and more vulnerable countries within the meaning of the GSP Regulation (Article 4) and, so that this exclusion can be effective and can benefit the least developed countries and their businesses, it calls on the Commission to include explanations on public procurement in the European Union and a link to the Official Journal (TED) publications in the *Export Helpdesk* for developing countries, in order to ensure the necessary technical assistance to enterprises in developing countries wishing to obtain information on the operation of public procurement rules in the European Union.

4.3 The Committee also endorses the non-application of the Regulation to European SMEs (Article 5). However, it wishes to remind the Commission that SMEs need special assistance for access to both cross-border markets in the EU and public procurement in third countries. This approach is compatible with the particular attention paid to SMEs in the Commission's Trade for All Communication. The goal of improving SMEs' access to public procurement should be stipulated in the SME chapter of the TTIP in particular, as well as in future trade agreements incorporating such chapters. The EESC has already spoken out against the establishment of quotas for SMEs in public procurement, on the model of the US *Small Business Act*, but calls for a proactive policy to support the participation of SMEs in order to enable them to access a larger number of public procurement contracts<sup>(8)</sup>. The Committee has also highlighted the need to improve the Commission's Market Access Database to ensure that, on the one hand, it contains reliable and accessible information on invitations to tender, the formalities and the technical specifications which effectively prevent participation in third countries and, on the other hand, provides statistics and indicators of the impact of distortions<sup>(9)</sup>.

4.4 The Committee understands the Commission's concern regarding the absence of a legal instrument enabling it to ensure effective access for European businesses to public procurement contracts in third countries, as Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules does not apply in the absence of an international agreement. However, the investigation procedure laid down in Articles 6 to 8 of the Regulation seems to be particularly slow and inefficient. First, the Committee expresses its doubts on the Commission's broad discretionary power to decide whether or not to carry out an investigation. Furthermore, contrary to Commission claims, the duration of the investigation has not been reduced in the new proposal and the possible total duration remains 12 months. This seems particularly long, since in many cases, especially in cases where the Commission initiates an investigation on its own initiative, it will already have some of the information needed and will often have already raised the issue in the forum for dialogue with third countries. The Committee also understands that the investigation will be suspended during any trade negotiations. However, given the duration of trade negotiations and their implementation, it would be desirable to define the period of suspension, which should not exceed two years.

4.5 The Committee considers that the fact that the investigation may lead only to a 20 % price adjustment for contracts of more than EUR 5 000 000, a provision which is moreover subject to a large number of exceptions, is insufficient and deprives the Regulation of its effectiveness.

4.6 The Committee regrets the abolition of Articles 85 and 86 of Directive 2014/25/EU by the new Regulation because these provisions are more ambitious and more in tune with the objective of taking sustainable development into account, since they include social and environmental dimensions. The Committee also believes that it would be useful to reflect further on the possible inclusion of some of their elements in the current proposal for a Regulation.

Brussels, 27 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(8)</sup> Opinion of the European Economic and Social Committee opinion on International public procurement, adopted on 28 May 2008, rapporteur Mr Malosse (OJ C 224, 30.8.2008, p. 32).

<sup>(9)</sup> See footnote 3.

**Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — State of the Energy Union 2015**

(COM(2015) 572 final)

(2016/C 264/16)

**Rapporteur: Mr Stéphane BUFFETAUT**

On 18 January 2016, the European Commission decided to consult the European Economic and Social Committee, under Article 194(2) of the Treaty on the Functioning of the European Union, on the:

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank — State of the Energy Union 2015*

(COM(2015) 572 final).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 28 April), the European Economic and Social Committee adopted the following opinion by 137 votes to 1, with 3 abstentions.

## **1. Conclusions and recommendations**

1.1 The Framework Strategy for an Energy Union was initiated in February 2015; in 2016, it will thus begin to take shape. It has arisen out of discussions by various think tanks and key Europeans on the concept of a European energy community, a project spearheaded by the Jacques Delors Institute and Jerzy Buzek in particular. The European Economic and Social Committee had, from the outset, given this initiative its full support.

1.2 The original concept was greeted tepidly by many Member States as it would have entailed revising the Treaties, a highly risky process in a time of rampant euro-scepticism. Nonetheless, the idea of better coordination of energy policies, the need for effective energy diplomacy, the obligation to combat climate change, the EU's increasing energy dependency, the need to minimise external pressure on supply, the implementation of the energy transition and the provision of social assistance for the sectors affected by this transition all argued in favour of a European-level initiative. This led to the birth of the Energy Union, an institutionally simple structure which aims to achieve its objectives by securing convergence in specific areas and following up on commitments.

1.3 It should be pointed out that from an early stage, the EESC was in favour of a European energy union or at least of improved coordination of energy policies<sup>(1)</sup>, diplomacy in the field of energy and the energy transition, while stressing the need for civil society to be fully involved. Civil society is directly concerned as both consumer and stakeholder in the energy transition, which will not succeed without its involvement or even active support. In the near future, it may be even more involved in generating decentralised energy than it is now.

1.4 The Commission communication seeks to take stock of nine months of Energy Union. Clearly, any such stock taking will be partial and devoid of any real meaning given the importance of the issues at stake and the scale of the changes to be made. The initial indications must therefore be viewed with caution, as the opening salvo of a policy which will need a determined and long-term approach supported by the Member States.

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<sup>(1)</sup> OJ C 82, 3.3.2016, p. 13 and OJ C 82, 3.3.2016, p. 22.

1.5 Nonetheless, the framework for this policy is known: the commitments made at COP21, marked geopolitical instability in the field of energy, European climate and energy targets, security of supply, energy efficiency, decarbonising the EU's economies, infrastructure development and the completion of the internal energy market. The political challenges are vast and it will take more than mere administrative and regulatory measures to meet them. We need a sound political will and a strong but realistic vision shared by the Member States which takes account of the economic situation and the technical opportunities available, as facts win out over political will.

1.6 The EESC welcomes the first report on the State of the Energy Union 2015 but would flag up a number of gaps in the analysis of the initiative's implementation. Plugging these gaps would reinforce both the Commission's approach and civil society's support for a project which entails an energy transition which could well be cause for concern.

1.7 The EESC considers that while the key points for analysis selected by the Commission are relevant, they need to be supplemented. As it stands, the text refers to:

- decarbonisation of the economy;
- energy efficiency as a contribution to the moderation of energy demand;
- an internal energy market;
- energy security, solidarity and trust;
- research, innovation and competitiveness;
- implementation of the Energy Union.

The EESC believes that the social dimension of the Energy Union is given insufficient attention and that this aspect should be among the criteria for evaluating the Energy Union. The Union should have a positive impact on job creation, competitiveness and innovation but could affect certain sectors, resulting in the need for social assistance and training. These measures must be preventative in order to make sure that the workers concerned do not lose their jobs and that the training measures set up anticipate future developments in the energy sector. The social dimension should therefore be included among the evaluation criteria in the next annual report. Similarly, it is vital to consider the economic repercussions of the choices involved in the energy transition, particularly because the social fallout is closely linked to those economic repercussions.

1.8 As regards energy efficiency, the European Commission considers that this is an energy source in its own right. The EESC strongly discourages this wording which promotes confusion and is scientifically inaccurate: no primary energy source can ever be replaced by energy savings. This comment by no means undermines the fact that energy efficiency is extremely important for the future of the European energy system. Improving energy efficiency in all areas in which energy is used can prove to be a significant means of reducing costs for the European economy.

1.9 In addition to the social partners, the EESC would like to see civil society involved in the annual report process. This European process is profoundly relevant to consumer associations, representative family associations, business representatives, farmers, environmental associations, scientists and researchers — civil society in fact. This is why the EESC advocates setting up a European energy dialogue, which would enable civil society to be more closely involved in discussing and establishing the EU's energy policy. This dialogue could be structured around the preparation of the annual report on the state of the Energy Union and focus on key points selected for the purpose of assessing its implementation.

1.10 As regards the statistical data, the EESC would point out that some of them are fairly old or even non-existent. Efforts must therefore be made to obtain more up-to-date data from the Member States, as it will otherwise be difficult to monitor the effects of implementing the Energy Union.

1.11 Lastly, the EESC would emphasise that the Energy Union does not boil down to administrative follow-up and information procedures. Such procedures are a useful and necessary tool for a policy which must pursue objectives upheld by the Member States and supported by civil society.

## 2. Content of the document and the European Commission's methodology

2.1 The document is primarily a progress report intended to assess the progress made in implementing the Energy Union, not a policy paper. It examines the data collected from the Member States using the policy criteria selected by the Commission. The Commission's methodology is therefore based on analysing and monitoring the delivery of the Energy Union using key indicators. This follow-up is by definition sensitive, as energy policy decisions depend on market developments and geopolitical events to which the Member States must react swiftly. Long-term objectives can be hindered by short-term imperatives and follow-up will therefore need to avoid a rigid approach.

2.2 In any case, the Commission has identified six topics or strategic approaches which will be used to measure the delivery of the Member States' commitments in the implementation of the Energy Union:

- decarbonisation of the economy;
- energy efficiency as a contribution to the moderation of energy demand;
- a fully-integrated internal energy market;
- energy security, solidarity and trust;
- an energy union for research, innovation and competitiveness;
- implementation of the Energy Union.

2.3 The Commission therefore intends to use these topics to provide an initial measurement of the delivery of the Energy Union.

## 3. General comments

3.1 With regard to decarbonisation, the Commission considers that the EU economy is the most carbon-efficient major economy in the world based on the fact that between 1990 and 2014 the EU's overall GDP grew by 46 % while total greenhouse gas emissions decreased by 23 %. However, the effects of the crisis which has hit the entire world and Europe in particular, along with persistent economic sluggishness and the deindustrialisation of the EU still need to be factored into these figures which may be less flattering than they would appear!

3.2 The Commission also flags up the fact that the EU generates more than half of its electricity without producing greenhouse gases. It should be pointed out that this would not be possible without the contribution of energy sources which are sometimes contested or discarded in certain Member States (such as nuclear energy or hydroelectric energy generated by dams).

3.3 The stated objective is 'to move further away from an economy driven by fossil fuels'. In this regard, the current drop in and volatility of oil prices are unhelpful, even if the target of 20 % renewable energy by 2020 would seem to be in reach. However, an energy policy cannot be based on a negative and restrictive approach. The EESC would therefore like the potential future role of resources such as wind energy, sea-based energy and hydrogen to be evaluated as far as possible, and for developments in these sectors to be supported by an ambitious R & D policy.

3.4 The Commission notes that the transition to low-carbon energy sources will require significant investments. In this respect, a lasting collapse in oil prices would make the comparative cost of these investments even greater. The delivery of the commitments made in Paris during the COP will therefore be scrutinised very carefully.

3.5 The EESC emphasises that the results of the COP 21 have yielded the first ever basis for globally-coordinated climate protection, and thus justify Europe's considerable efforts which would have had limited effect on global climate change if the rest of the world had not followed suit. We can therefore follow the European roadmap in line with the Paris agreement and ensure that each Member State is able to contribute fully to climate protection as its own capacities permit.

3.6 The Commission has said that it has set up tools and instruments which see energy efficiency as a form of energy in its own right. The EESC strongly discourages the use of this wording which will promote confusion as well as being scientifically inaccurate: no primary energy source can be replaced by energy savings. Saving energy is certainly necessary but it is not a form of energy. Energy efficiency is nonetheless an important parameter in the future European energy system. Improving energy efficiency in all areas in which energy is used can prove to be a significant means of reducing additional costs for the European economy. Ideally, an increase in energy efficiency commensurate with the increase in the costs of a given energy source could stabilise prices at their current level.

3.7 However, a significant increase in energy efficiency inevitably requires heavy investment by consumers, industry and public organisations (buildings, infrastructure, cars, etc.). The overall curb on investment will determine the speed of improvement, and some sectors of European society will be able to bear substantial investment and reap the considerable savings, while others will not. This could bring about an economic gulf between parts of the EU. The EESC considers therefore that support must be provided to ensure that energy efficiency is beneficial to everyone.

3.8 The completion of the internal energy market will require new infrastructure for transporting energy, electric lines or gas pipes — heavy investments in fact. The Commission is rightly pleased with the progress achieved in this area and with the launch of the Copenhagen Forum, which is definitely useful for identifying problems but not however a solution in itself. A number of cooperation agreements between states have been implemented, such as those between Poland and Lithuania or Norway and Sweden. However, certain Member States may have disagreed on projects such as Nord Stream, which was criticised in Poland, the Baltic States and Sweden. Care must therefore be taken to ensure that certain investment decisions do not go against the spirit of the Energy Union. Moreover, certain policy decisions may have a significant impact on investments; decision makers must use caution and apply scientific and technical knowledge.

3.9 It should be pointed out that the Commission acknowledges that consumers — individuals, families and businesses — want more transparency regarding energy prices and costs which, moreover, must be evaluated in comparison with the situation of our main competitors. The EESC strongly supports and has often called for such a transparent, simple approach. Nonetheless, in a time of rising energy poverty, the need for a universal energy service and for specific indicators on the potential role of services of general economic interest in this respect must be reaffirmed. Our societies depend on energy, which influences our quality of life, mobility, communication and business activities. The EESC would like to see civil society represented in forums where the operating conditions of universal services are shaped at European level. Consumers must be able to help shape this universal service and be in a position to follow up on it as it is rolled out.

3.10 The EESC is increasingly aware of the need to conduct a fresh debate, informed by this vision, about the liberalisation of the energy products markets that was introduced at the end of the 1990s. That liberalisation was accompanied by a creeping, albeit often well-justified, introduction of non-market-based instruments such as subsidies (for sustainable energy production) and restrictions (e.g. on CO<sub>2</sub> emissions). It is important for businesses and employees in the sector to have a predictable framework in which investment can take place, in view of the considerable sums involved, which take a long time to be recouped. Uncertainty resulting from constantly changing energy policy discourages risk-taking and so hampers the technological innovation of Europe's energy sector that promotes sustainability.

3.11 Europeans will gauge the success of the Energy Union using very practical criteria, particularly prices (primarily the product of energy taxes), network accessibility, security of supply (avoiding power cuts or blackouts) and consumer information about the equipment they use which needs to be simple and readily understandable (energy labels for electronic equipment or household appliances and fuel consumption figures for cars)<sup>(2)</sup>.

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<sup>(2)</sup> OJ C 82, 3.3.2016, p. 6.

3.12 It should also be pointed out that employees in businesses are strongly affected by energy policy choices. The energy transition will involve changes, technological and otherwise. New jobs are appearing while others may disappear as a result of closures or cutbacks in certain industries (coal mines or nuclear plants). Other jobs are evolving or changing: for instance, roofers who lay tiles or slates will have to learn how to place solar panels. When implementing the various chapters of the Energy Union, the training needed for employees and craftworkers in sectors affected either directly or indirectly must be taken into account. Care must also be taken to maintain advanced skills which are very valuable for economic competition (in the area of nuclear energy, for instance). However, provision must also be made for employees who may lose their jobs because of the changes brought about by the energy transition and who will have to be supported and provided with vocational retraining. Similarly, the economic consequences of the political choices that have been made will need to be assessed upstream to accurately determine their impact, particularly in an environment of extremely keen global competition.

3.13 With regard to the businesses themselves, the objectives of decarbonisation, energy efficiency and moderation of demand must take global competition fully into account, particularly in high-energy-intensity industries (such as iron and steel, aluminium, the tyre industry and chemicals). The transport sector is particularly problematic as regards CO<sub>2</sub> emission targets. All modes of transport shall contribute, according to the intensity of their fossil fuel consumption, to reduce the emissions. Current technologies provide viable clean solutions for short trips — which in practice means travel within urban areas. With the exception of electric rail transport, long trips depend on fossil fuel. Modal shift can contribute to decarbonisation, but it is difficult in Europe. To this end investments must be better focused to integrate different modes favouring the less polluting. Energy is also a geopolitical weapon, and dependence in strategic fields is politically dangerous both for the countries concerned and for the people living in them, whether employees, consumers or company directors. It is important to avoid offshoring which results in the loss of economic power, valuable skills and independence.

3.14 Energy security, solidarity and trust between Member States are key to the success of the Energy Union in a world where the geopolitics of energy are highly unstable. It cannot be disputed that more energy efficiency, more renewable energy and more indigenous energy sources help reduce the EU's dependence and vulnerability: so much is obvious. Achieving it, on a sustainable economic basis, is another matter.

3.15 The EU needs to stabilise its diplomatic relations with its partners in the East, South, Middle East and West in order to develop and secure the independence of the Energy Union. The EESC considers that clear and united energy diplomacy as regards third countries, steered by the clearly understood interests of the EU, is imperative.

3.16 Quite rightly, the Commission stresses that research and innovation are paramount to accelerating the energy transition. The EESC has repeatedly drawn attention to the imperative need to coordinate Member States' efforts in this field and launch joint projects in order to reduce the costs and pool the results of research. Progress in R & D along with regulation will enable us to reach our energy objectives. In this regard, one of the objectives of the European Energy Union should be to direct efforts towards joint projects and avoid the fragmentation of resources, which is scientifically, technically and economically inefficient. Clearly, funds will need to be made available but the currently unsatisfactory emissions trading scheme is unlikely to sufficiently cover these funding needs. Our emissions trading system is struggling as a result of the oversupply of allowances and the consequently overly low carbon credit prices, which are preventing the intended effect of emissions reduction from being fully achieved, and the impact of subsidies for certain green energy sources.

3.17 The EESC endorses the Commission's approach as regards closer involvement of the social partners in the energy transition, which clearly will entail training and preparing people for new technologies and new jobs. The energy transition will not succeed unless social and economic players step up, although they still need to be given the resources to drive change rather than being resigned to being passively driven by it. Reskilling must also be made available to workers who lose their jobs in the energy sector.

3.18 Lastly, the Commission is developing its strategy for the implementation of the Energy Union. It calls for a reliable and transparent governance process. However, the Commission adds that this process must be anchored in legislation, but the EESC considers that a policy cannot be boiled down to legislative procedures or administrative planning. An energy policy cannot be successful unless the governments concerned take political action, unless people commit to clear, understandable goals, unless economic factors are taken into account, unless innovation is developed, unless civil society supports it and unless the possibilities of the market economy are harnessed. While an annual follow-up report is necessary, it is not enough. A report is inevitably a formal document which runs the risk of becoming mired in technocratic abstraction. To avoid this danger, the EESC considers that we need to establish a real European dialogue on energy which involves Europeans, whether consumers, representatives of environmental organisations, employees, company directors, farmers, city or country dwellers or retired people, that is to say <sup>(3)</sup> civil society which is directly and specifically affected by energy issues on a daily basis. We need to shape the future and not simply be shaped by it; and in that future, there will be energy prosumers, consumers, producers and savers. The Energy Union must go beyond bureaucracy and take resolute political action in order to succeed.

Brussels, 28 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(3)</sup> OJ C 68, 6.3.2012, p. 15; OJ C 161, 6.6.2013, p. 1; OJ C 291, 4.9.2015, p. 8; OJ C 383, 17.11.2015, p. 84.

**Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ‘Trade for all — Towards a more responsible trade and investment policy’**

**(COM(2015) 497 final)**

(2016/C 264/17)

**Rapporteur: Jonathan PEEL**

On 11 November 2015, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty on the Functioning of the European Union, on the:

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Trade for All — Towards a more responsible trade and investment policy*

(COM(2015) 497 final).

The Section for External Relations, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 31 March 2016.

At its 516th plenary session, held on 27 and 28 April 2016 (meeting of 28 April 2016), the European Economic and Social Committee adopted the following opinion by 159 votes to 7 with 13 abstentions.

## **1. Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) welcomes the European Commission (EC) communication <sup>(1)</sup> ‘Trade for all — Towards a more responsible trade and investment policy’, published in October 2015, as a timely and welcome update of EU trade and investment policy.

1.1.1 This communication presents a positive agenda for business, as well as demonstrating that the new Trade Commissioner has listened to key concerns raised by civil society and others, following a turbulent two years with trade a high-profile political issue for the first time in a decade. The ambitious agenda it offers is important at a time of growing global economic uncertainty. Trade and investment are hugely important for the economic well-being of the EU, the world’s most important trading block, and the signing of the Trans-Pacific Partnership (TPP) is a timely reminder of its need to remain competitive.

1.1.2 The EESC is concerned that it will prove hard to deliver so many raised expectations, which in time could lead to problems and disappointment when EU trade negotiations reach inevitable compromise. ‘Trade for all’ will be judged by whether the Commission is able to demonstrate that environmental, labour and other standards are not lowered by trade agreements. Indeed these should aim to improve such standards.

1.2 We believe that this can best be achieved through a much greater involvement of civil society throughout the negotiations and then through the process of implementation. Civil society would expect transparency, accountability, evaluation and analysis to be at the heart of the EU trade policy political decision-making process.

1.2.1 The EESC is well placed due to its institutional role to help deliver this, through our wide range of contacts both at home and abroad. Such enhanced dialogue must also include increased consultation of the social partners on the possible impacts of trade and investment on jobs.

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<sup>(1)</sup> COM(2015) 497 final.

1.3 The Committee warmly welcomes the referral to it of 'Trade for all' for its opinion, recognition of the Committee's increased role and significance in trade policy, although it is disappointing that the EESC's role is not mentioned in the communication itself.

1.4 The Committee welcomes the emphases in 'Trade for all' on the need to make EU trade and investment more effective, the need for greater transparency, the importance of promoting EU values, and the need to dovetail with other key EU policies. Above all it extensively covers sustainable development, especially in human and social rights and the environment. Following COP 21, combating global warming should now also be included as an integral part of EU values.

1.5 Welcome too is the commitment to small businesses, which face greater hurdles when aiming at new markets. Dedicated SME provisions, following the EU-US Transatlantic Trade and Investment Partnership (TTIP) precedent, are promised in all negotiations, as are 'regular surveys on barriers' faced by SMEs in specific markets. The Committee's Opinion <sup>(2)</sup> on 'TTIP and its impact on SMEs' is relevant here.

1.6 The Committee also welcomes the suggestions to reinvigorate the World Trade Organisation (WTO) and the multilateral system, especially in the light of the 10th Ministerial Conference in Nairobi. This emphasises both the WTO's rule-making aspect and the need for a more focused approach, particularly important in the light of the sustainable development goals (SDGs) and the COP21 goals, together with the growth of global value and supply chains, digital trade and e-commerce. The paramount importance of the multilateral approach must be maintained by, for example, avoiding conflicting rules or standards. Special care must also be taken to ensure that key countries are not left out of the loop, especially poorer, developing countries, notably those in Africa.

1.7 The case for trade and investment needs to be made here in the EU, especially following the TTIP debate. We welcome the communication's pledge that 'no EU trade agreement will lead to lower levels of consumer, environmental or social and labour protection' <sup>(3)</sup>. Trade policy must be seen to be in line with sustainable development, including long-term economic sustainability.

1.7.1 There needs to be a high level of well informed debate both at EU and at Member State level. It is essential that all interested parties can be sure to have their voice heard.

1.7.2 The Committee considers a very positive step the intention to make trade policy more open and transparent and more beneficial to consumers. Consumer opinions need to be taken into account to enhance trust and help ensure trade becomes more sustainable and responsible. However, we also share the concern of BEUC, the EU consumers' organisation, that there are still no mechanisms that enshrine the precautionary principle and the hazard-based approach in trade policy. In turn this needs to be integral with the 'Innovation Principle' <sup>(4)</sup>.

1.8 The Committee however believes the Commission needs to do more. It needs to demonstrate that it itself is accountable in its trade and investment negotiations, and can be held to make good its claims of benefits for all.

1.8.1 The Committee welcomes the commitment in the communication to provide the same level of transparency for all negotiations as has been reached over TTIP (but not yet for Japan). Regular briefings during each round of negotiations are important for civil society. The EESC was disappointed, due to its institutional role, not to have been formally included in the specific TTIP Advisory Group. This needs to be rectified for future negotiations.

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<sup>(2)</sup> OJ C 383, 17.11.2015, p. 34.

<sup>(3)</sup> See footnote 1.

<sup>(4)</sup> 'Better framework for innovation' published by BusinessEurope et al, June 2015.

1.9 The Committee finds signally disappointing the failure of the communication to refer to the civil society monitoring mechanisms covering the Trade and Sustainable Development (TSD) chapters in existing EU trade agreements, nor how these might be developed and strengthened. The Committee believes that enforcement mechanisms have to equally apply to the TSD chapters themselves, starting with the Commission proposal for TTIP.

1.9.1 These mechanisms have major potential and can deliver tangible results. They are an important channel for dialogue and cooperation with civil society from partner countries, but they are not mentioned. This we find at odds with the intention to promote ambitious and innovative TSD chapters in future agreements, together with the substantive provisions outlined.

1.9.2 There is now sufficient experience gained on which to reflect and learn lessons for clear, positive recommendations to be made for the future. Balanced, structured and reinforced domestic advisory groups (DAGs) are needed. Capacity building and better promotion are important too, both with partner countries and with local civil society to encourage more organisations to take part.

1.9.3 Joint meetings of both DAGs must be written into the agreements, backed by adequate funding and widened mandates to include activities aimed at broader TSD objectives.

1.10 There are other surprising omissions. Despite it being a 'Commission communication', it fails to read across sufficiently to the interconnection with other Directorates-General. The Committee has yet to be convinced that the Commission has developed a cross-DG approach to key issues.

1.10.1 We regret the failure to demonstrate a fully coordinated approach to the SDGs. Trade and investment will play a profound role in realising the SDGs, which will set the global agenda for the next 15 years, yet there are only two references to the SDGs in the communication. This is a clear missed opportunity. We call for an urgent dialogue to ensure the involvement of civil society in monitoring the impact of trade and investment in achieving the SDGs.

1.10.2 Nor is there any reference to the renewal of the 'Cotonou' ACP-EU Partnership Agreement, due by 2020. The EU must also actively encourage the growing momentum for intra-African trade cooperation, essential for African development. Some 50 % of African countries are not covered by current Economic Partnership Agreements (EPAs), yet there is no sense of any EU pan-African strategy emerging beyond these or the ACP framework.

1.10.3 Likewise, the EESC is disappointed that the communication remains silent about other key areas of trade policy. Although there is frequent mention of the importance of energy and raw materials, there is nothing about the need to secure these essential imports from relevant countries where as yet no FTA is in prospect, or otherwise reduce our energy dependency.

1.11 Finally, we urge that sufficient resources be dedicated to implementing 'Trade for all' if this ambitious trade and investment policy is to succeed. This should include the role played by EU Missions and Delegations abroad.

## 2. Background

2.1 Trade and investment are hugely important for the EU. As the communication states, over 30 million EU jobs, one in seven, depend on exports, trade is one of the few instruments available for boosting the economy without burdening state budgets, and 90 % of global economic growth over the next 15 years is expected outside Europe.

2.2 'Trade for all' is a timely review of EU trade strategy one year after this Commission took office. It is the third such communication starting with 'Global Europe' <sup>(5)</sup>, published in 2006 when progress with the WTO Doha Development Agenda (DDA) negotiations had effectively stalled.

2.2.1 The communication emphasises the need to make EU trade and investment more effective, the need for greater transparency, together with the importance of promoting EU values, and the need to dovetail with other key EU policies. It promises that more attention will be paid to small businesses, which face greater hurdles when getting into new markets.

2.2.2 It also stresses the need to conclude current negotiations, notably TTIP and those with Japan and with China <sup>(6)</sup> (on investment) — the latter with particular reference to China's 'One belt, one road' strategy. Ratification of CETA (the EU-Canada Comprehensive Trade and Economic Agreement) is also highlighted.

2.2.3 Greater emphasis on trade relationships with Asia as a whole is promised, with renewed emphasis on a region-to-region FTA with ASEAN countries, investment agreements with Hong Kong and Taiwan and a call to resume stalled negotiations with India. FTAs with Australia and New Zealand are also projected, and reviews of existing FTAs with Mexico and Chile confirmed.

2.3 The communication outlines the extent to which the significant and consistent growth in the volume of global trade and investment in recent decades has improved general welfare and increased employment in the EU, as elsewhere.

2.3.1 It also acknowledges that trade 'can involve temporary disruptive impacts for some regions and workers, if new competition proves too intense for some firms' and stresses that 'for the people directly affected, a change like this is not small'. Here the European Globalisation Adjustment Fund is important. It helped over 27 600 workers in 2013-2014 <sup>(7)</sup>. The benefits of trade are never evenly spread and although the aggregate balance is positive, negative effects can occur on a sector-specific, geographical and/or individual basis.

2.3.2 It also points out that two thirds more jobs now depend on exports than 15 years ago, jobs which are 'highly skilled and better paid than average' <sup>(8)</sup>. It adds that 'over 600 000 SMEs, employing more than 6 million people directly export goods outside the EU, accounting for one third of exports' <sup>(9)</sup>, whilst adding that 'many more export services', or are suppliers to large companies.

2.3.3 Since 2000, exports of European goods have almost tripled, increasing by some EUR 1,5 trillion, with the EU maintaining its 'share of world goods exports' (at 15 %), compared with the rise of China and the corresponding decline in the global shares for both the US and Japan. The communication also outlines the significant, positive impact of the EU-South Korea FTA, where a trade deficit has now become a surplus.

2.3.4 The communication underlines the growing interdependence between imports and exports. Energy and raw material imports remain essential, but, as it states, 'the same is true for parts, components and capital goods like machinery [...] the share of imports in the EU's exports has increased by more than half since 1995' <sup>(10)</sup>.

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<sup>(5)</sup> COM(2006) 567 final.

<sup>(6)</sup> With China, Market Economy Status is also a key issue.

<sup>(7)</sup> EC Press Release, July 2015.

<sup>(8)</sup> See footnote 1.

<sup>(9)</sup> Ibid.

<sup>(10)</sup> Ibid.

### 3. The changing face of world trade

3.1 ‘Trade for all’ rightly emphasises the need to maintain core EU principles and to use trade agreements ‘as levers to promote, around the world, values like sustainable development, human and social rights, fair and ethical trade and the fight against corruption’.

3.1.1 The communication has been published at a time when trade is undergoing major change. Two recent major international agreements will have profound effects on the patterns of world trade. First the sustainable development goals were adopted in September 2015 by the United Nations, part of its 2030 Agenda for Sustainable Development: there are only two references to the SDGs in ‘Trade for all’.

3.1.2 This was followed in December by the successful outcome to the Paris Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC COP 21).

3.2 Trade and investment will have a profound role to play in the promotion, the targeting and in the implementation of the SDGs, not least as Unctad estimate that, to meet the targets set, an extra USD 2,5 trillion will have to be found annually, much of it from the private sector.

3.2.1 The Ministerial Declaration of the recent 10th WTO Ministerial Conference held in Nairobi acknowledged that international trade can play a role towards achieving sustainable, robust and balanced growth for all<sup>(11)</sup> and sent a clear message both that the WTO has an important part to play in achieving the SDGs, and that this would be far harder without an effective multilateral trade mechanism.

3.2.2 The contribution of trade and investment to ameliorating climate change will also be important. The full effects of the Paris Agreement on trade remain to be seen. Progress in the negotiations for the plurilateral Environmental Goods Agreement (EGA) promises an important step in integrating climate change with multilateral trade policy but the need remains for further multilateral action in order to promote coherence and mutual support between trade and environment.

3.3 Another significant change affecting international trade and investment has been the notable expansion of global value chains (GVCs) and global supply chains (GSCs), together with the exponential growth in digital trade and e-commerce.

3.3.1 A high proportion of trade is now in intermediate products and services, components in the eventual product. This fragmented production process can be spread across many countries, and can change, but developing countries also look to specialise in specific areas of a GVC. GSCs cover those parts of GVCs dedicated to the sourcing, but not to the conception or to the final production or distribution of a good or service.

3.3.2 Services, and the exponential growth of services as a core part of trade, are rightly covered at length in ‘Trade for all’ (2.1.1). However, beyond the traditional aspect of trade in services, the Commission will need to monitor closely further development in this growth and the ways in which it affects international trade.

3.3.3 The Committee therefore welcomes the emphasis in ‘Trade for all’ on the need for trade policy to ‘tackle a wider range of issues’<sup>(12)</sup> if the EU is to secure its due place in GVCs, including the promotion of trade in services, the facilitation of digital trade, and the protection of consumers and their personal data.

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<sup>(11)</sup> Nairobi Ministerial Declaration —WT/MIN(15)/DEC, point 4, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/mind-ecision\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc10_e/mind-ecision_e.htm)

<sup>(12)</sup> See footnote 1.

3.3.4 The Committee also welcomes the Commission commitment to develop further its policies to ensure responsible management of global supply chains, which as stated is ‘essential to align trade policy with European values’<sup>(13)</sup>. We welcome the progress already achieved here by the Commission, notably its Labour Rights Initiative with Myanmar. Monitoring supply chains must play a key part in meeting the objectives of ‘Trade for all’ here.

3.3.5 A clearer understanding of how GSCs operate is timely, notably their impact on the economy and labour market in third countries, in order to promote sustainable development, inclusive growth, human rights and above all the creation of decent jobs. In this regard, the Committee would draw attention to its recent Information Report ‘Corporate social and societal responsibility’<sup>(14)</sup>. It is also preparing a separate opinion on ‘Decent work in GSCs’ in advance of the International Labour Conference in June, and to bolster the promotion of responsible business conduct, a Dutch Presidency priority.

3.4 The multilateral approach to trade nevertheless remains of fundamental importance. It lies at the heart of world trade and must remain, as is stated, ‘the cornerstone of EU trade policy’<sup>(15)</sup>. However, the WTO has a very different starting point from either the SDGs or COP21. The SDGs and the COP21’s goals are both clear sets of targets, yet the WTO only has a clear mechanism. As the limited agreements arrived at in both Bali and Nairobi show, common WTO targets are hard to achieve.

3.4.1 The Committee remains strongly supportive of multilateralism, not least with the need to meet the SDGs and the COP21 goals, and with the growth of GVCs, GSCs, digital trade and e-commerce.

3.5 ‘Trade for all’ is right to stress<sup>(16)</sup> the key role of the WTO in developing and enforcing the rules of global trade, stating its rulebook to be ‘the foundation of the world trading order’<sup>(17)</sup>. The WTO ensures global compatibility and, backed by its Disputes Mechanism<sup>(18)</sup>, is widely valued and increasingly used. There is a real danger that ‘mega-regional’ and other major bilateral FTAs may start to set potentially overlapping and even conflicting rules, which would complicate rather than clarify world trade rules. For example, the Committee notes with concern that the rules of origin (ROO) provisions in the recent EU agreement reached with Vietnam may conflict with what Vietnam has accepted as part of the TPP agreement.

3.6 Many of the issues that formed part of the WTO Doha Agenda can only be tackled at multilateral level, as recognised since the Uruguay Round. This would include any effective global agreement on the overall levels of subsidies in agriculture, a key Doha objective. Multilateral solutions need to continue to be worked for.

3.6.1 FTAs need to provide real added value. They allow more scope for regional and national differences, as well as more scope for cultural sensitivities. FTAs must eventually strengthen multilateralism.

3.7 ‘Trade for all’ looks at ways the WTO and the multilateral system may be reinvigorated. As well as the rule-making aspect, it is right to emphasise the need for a more focused approach. It is correct to draw attention to the growing imbalance due to the rise of several fast-emerging economies, and the need for these to make a larger contribution to help others still further behind in development.

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<sup>(13)</sup> Ibid.

<sup>(14)</sup> Information Report ‘Corporate social and societal responsibility’ (<http://www.esc.europa.eu/?i=portal.en.rex-opinions.35349>).

<sup>(15)</sup> COM(2015) 497 final, point 5.1.

<sup>(16)</sup> Ibid, point 5.1.1.

<sup>(17)</sup> Ibid.

<sup>(18)</sup> Now handling its 500th case.

3.8 Yet the Committee is concerned that the communication contains two proposals that appear to go in another direction to its declared intention. First is the suggestion that 'a subset of WTO members can advance on a given issue' (the plurilateral approach), as is already happening with the EGA negotiations and those for the proposed Trade in Services Agreement (TISA). However, if this approach were to become the norm it could leave many important countries out of the loop, notably poorer, developing countries, especially in Africa. A close watch must be maintained to ensure compatibility between plurilaterals and full multilateralism.

3.8.1 Secondly, if the proposal that an agreement like TTIP should be open for others to join (although put forward with countries like Turkey, Norway and other EEA members in mind), were to become linked with other major agreements (such as an EU-Japan Agreement or CETA) then the very relevance of the WTO could be called into question, not least as it could lead back to days when the 'Quad' or 'G4' were predominant.

#### 4. Strategic considerations and omissions

4.1 Although 'Trade for all' covers many key strategic issues and important trade topics, there remain a number of omissions.

4.2 First, there are just two references to the SDGs, where trade and investment will have a profound role to play. These go much further than the Millennium Development Goals and will impact on virtually every country, not least as they include energy and climate change.

4.2.1 Point 4.2 of the communication nevertheless makes many pertinent points and commitments, and deals with many relevant issues, including sustainability impact assessments and the effects of new FTAs on least developed countries (LDCs), but the essential link with the overall EU approach to the implementation of the SDGs is missing. We regret this failure to demonstrate a fully coordinated approach.

4.3 Nor is there any reference to the renewal of the 'Cotonou' ACP-EU Partnership Agreement, nor to those regions, especially in Africa, where EPAs have yet to be reached. A key message from Nairobi was the widespread desire not only to develop the African Union, but also to work towards a 'Continental Free Trade Area' (CFTA) for Africa, over 50 countries, as a whole. This aspiration is one the EU is uniquely able to promote, and to which it should give priority.

4.3.1 The considerable attention rightly devoted by the EU to the ACP must become an even greater priority as the new SDGs start to be implemented. We welcome the commitment to review the joint EU Aid for Trade strategy 'to enhance the capacity of developing countries to make use of the opportunities offered by trade agreements', in line with the SDGs, and that trade will also be used to support regional integration.

4.3.2 The EU's attention is drawn to the Final Declaration of the 14th ACP-EU Economic and Social Interests Groups meeting in Yaounde in July 2015<sup>(19)</sup>, which states that all available financial resources must be brought into play to achieve the SDGs, within a framework of sound, transparent fiscal governance, involving the private sector.

4.3.3 This approach mirrors two other recent Committee opinions. One<sup>(20)</sup> emphasises that effective aid for trade also requires the active participation of economic and social actors in shaping programmes, monitoring their implementation and evaluating their outcome and impact. In ensuring that relations with ACP countries take account of the diversity of these countries, the Commission should seek the broad and active participation of such actors, including the social partners and wider civil society. It is regrettable, therefore, that the recent EPA with the Southern Africa Development Community does not include any such provisions.

<sup>(19)</sup> Final Declaration of the 14th Meeting of ACP-EU Economic and Social Interest Groups as mandated by the Cotonou Agreement.

<sup>(20)</sup> OJ C 383, 17.11.2015, p. 49.

4.3.3.1 In the other opinion <sup>(21)</sup>, the EESC stressed that business and civil society organisations in developing countries need support in acquiring the skills and ability to exert positive influence on the working environment — including respect for recognised democratic principles, facilitating the establishment and growth of companies, increasing transparency and reducing both overbearing bureaucracy and rampant corruption, not least to encourage foreign and local investors.

4.4 Thirdly, there is nothing in the communication about the need to secure essential imports from relevant countries where as yet there is no FTA in prospect, or otherwise to lessen the EU's energy dependency. A considerable amount of jobs also depend on secure, regular supply of energy and of key raw materials. An earlier Committee opinion has examined this issue, calling for an effective global strategy and a clear EU emergency or crisis response procedure should an important import suddenly become unavailable, for whatever reason <sup>(22)</sup>.

4.4.1 The Committee in turn was disappointed to note that, in the recent Commission communication on the 'Energy Union Package' <sup>(23)</sup>, the section on a 'stronger European role in global energy markets' was surprisingly weak. It placed Algeria and Turkey together, which we do not consider as appropriate, yet made no reference to key energy corridors, nor to the EU Strategic Partnership with China, especially in connection with joint cooperation in energy and transport.

4.4.2 The COP21 Agreement was reached after 'Trade for all' was published. The international trade system will need to reflect its goals as well as the SDGs. Carbon footprints and biodiversity incentives will also need to be taken into account in the fight against climate change.

4.5 Concerning investment, only an EU competency since the Lisbon Treaty, 'Trade for all' proposes to update existing EU FTAs to add a specific investment chapter, together with new stand-alone negotiations with Hong Kong and Taiwan.

4.5.1 Secondly, it looks to regularise investment protection and arbitration, following the ISDS controversy and the subsequent proposals for the TTIP negotiations. It proposes stronger emphasis on enshrining in FTAs the right of the state to regulate, together with moves to transform the old system 'into a public Investment Court System composed of a Tribunal of first instance and an Appeal Tribunal operating like traditional courts' <sup>(24)</sup>. There is to be a code of conduct and independent judges who will require tough technical and legal qualifications.

4.5.2 The Committee encourages an open, transparent debate. It is therefore regrettable that these proposals, which have been widely opposed by a broad range of civil society organisations as not being substantially different from the ISDS mechanism which the EESC has criticised <sup>(25)</sup>, have now been included in the EU-Vietnam FTA and revised CETA texts, without a full and proper consultation process.

4.6 Finally, an ambitious EU trade and investment policy needs adequate, dedicated, and sufficient resources, whether to pursue several negotiations at the same time, the monitoring and implementation of trade agreements (including sufficient funding for civil society monitoring), or in selling the case for trade to a wider public. Sufficient dedication of resources to where they are most needed must be a core consideration when implementing 'Trade for all', including the role played by EU Missions and Delegations in third countries.

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<sup>(21)</sup> OJ C 67, 6.3.2014, p. 1.

<sup>(22)</sup> OJ C 67, 6.3.2014, p. 47.

<sup>(23)</sup> COM(2015) 80 final.

<sup>(24)</sup> Ibid.

<sup>(25)</sup> EESC opinion on investor protection and ISDS in EU trade and investment agreements with third countries (OJ C 332, 8.10.2015, p. 45).

## 5. Sustainability and EU values — key to winning the argument at home

5.1 It will be important to win the wider argument for trade at home if 'Trade for all' is to be successful. Trade and investment are now part of the public agenda and seen as important by a broad range of civil society, with many questioning basic precepts. The earlier EU assumption that liberalised trade is automatically beneficial is no longer accepted.

5.2 'Trade for all' deals at length with concerns that have arisen during the TTIP debate. It firmly states that 'the Commission must pursue a policy that benefits society as a whole and promotes European and universal standards and values alongside core economic interests, putting a greater emphasis on sustainable development, human rights, tax evasion, consumer protection and responsible and fair trade' <sup>(26)</sup>. Provisions to combat tax fraud and tax avoidance will also be important. It pledges that 'no EU trade agreement will lead to lower levels of consumer, environmental or social and labour protection' <sup>(27)</sup>. Following COP 21 global warming should now be included.

5.3 The Committee welcomes these commitments, building on the foundations laid by 'Global Europe', which stated 'as we pursue social justice and cohesion at home we should also seek to promote our values, including social and environmental standards and cultural diversity around the world' <sup>(28)</sup>.

5.3.1 Part of the EU emphasis on sustainable development stems from its overall desire to promote and strengthen its shared beliefs in democracy, the rule of law, human rights, transparency and predictability. At the heart of this lies protection of the environment, combatting climate change, promoting decent work, health and safety at work and the wide range of issues addressed both by the core ILO Conventions and the key multilateral environmental conventions. Now it is essential that the SDGs must also play a central role.

5.3.2 In most sectors, but notably not for textiles or ceramics, tariffs play a secondary role in trade negotiations to non tariff barriers and rules, including regulatory cooperation. It is the effect of the latter that raises concern at who may be the real winners. As the communication stresses, it is essential that regulatory cooperation be achieved without reducing existing regulatory protection in key areas such as health, safety, the environment, working conditions and consumer protection. The sanitary and phytosanitary measures chapter of CETA points a way forward. The right to regulate must be guaranteed. Double standards must be avoided.

5.4 The Committee welcomes the Commission's stated desire, in line with positions taken by the EESC, the European Parliament and wider civil society, to protect public services in FTAs and feels that this can best be done by the use of a positive list with regard to both market access and national treatment.

5.5 As trade has become more widely discussed, the European Parliament's ratification of trade agreements can no longer be readily assumed, with its greater powers and a much wider range of views. Therefore the Committee would expect the Commission to take into account in trade negotiations the Parliament's comments and concerns expressed in its resolutions, most recently on TTIP and TiSA. Due to the likelihood that some FTAs will cover 'mixed' competencies, ratification in those cases will be needed by national parliaments. In such cases ratification will necessitate a fully accountable procedure in line with national constitutional provisions. Further activity by the Commission to win approval for such agreements will be essential both at EU and Member State level.

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<sup>(26)</sup> See footnote 1.

<sup>(27)</sup> Ibid.

<sup>(28)</sup> COM(2006) 567 final, point 3.1(iii).

5.6 The EU strengths on trade remain one of its best selling points, but the positive case for trade and especially investment needs to be constantly restated. There needs to be a high level of well informed debate both at EU and at Member State level, including civil society, as well as ensuring that all interested parties can be sure to have their voice heard.

5.6.1 Hitherto a broader, attractive range of imported products, aided by reduced costs through tariff reduction or elimination, was seen to deliver readily identifiable consumer benefits, offering greater choice and diversity. Issues such as the lowering of roaming fees for telecommunications with trading partners remain outstanding. Encouraging positive consumer spending at home is key to realising the broader benefits of trade liberalisation in the EU, notably through greater economic growth and jobs.

5.7 Whilst the communication stresses the importance of trade to the EU, in terms of growth and jobs, of equal importance is the voice of the consumer, concerned at potential loss of standards, and at potential environmental footprints.

5.7.1 Consumers, recognised by 'Trade for all' <sup>(29)</sup> as having benefitted from the elimination of trade barriers, need to have trust in the global market. To gain that trade policy must be seen to be in line with sustainable development, including long-term economic sustainability. Impact assessments will need to reflect this fully and be seen to have impact.

5.7.2 It is essential that consumers and wider civil society are placed at the heart of policymaking. The Committee believes that the focus of the communication to make trade policy more beneficial to consumers, more open and transparent is a very positive step. However, we share concerns that there are still no mechanisms that enshrine the precautionary principle and the hazard-based approach in trade policy. In turn this needs to be integral with the 'Innovation Principle' <sup>(30)</sup>.

## 6. Transparency and the deepening of civil society participation

6.1 'Trade for all' will be judged by whether the Commission is able to demonstrate that environmental, labour and other standards are not lowered by trade agreements. It will also need to show that it itself is accountable in its trade and investment negotiations, and can be held to make good its claims of benefits for all.

6.1.1 This can only be achieved by a much deeper involvement of civil society from the start.

6.1.2 'Trade for all' covers the need to engage actively with civil society but not as extensively as might be expected. As part of its institutional role the EESC is well placed to help develop this through its regular involvement with civil society both in the EU and abroad. This must also involve direct consultation of the social partners on the possible impacts of trade and investment on jobs.

6.2 Following the TTIP controversies, the communication now fully recognises the need for transparency. The commitment to provide the same level of transparency for all negotiations as provided for TTIP is welcome. The Committee therefore requests the Council to publish the mandate and negotiation texts for the EU-Japan FTA without delay.

6.2.1 The Committee believes that briefings for civil society during each round of negotiations are particularly important. The specific Advisory Group set up for input as the TTIP negotiations progress has also been of benefit: the Committee was disappointed that it was not as an institution formally included. This needs to be rectified in future.

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<sup>(29)</sup> COM(2015) 497 final, point 4.1.1.

<sup>(30)</sup> See footnote 5.

6.3 What the communication signally fails to mention however are the civil society monitoring mechanisms for trade and sustainable development (TSD) chapters in existing EU trade agreements, nor how these might be developed and strengthened. The committee believes that enforcement mechanisms have to equally apply to the TSD chapters themselves, starting with the Commission proposal for TTIP.

6.3.1 This is disappointing. In its response to 'Global Europe', the Committee called for the inclusion of a TSD chapter in each subsequent FTA, together with an active monitoring role for civil society<sup>(31)</sup>.

6.3.2 Starting with the EU-Korea Agreement of 2010, there have been seven EU trade agreements with a prominent TSD chapter. The Committee has since called for TSD chapters to be included in stand-alone Investment Agreements<sup>(32)</sup>.

6.3.3 The Committee considers that the lack of any detailed assessment of these chapters to date, their monitoring or their potential development to be at odds with the Commission's otherwise welcome intention to continue to promote ambitious and innovative TSD chapters in EU trade and investment agreements, together with the substantive provisions they outline.

6.3.4 Each such agreement has included varying types of joint civil society mechanisms to monitor the implementation of TSD chapters. There is now sufficient experience gained and lessons learned on which to reflect and make clear, positive recommendations for the future.

6.3.5 These mechanisms have major potential and can deliver tangible results in terms of positive impact of trade and investment where appropriate. An important channel for dialogue and cooperation with civil society from partner countries, they also require time, effort and capacity building to become fully operational and effective, especially where the model of civil and social dialogue differs from the EU. Existing EESC links helped in setting up domestic advisory groups (DAGs).

6.4 As the number of such bodies grows, so there are real challenges in achieving balanced representation of each group in the DAGs, leading to serious delay.

6.4.1 Other recurring problems include:

- capacity constraints of relevant organisations: better promotion both with partner countries and amongst civil society actors is needed,
- the need to write into the text of an agreement provision for joint meetings of the EU and partner country DAGs, to exchange experience and set up common benchmarks for monitoring,
- adequate funding for civil society participation: this should also cover wider activity, including seminars or studies that contribute to TSD objectives.

6.4.2 We further recommend that the mandate of DAGs be widened to cover any issue of interest for civil society, including regulatory cooperation, SME chapters or provisions related to human rights.

Brussels, 28 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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<sup>(31)</sup> OJ C 211, 19.8.2008, p. 82.

<sup>(32)</sup> OJ C 268, 14.8.2015, p. 19.

**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(2016) 71 final — 2016/43 (NLE))**

(2016/C 264/18)

On 24 February 2016 the Council decided to consult the European Economic and Social Committee, under Article 148(2) of the Treaty on the Functioning of the European Union, on the:

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

(COM(2016) 71 final — 2016/43 (NLE))

Since the Committee has already set out its views on the content of the proposal in question in its earlier opinion on employment guidelines (EESC-2015-01167-00-02-AC-TRA) adopted on 27 May 2015 (\*), it decided, at its 516th plenary session of 27 and 28 April 2016 (meeting of 27 April 2016), by 220 votes to 1 with 7 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 April 2016.

*The President*  
*of the European Economic and Social Committee*  
Georges DASSIS

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(\*) EESC Opinion SOC/519 on the proposal for a Council Decision on guidelines for the employment policies of the Member States (COM(2015) 098 final — 2015/0051 (NLE)) (OJ C 332, 8.10.2015, p. 68).



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