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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

536TH EESC PLENARY SESSION, 11.7.2018-12.7.2018

Opinion of the European Economic and Social Committee on The effects of a new carbon-free, decentralised and digitalised energy supply structure on jobs and regional economies**(own-initiative opinion)**

(2018/C 367/01)

Rapporteur: **Lutz RIBBE**

Plenary Assembly decision	15.2.2018
Legal basis	Rule 29(2), Rules of Procedure
	Own-initiative opinion
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	28.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	123/1/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. Transforming the energy system towards carbon-free, decentralised and digitalised supply offers enormous opportunities, in particular for structurally weak and rural regions in Europe. The development of renewable energy (hereinafter referred to as 'RE') can have a major and beneficial impact on employment, and can be configured so as to provide a completely new stimulus for the regional economy.

1.2. In particular, there is potential for mutually reinforcing the positive effects of Europe's energy and cohesion policies. The European Economic and Social Committee (EESC) finds it regrettable that both the Commission and the Member States have yet to properly recognise this potential, let alone exploit it.

1.3. It is true that, since being redesigned, cohesion policy has helped promote RE and energy efficiency, and the EESC welcomes this fact. However, European energy policy has so far done next to nothing to promote cohesion policy. There has been a failure to recognise that RE could make a substantial contribution to the economic development of disadvantaged regions in particular, meaning that major political potential for regional growth is going to waste.

1.4. In order to realise this potential, steps must be taken to enable and support regions to develop RE and related specific network infrastructure as a way of stimulating regional economic growth, and to ensure broad public participation in this growth. An enhanced role for consumers is a particularly important form of participation for regional added value. Thanks to digitalisation (among other things), these consumers could, as prosumers, take on entirely new responsibilities in relation to the energy economy; engage in economic participation; and support broader political objectives following a 'bottom-up climate action' approach.

1.5. It is important to pursue an overarching, regional economy approach to the development of RE. This means coordinating the generation and use of RE at local level, and in a way that cuts across electricity, heat and mobility. Artificial intelligence and smart grids could make an important contribution here.

1.6. The relationship between regional energy demand and regionally produced or producible RE should serve as a basis for understanding the extent to which regions succeed in doing this. The EESC recommends that, in the context of 'plans for regional energy circular economies', analysis should be carried out that is capable of providing a differentiated assessment of RE's potential for each regional economy. The plans should also lay out the employment policy-related effects for each region. For even if it is generally true that the energy transition creates more jobs than there were in the previous energy system, there will still be regions that benefit from this effect more than others.

1.7. Plans for regional energy circular economies could form the basis of a structured and nuanced dialogue with local people which is important (a) for maintaining or establishing local approval for RE, and (b) strengthening regional centres of economic activity. The EESC is surprised that such analysis and plans have so far been carried out only in a very small number of cases.

1.8. European cohesion policy is not the only area where an overarching, regional economy approach to RE development could make an important contribution. It also has a number of energy policy-related advantages (reducing energy dependency and energy poverty, supporting the coupling of sectors, exploiting the innovation potential of digitalisation, reducing grid load).

1.9. In light of the above, the EESC calls on the Commission and the Member States to take the necessary steps for an overarching, regional economy approach to RE development: these include a definition of energy regions, support for compiling an empirical record of the relationship between regional energy demand and regionally produced or producible RE, targeted education and training, incentives for implementation (e.g. based on support for development of RE infrastructure), the opening up of networks, and appropriate pricing of grid costs.

2. Background

2.1. The European Union is facing profound changes to its energy policy and to the way its energy is supplied. This will not only affect production (away from carbon-based fossil fuels towards the expansion of renewable energy); it will also involve enormous structural changes, both in terms of the places where energy is generated (moving away from large central power plants towards more decentralised structures) and the supplier and consumption structure (new stakeholders and consumption and distributor models, not least as a result of digitalisation).

2.2. The EESC has already issued a number of opinions on the impact of the energy transition on regions that are expected to be adversely affected, such as coal regions⁽¹⁾. Many people in such regions have already lost their jobs; further job losses can scarcely be avoided. This makes it all the more important to recognise the structural change at an early stage and to support it at political level, so that the economic and social impact can be minimised and mitigated. The EESC welcomes the Commission's initial initiatives in this respect⁽²⁾.

2.3. However, the EESC has noticed that the positive changes, which might for example concern regional added value and job creation, have so far been only marginally discussed. At various points in the recitals to the current RE directive (2009/28/EC), the Commission refers to the importance of RE for regional economic development; however, in the course of its research, the EESC has found that (a) hardly any studies exist on the possible outcomes for regional economies of

⁽¹⁾ OJ C 303, 19.8.2016, p. 1.

⁽²⁾ https://ec.europa.eu/info/news/no-region-left-behind-launch-platform-coal-regions-transition-2017-dec-08_en.

developing RE and that (b) within the Commission, but also the Member States, there is no discernible strategy to join up energy policy and regional development in a genuinely more targeted way. No recognisable political strategy therefore exists to fully exploit this potential.

2.4. At the same time, a huge number of positive 'bottom-up' examples of RE development at local and regional level can already be seen in Europe. To take a more or less random example, a wood-fired heating plant was constructed in Langres in eastern France (10 000 inhabitants), which uses a five-kilometre-long block heating network to supply 22 water heating systems and, indirectly, a hotel, a water park and an old people's home, among others. This saves 3 400 tonnes of CO₂ each year. What is striking in many such initiatives is that only in rare cases are they systematically evaluated for their importance to the regional economy. In this regard, a significant 'lack of statistical knowledge' must be noted.

2.5. Meanwhile, in Feldheim (close to Berlin), not only have local resources been consistently used for local energy production and supply for around 20 years now; the impact on the regional economy has also been thoroughly described. The village's electricity demand is now covered many times over, with demand for heating fully covered. As well as direct income from energy sales, the savings are remarkable: local residents pay an electricity price of only 16,6 cent/kWh, which is only a little more than 50 % of the average cost of electricity in Germany. The local population — the 'driving force' — should be involved as closely as possible in a systematically operated energy circular economy ⁽³⁾.

In the EESC's view, an overall comparison is important, weighing up the potential positive impact on the regional economy against the negative effects mentioned earlier caused by the energy transition.

2.6. The aim of this own-initiative opinion is to help finally stimulate an in-depth debate, by setting out the various possibilities and potential approaches and identifying shortcomings.

3. The importance of RE to the economic and social development of Europe and its regions

3.1. The EU is the world's biggest energy importer: 53 % of our primary energy demand is imported annually for a total sum of more than EUR 400 bn. The EU's energy dependency is a serious economic and geopolitical problem.

3.2. The aim of the 'European Energy Union' is (a) to increase Europe's energy security by reducing energy imports, (b) to promote climate action, and (c) to create new jobs. The EESC is of the view that this European macroeconomic objective is useful and should be applied at regional level too.

3.3. In light of this, the promotion of RE as a 'domestic' energy source which — unlike fossil resources — is available in all EU regions, must not only be discussed for reasons of climate protection but also be seen as an important regional economic objective: energy production could and should stimulate regional economies.

3.4. The greater the success in facilitating the economic participation of regional stakeholders in this process — be they citizens, regional businesses or the municipalities themselves — the greater the approval needed for the development of RE infrastructure. The more actively involved regional stakeholders are, the greater the regional added value resulting from RE.

3.5. How such economic participation might specifically look can be explained by a nuanced overview of the RE added value chain.

⁽³⁾ For further details, see the presentation of the case study at the EESC hearing on the 'Energy transition in Europe's regions — Assessing regional economic effects of the transition to a smart and low-carbon energy supply' (31 May 2018): <https://www.eesc.europa.eu/en/news-media/presentations/presentation-michael-knape> (in German).

- First, actual **investment** in RE installations: these installations are mostly ‘imported’ from other regions. The same applies to the **planning process**, which — especially in the case of larger projects — is often carried out by engineering/development firms that are also frequently based outside the local area; the impact on the regional economy is therefore rather limited.
- However, direct regional added value is created by installations’ **operating and maintenance costs**. That said, this kind of expenditure is comparatively low in the case of RE installations. With wind or solar farms, for example, rent payments to local landowners have a positive effect, as does potential **tax revenue** for the municipalities.
- The actual economic benefit of RE installations arises from the use or **sale of the generated energy**. For the regional economy it is therefore key who operates the installations, and who can generate profit from operating them.

3.6. One type of economic participation takes the form of regional jobs, which can be created in the energy sector as RE develops. Numerous studies have shown that the net impact of the transformation of the energy system on jobs is clearly positive, as most recently demonstrated by a study for the Netherlands, for example⁽⁴⁾. It should be pointed out that, according to this study, all Dutch provinces will benefit from this positive effect.

So that such positive developments can take place across all of Europe’s regions, steps should be taken at the earliest opportunity to invest in relevant skills development for people.

3.7. Clearly, these positive effects cannot in every case fully offset all the disadvantages of structural change, such as those for coal regions. However, the transition to RE does offer major opportunities for positive development in the many European regions which currently only import energy.

3.8. A further form of regional economic participation is based on direct participation in RE installation investments and thus on their operation. Capital costs account for the largest share of the total costs of RE installations. For regional added value, it is therefore all the more important that regional stakeholders are able to invest in RE installations. According to a study carried out for the German federal state of Hessen, regional added value can be up to eight times higher if a wind farm is run by a regional operator⁽⁵⁾.

3.9. In some European regions, policy-makers have recognised the importance of this and started initiatives to boost regional participation in RE, such as the Community Empowerment Bill in Scotland, *Lov om fremme af vedvarende energi* (Law on the Promotion of Renewable Energy) in Denmark, the *Bürger- und Gemeindebeteiligungsgesetz* (Citizen and Municipality Participation Act) in the German state of Mecklenburg-Western Pomerania, and the ‘National Energy Independence Strategy’ in Lithuania.

3.10. A third possible form of participation involves consumers being able to directly obtain energy generated by installations in their region, for example through ‘power purchase agreements’ (PPA). Digitalisation will also make PPA accessible to smaller energy consumers and price trends strongly suggest that, increasingly, the costs of locally produced wind or solar power will be below the wholesale market price.

3.11. There might be another important effect. When a regional energy circular economy creates new added value in a region through savings or revenue based on RE, or reduces the outflow of money due to energy imports, capital becomes available that can be invested in other economic sectors too — i.e. outside the energy sector. This means that not only should the ‘direct’ impact on employment be considered (such as jobs in the RE sector), but also the ‘indirect’ effects that can be derived from new regional financial flows.

⁽⁴⁾ Weterings, A. et al. (2018): *Effecten van de energietransitie op de regionale arbeidsmarkt — een quickscan* (Effects of the energy transition on the regional jobs market — a brief survey), PBL, Den Haag, p. 36.

⁽⁵⁾ Institut für dezentrale Energietechnologien (Institute for Decentralised Energy Technologies) (2016). *Regionale Wertschöpfung in der Windindustrie am Beispiel Nordhessen* (Regional added value in the wind industry: the example of northern Hessen).

4. RE as regional policy — a best-case scenario from Poland (Podlaskie)

4.1. The Polish region of Podlaskie provides a particularly clear example of how the considerations from section 3 can be implemented regionally. This example shows how a structurally weak region can undertake a successful regional policy by developing RE — even when national objectives are far from optimal. However, a systematic approach — as described below — is a prerequisite.

4.2. In 2012, the regional parliament (Sejmik) adopted a regional development plan, which formed the basis for implementing operational programmes using European structural funds.

4.3. Podlaskie is one of Europe's weakest regions in terms of development and income and spends some PLN 5,2 bn (EUR 1,25 bn) annually on importing energy. The region does not have its own sources of fossil fuels.

4.4. The development strategy refers to a planned 'revolution' with four objectives: 1) independence from electricity imports, 2) increasing the share of RE in energy consumption, 3) reducing CO₂ emissions and 4) increasing the economic potential of the region in which imported (heavily carbon-based) energy sources are substituted with regional (cleaner) forms of energy.

4.5. There is a recognition in Podlaskie that a 'regional energy policy' can only succeed if the stakeholder structure of the energy market is also taken into consideration. Thus efforts are being made 'to turn Podlaskie's residents and businesses into the owners of decentralised energy sources'.

4.6. Since the end of 2016, the municipality of Turośń Kościelna in Podlaskie has used resources from the ERDF to arrange the purchase of 38 heat pumps as well as 77 PV and 270 solar thermal installations for its residents. It coordinates billing, ordering and installation, and does all of the legal and technical work for residents. The investments were 85 % co-financed using EU Structural Funds. Around 25 % of all houses will in future be equipped with modern RE technology.

4.7. On the basis of the 'net metering' system used in Poland for small PV installations, citizens produce their own 'green' electricity (including all associated costs) for approximately PLN 0,18/kWh (around 4,3 cent/kWh). By way of comparison: for a grid connection (to obtain electricity mainly produced using coal), the current price is PLN 0,65/kWh (= 15,5 cent/kWh). The former leads to a reduction in electricity costs of around 75 % and the money saved benefits the regional economy.

4.8. The Marshal's Office has taken up this approach and in 2017 it paved the way for similar projects in 62 other municipalities. Overall, funding was requested for some 4 700 solar thermal rooftop panels and 2 250 PV rooftop panels on homes with a total capacity of just over 7 MWp; roll-out is due to take place in 2018.

4.9. For a long time, however, people have been thinking beyond this, to areas such as electro-mobility. Of the PLN 5,2 bn that Podlaskie spends annually on energy imports, around PLN 1,5 bn alone goes on the import of petrol and diesel for cars.

4.9.1. One consideration specific to Podlaskie: every year, licensed cars in the region cover a distance of some 5,2 billion km. If all vehicles were powered using electricity, around 800 000 MWh of electricity would be needed based on a consumption of 15 kWh/100 km. With grid connection costs currently at PLN 0,63/kWh, around PLN 500 million would be required to run these cars, instead of the PLN 1,5 bn that is currently spent to run them using fossil fuels. Some PLN 1 bn would be left over for the region purely as a result of this, which could be used to help bolster the economy.

4.9.2. The required quantities of electricity could be generated using around 70 wind turbines (regionally installed). Electricity generated annually by one such installation is enough to power some 7 000 cars; one kWh costs around 6-7 cents. If 7 000 drivers were to join forces and run such an installation in the form of a cooperative, the costs they would incur of running an electric car would fall significantly once again. This, however, would need to be made possible from both a legal and administrative point of view, for example by opening grids for peer-to-peer distribution. Digitalisation opens up such possibilities, but the political reality acts as a brake on them.

4.10. The use of regionally generated wind power in heating plants as a substitute for coal is also being considered in Podlaskie. Wind power would be used in industrial heat pumps and heat storage devices. This seems to make a great deal of economic sense. However, these ideas have yet to move beyond the pre-planning phase. The financial means are not even available for a feasibility study.

5. More regional added value through regional use of regionally generated RE

5.1. The example of Podlaskie shows that one of the major effects of RE is its potential to boost regional purchasing power. In order to assess this, it is important — in the context of a ‘regional energy circular economy’ — to first estimate the potential, both in terms of electricity and heating and transport.

5.2. The example of solar thermal energy provides a good illustration of the potential of the regional economy approach. Installation and operation bring little regional added value, especially as there are also negative effects, such as if oil heating is replaced, thus putting pressure on heating oil sellers’ jobs. But solar power is in fact very positive for consumers. Because the higher the share of their overall heat demand is met by solar thermal energy, the more they can do without imported energy raw materials such as coal, oil or natural gas, which represent an outflow of purchasing power from the region to the benefit of coal-, oil- and gas-exporting countries or multinational mineral oil and natural gas companies.

5.3. Overall, there appears to be a need to calculate a region’s energy balance in order to identify the extent to which regional energy consumption is or could be successfully met using regionally generated (and, potentially, temporarily stored) RE. The balance must take into account four elements:

1. It must be established how much energy a region needs in terms of electricity, heat and mobility. Consideration of heat and mobility is important for two reasons: first, these areas account for 75 % of energy consumption. Second, heat and mobility applications offer important flexibility options which are mostly available at local level only.
2. How much potential there is to meet this demand with RE from the region should be worked out. To this end, the extent to which this actually re-routes capital flows for the benefit of the region should also be established. In the case of bioenergy, this depends on the source of the biomass; with all RE technologies, it depends on the origin of the installation and of the businesses contracted to set them up and maintain them. Furthermore, it needs to be determined, on the basis of the operating structure and — where appropriate — the volume of intra-regional electricity consumption, whether the operating turnover remains in the region, thus implying economic participation by regional stakeholders.
3. The difference between the regional energy demand and the proportion of this demand that can be met from regional RE shows how much energy needs to be imported from other regions (outflow of capital from the region). Many European regions will continue to be unable to avoid importing energy, whether because it is inefficient, uneconomical, or simply technically impossible to fully cover regional energy demand with regionally produced energy.
4. In so far as more energy is produced in the region than is consumed regionally, it should be determined who participates in the proceeds of electricity sales.

5.4. The balance between regional energy production and regional energy consumption should be calculated for each European region, although this should not be a legal requirement. Rather, it should be in the interest of each region to calculate this balance on their own initiative. It should be checked whether the established category of NUTS 3 regions can be used for this purpose. In some cases, cross-border energy regions seem to be an interesting possibility, not least in connection with the ‘Europe of the regions’ idea. In this connection, the energy information service, whose creation was called for in a previous EESC opinion⁽⁶⁾, could play a coordinating role.

6. The potential for energy and regional policy of energy equilibrium or a positive energy balance

6.1. If the balance described in section 5 between regionally produced and regionally used RE can be improved, this will help lower Europe’s energy dependency.

⁽⁶⁾ OJ C 262, 25.7.2018, p. 86.

6.2. If regional stakeholders are able to play a bigger economic role in RE, this would strengthen regional cohesion. This is due to the fact that regions with structural weaknesses frequently offer the largest potential areas for RE, meaning that RE can have the most pronounced effect on the regional economy in such regions.

6.3. Calculating energy balances specifically for regions would enable the significance of the energy transition for individual regions to be ascertained. The debate about structural change in certain regions could be placed on a sound basis. Corresponding regional policy measures could be better developed than they are currently, when we have to speak in relatively broad terms about 'coal regions' or 'energy islands'.

6.4. Whether a region is a net importer or exporter of energy, or is in energy equilibrium, has a tangible impact on inhabitants. A dialogue on the subject must be conducted with regional stakeholders. There is no perfect solution that suits all regions equally. Instead, fairer solutions that are tailored towards regions must be agreed, including with regard to 'spatial justice' (i.e. what areas are used for what purpose). Regional politicians and administrators will need to be trained accordingly.

6.5. The more regional energy demand is successfully met using regional RE, the more independent consumers living and working in the region will be of changes in international market rates, particularly mineral oil and natural gas prices. This is the best way of reducing energy poverty and the vulnerability of end users. As energy prices are an increasingly important factor in investment decisions, this also makes local economic and industrial centres more attractive.

6.6. The forthcoming integration of the heating and mobility sectors into the electricity system could be supported, in a targeted way, by means of incentives for regional use of regionally generated RE and thus for consolidation.

6.7. The digitalisation of the energy industry offers great opportunities. Here, too, incentives to improve regional use of regionally produced RE could unlock the specific potential of digitalisation, promoting innovation.

6.8. The European Energy Union aims to strengthen the role of citizens/energy consumers in the energy transition. However, high barriers to entry exist in interregional energy markets and economies of scale play an important role⁽⁷⁾. Ultimately this is a consequence of historical, monopolistic market structures. It is a lot easier for citizens and consumers to play this new, more active role on a regional scale — i.e. within a regional energy circular economy.

6.9. If more regionally produced RE were used at regional level, this would lighten the load on the grid and may potentially reduce the need to massively expand European electricity transmission networks (see also recital 52 of the proposal for a Directive on the promotion of the use of energy from renewable sources (COM(2016) 767 final)).

7. Regional energy circular economy-related recommendations

7.1. The EESC calls on the EU institutions to view regional use of regionally produced RE as a goal of European energy policy and cohesion policy, and to use the balance between regional energy demand and regional RE generation as a gauge. This means taking account of the specific characteristics of community energy, as well as other regional stakeholders not benefiting from economies of scale, in the future design of measures to promote RE⁽⁸⁾. The particular aim must be to dismantle barriers to market access that limit the opportunities of small-scale (regional) stakeholders. A European programme to train regional stakeholders and enhance exchange of best practices would also be helpful.

7.2. This requires a strategic decision to gear energy policy towards a decentralised approach. In this respect, there are still far too many contradictions in the 'Clean Energy for All Europeans' package between a more decentralised and an unequivocally centralised energy policy. It would be welcome if Europe's regions and municipalities had the power to

⁽⁷⁾ OJ C 288, 31.8.2017, p. 91.

⁽⁸⁾ OJ C 246, 28.7.2017, p. 55.

directly regulate the participation of regional stakeholders in the use of regional renewable energy. This would also be in line with the established tradition in many European Member States of providing municipal services of general interest.

7.3. The EESC calls on the Commission to set out which policy measures relating to the energy mix at European, national and subnational level help to promote regional energy. Part of this might be a specific version of public procurement law. Furthermore, a methodology should be developed to help regions calculate their specific energy balance. An online application for regional politicians and stakeholders, which provides at least approximate results, would be a good idea.

7.4. Restructuring network charges — and possibly other levies and taxes too — could help achieve the described regional economic effects linked to RE development. The export and in particular the import of energy should be priced so as to at least take transport costs into account.

7.5. Differentiated network charges — i.e. setting a price for an electricity transaction according to how many grid levels are needed to carry out the transaction — in combination with greater coverage of regional energy demand using regionally produced RE also make it easier to ascertain the actual need for grid development on a market-oriented basis. Although it will be important to connect Europe's energy regions effectively, this does not mean that network expansion should always be given absolute priority. This is still too often the case today, without it being economically justifiable⁽⁹⁾.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

⁽⁹⁾ See Peter, F.; Grimm, V. & Zöttl, G. (2016). *Dezentralität und zellulare Optimierung — Auswirkungen auf den Netzausbaubedarf* (Decentralisation and cellular optimisation — impact on the need for network expansion) https://www.fau.de/files/2016/10/Energiestudie_Studie.pdf (in German).

Opinion of the European Economic and Social Committee on the Role of transport in realising the sustainable development goals, and consequent implications for EU policy-making

[Own-initiative opinion]

(2018/C 367/02)

Rapporteur: **Tellervo KYLÄ-HARAKKA-RUONALA**

Plenary Assembly decision	15.2.2018
Legal basis	Rule 29(2) of the Rules of Procedure
	Own-initiative opinion
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	28.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	136/0/3
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. Transport is a vital enabler of several SDGs. It contributes strongly to the SDGs regarding economic development, industry and SMEs, as well as trade and investment. Consequently, it also helps achieve the SDGs that aim to promote employment and well-being, and to reduce inequalities and exclusion. Meanwhile, transport presents many challenges with respect to the SDGs, such as the need to reduce climate and environmental impacts, to improve transport systems and traffic safety, and to manage concerns related to jobs and decent work.

1.2. The EESC calls on the Commission to prepare a new, integrated policy framework for the next generation of transport policy, with the aim of laying the foundations for improving transport and mobility while at the same time delivering on the social and environmental objectives.

1.3. To this end, EU policy-making has to provide favourable conditions for transport to meet the mobility needs of people and businesses. This requires, in accordance with the SDGs, significant investments in proper infrastructure, innovation and well-functioning transport systems, including public transport.

1.4. Efforts are also needed to respond to the SDGs that relate to the social aspects of transport, such as promoting full and productive employment, decent work and skills development, as well as delivering on gender equality and paying special attention to the needs of those in vulnerable situations such as children, persons with disabilities and older persons. Social dialogue should play a key role in properly managing structural changes.

1.5. The Goal regarding climate change is extremely challenging for transport and requires the intensive development of transport systems, the introduction of a wide range of decarbonising measures, and new and innovative approaches to mobility.

1.6. Digitalisation and robotisation are among the megatrends affecting the development of transport, and require proper management of the opportunities and challenges. Digitalisation contributes to sustainable transport by making logistics more efficient, helping provide better transport information for passengers and improving traffic safety.

1.7. As transport is a matter for the whole of society, it is vital to involve civil society in the preparation and implementation of transport policy. Whilst the role of the public sector is essential, bottom-up action and partnerships should also be facilitated to find the best possible solutions for transport.

1.8. The EESC, moreover, calls on the Commission to assess the SDG indicators from the transport point of view and to enhance the development of indicators that are relevant, give a realistic and informative picture of developments, and are in line with the integrated approach.

2. Background

2.1. The Sustainable Development Goals (SDGs) of the United Nations' 2030 Agenda broadly cover different aspects of the economic, social and environmental challenges we are facing globally. None of the SDGs is specifically focused on transport and mobility, but transport is implicitly related to several Goals. In addition, a few of the 169 targets complementing the Goals are directly related to transport, notably those regarding infrastructure, local transport systems, and road safety. Correspondingly, three of the 232 indicators being used to monitor the progress are transport-related, measuring transport volumes, access to public transport, and road traffic deaths.

2.2. Transport has a diverse role with respect to the SDGs. The SDGs provide transport with both opportunities and challenges, and transport has both an enabling and adapting role in the implementation of the SDGs. 'Transport' refers here to the transport of goods and passengers, including all transport modes.

2.3. The purpose of this own-initiative opinion is to

- identify how transport contributes to achieving the SDGs, as well as how the SDGs may benefit or shape transport;
- analyse the possible implications of the linkages between transport and the SDGs for transport-related EU policies, both domestically and in the global context;
- provide the EESC's views and proposals on how these linkages should be considered in EU policies and policy-making, in order to properly seize the opportunities and manage the risks.

The role of transport as an enabler for achieving the SDGs is analysed in Chapters 3 and 4. Chapter 5 considers how SDGs benefit transport by enhancing its foundations. Chapters 6 and 7 analyse what kind of challenges and expectations SDGs set for transport. Based on this analysis, Chapter 8 summarises the findings as implications and recommendations for policy-making.

3. Transport and SDGs: enabling economic development and employment

3.1. Transport is one of the main enablers of economic development both in the EU and in the global context and thus deserves a central place on the EU's agenda. Transport has an essential role in helping achieve Goal 8, which aims at sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all.

3.2. Even though digitalisation is expanding into all areas of the economy and society, it does not put an end to material production and consumption. Logistics combines the various parts of supply chains, covering the transport of raw materials, intermediary products, and end products to customers. Transport is thus a necessity for industries, agriculture and commerce.

3.3. Properly managed transport can also contribute to the specific target of Goal 8 which calls for policies to promote sustainable tourism, with the aim of creating jobs and promoting local culture and products.

3.4. In addition to serving other businesses, transport itself constitutes a notable business sector providing millions of jobs and contributing greatly to the economy. Furthermore, transport gives rise to manufacturing industries, such as the automotive, railway, shipping and aeronautics industries.

3.5. All in all, transport contributes to meeting the Goal 9 target, which calls for a significant rise in industry's share of employment and GDP. As transport-related businesses involve a lot of small and medium-sized enterprises, transport also contributes to integrating SMEs into value chains and markets and fostering their growth, as called for by Goals 9 and 8.

3.6. Correspondingly, transport contributes to the creation of jobs, as called for by Goal 8, in transport-related sectors. Transport moreover enables a better geographic fit between jobs and labour and thus higher employment. There are also challenges, however, such as the transition caused by digitalisation and robotisation, which is forecast to result in profound changes with respect to jobs and tasks.

3.7. In the global context, transport contributes to Goal 17, which aims to strengthen the global partnership for sustainable development. This goal calls for the promotion of a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO. As transport is the backbone of trade, it has significant potential in promoting this goal.

3.8. Goal 9 calls for the development of sustainable and resilient infrastructure in developing countries. This is related to Goal 10, which is about reducing inequality within and among countries and calls for development aid and foreign direct investment to states where the need is greatest.

3.9. By helping to generate economic development and decent jobs through production, trade and investment, transport has also a role in striving for Goal 1, which aims at ending poverty in all its forms everywhere.

4. Transport and SDGs: enabling access to goods and services

4.1. Consumers use transport to access commodities, be it food, as addressed by Goal 2, and other basic commodities or more luxury products. In addition, people also need transport to reach services, such as those related to tourism, hobbies, or social welfare systems.

4.2. Transport is one of the main elements connecting markets, be it the single market or international trade. Connected markets bring about efficiency and scaling benefits and thereby contribute to the accessibility and affordability of goods for consumers.

4.3. Transport is also crucial for the supply and use of healthcare services, both in the EU and globally. Transport is thus a contributor to reaching Goal 3, which aims to prevent and treat diseases, and ensure healthy lives and well-being for all.

4.4. The same holds true as regards providing and attending education. Transport thus contributes to Goal 4, the aim of which is to ensure inclusive and equitable quality education and to promote life-long learning opportunities for all.

5. Transport and SDGs: laying the foundations for mobility

5.1. Transport must be accessible, affordable, smooth and effective, as well as safe and secure, to enable the mobility of people and goods. It is thus crucial for the EU to boost investments in proper infrastructure and appropriate technology, and to enhance well-functioning transport systems.

5.2. Goal 9 has a direct beneficial effect on transport, as it advocates developing 'quality, reliable, sustainable and resilient infrastructure' so as to support economic development and human well-being.

5.3. Smooth border crossings in the internal market, and in international transport and travel, are of the utmost importance for well-functioning markets and the flow of goods and people. Goal 9 promotes this objective by emphasising the role of transborder infrastructure.

5.4. Goal 11 aims to make cities and human settlements inclusive, safe, resilient and sustainable. It calls for access to safe, affordable, accessible and sustainable transport systems to be provided for all paying special attention to the needs of those in vulnerable situations such as women, children, persons with disabilities and older persons. This requires proper planning of land use and traffic systems, as well as adequate public investments in infrastructure. The development of public transport plays an important role here, in both urban and rural areas.

5.5. As for innovation, Goal 9 advocates enhancing scientific research and upgrading the technological capabilities of industrial sectors. This is also important from the point of view of the development of transport and transport-related sectors.

5.6. In addition, Goal 7 calls for international cooperation to facilitate access to clean energy research and technologies, as well as the promotion of investment in energy infrastructure and clean energy technologies. These measures, including infrastructure for alternative fuels and electricity charging, also benefit the decarbonisation of transport.

5.7. With the increasing digitalisation and robotisation of transport, ever more attention should be paid to the needs of digital infrastructure, including automated traffic management and control systems. Goal 9 mentions the need to significantly increase access to ICT and to strive to provide universal and affordable access to the internet. Goal 17 in turn calls for the use of enabling technology to be enhanced, in particular ICT. Digitalisation makes logistics more efficient and helps provide better transport information for passengers, for instance.

6. Transport and SDGs: responding to social expectations

6.1. While transport contributes to healthcare and well-being, it also generates health risks via pollution, such as particulates in air, and traffic accidents. Goal 3 aims to bring about a substantial reduction in these risks. Effective traffic management systems, regulation and enforcement are all necessary means of improving traffic safety. By decreasing human error, advanced automation will for its part increase the safety of transport, despite technological concerns.

6.2. The education and training called for by Goal 4 are crucial to ensure the necessary skills for workers and entrepreneurs in transport-related sectors. Changes in tasks caused, for example, by digitalisation, imply a considerable change in the demand for skills. Goal 4 is therefore an important enabler of transport.

6.3. Goal 5 calls for gender equality to be achieved and all women and girls to be empowered. The transport sector can enhance gender equality by attracting more women to join the sector as entrepreneurs or workers, and thus unleash the potential of people of either gender. Transport, especially public transport, must also be made safe for women to travel.

6.4. Goal 8 calls for full and productive employment, the prevention of youth exclusion, decent work for all, and the protection of labour rights. Conditions in this regard vary. In developing countries, the implementation of the basic rights of workers may be the most relevant target, while in the EU the greatest concerns for the future are related to the promotion of full employment and decent work for all.

6.5. Managing the structural changes faced by the EU due to digitalisation and the transition towards a low-carbon economy requires comprehensive strategies regarding how to ensure a fair and smooth transition, decrease negative social impacts, and respond to the skills gap.

6.6. Furthermore, Goal 10 calls for promotion of the social, economic and political inclusion of all, and the adoption of policies aiming at greater equality. These policies equally enhance Goal 1, the eradication of poverty. With regard to transport, Goal 9 calls for affordable and equitable access for all. By enabling access to work, goods and services, transport — particularly public transport — has a role to play in preventing people's exclusion.

6.7. Goal 10 also calls for orderly, safe, regular and responsible migration and mobility of people to be facilitated. This is related to transport in two ways: transport has a role to play in preventing the loss of life and contributing to the safe and legal movement of refugees and migrants. On the other hand, the transport sector provides opportunities for migrants to become integrated into labour markets.

7. Transport and SDGs: realising the environmental objectives

7.1. In addition to meeting the mobility needs of people and businesses, transport must meet the climate and environmental requirements. Goal 13 stresses the need for urgent action to combat climate change and its impacts. As transport is a major source of global greenhouse gas emissions and a sector in which emissions are still increasing, this Goal is extremely challenging for transport. It requires increased efforts to achieve the objectives defined by EU policies, as well as global cooperation with respect to international air and maritime transport.

7.2. The target of decoupling economic growth from environmental degradation, as called for by Goal 8, is also a massive challenge from the point of view of transport, as there is a strong correlation between transport and economic growth. Striving for decoupling thus requires the intensive development of sustainable transport systems with minimum environmental impact, the introduction of advanced technologies, as well as new and innovative approaches to mobility. This also responds to Goal 12, which is about responsible consumption and production.

7.3. Infrastructure plays an important role with respect to the environmental impacts of transport. Goal 15 aims to protect, restore and promote the sustainable use of terrestrial ecosystems, which has to be considered in land-use planning and construction of infrastructure. The same holds true for Goal 11, which deals with the need to step up efforts to protect and safeguard the world's cultural and natural heritage.

7.4. As energy is a prerequisite of transport, the energy-related Goal 7 applies directly to transport as well. It calls for a substantial increase in the share of renewable energy in the global energy mix, as well as significant improvement in terms of energy efficiency. Goal 12 in turn includes a target of phasing out harmful fossil fuel subsidies. Given the widespread use of fossil fuels in transport, this target has an obvious impact on transport and its users.

7.5. Goal 14 addresses the conservation and sustainable use of the oceans, seas and marine resources. Besides land-based activities, it challenges maritime transport to improve waste management and reduce emissions.

7.6. Environmental impacts are not only related to transport itself but also to the life-cycle of vehicles, aircraft and ships, from manufacture to end-of-life. The impacts can be decreased by improved resource efficiency and the use of clean technologies in industrial processes, together with recycling and reuse, as called for by Goals 9 and 12.

7.7. Measures that improve traffic flow also have a role to play in reducing emissions. To this end, high quality infrastructure and smooth border crossings, land use and urban planning, efficient public transport and multimodal freight transport alternatives are of the utmost importance.

7.8. The development of autonomous transport may lead to greater use of private cars due to the increased convenience for passengers. On the other hand, car-sharing — together with the use of public transport — is intended to decrease the number of private cars. All in all, digitalisation and robotisation lead to more efficient transport and logistics, which has a positive impact on the climate-related and environmental effects of transport.

7.9. Besides the fact that there is a need to reduce the emissions caused by transport, transport also contributes to preventing and solving climate and environmental problems, by enabling the dissemination of low-carbon and environmentally sound technologies, products and solutions, as called for by Goal 17.

8. Transport and SDGs: implications for policy-making

8.1. The analysis in the previous sections clearly shows that transport is related to a large number of the SDGs. As transport is a vital enabler of several SDGs, the role of transport should be fully recognised in the implementation of the SDGs at EU, Member State and local levels.

8.2. Meanwhile, the EU's transport policy should consider the SDGs in an integrated way, with the aim of laying the foundations for improving transport and mobility while at the same time delivering on the social and environmental objectives.

8.3. Approaching transport from the different starting points of several policy areas, 'one issue at a time', leads to suboptimal solutions. It is therefore essential that transport policy is developed as a whole. Accordingly, the EESC calls on the Commission to prepare a new, integrated policy framework for the next generation of transport policy. This framework should then guide more detailed transport-related decisions.

8.4. The policy framework should also include a global dimension, which aims to integrate the SDGs into the EU's transport-related international cooperation and foreign action.

8.5. As transport is a matter for the whole of society, it is important to involve civil society in developing and implementing transport policy. This would respond to Goal 16, which calls for responsive, inclusive, participatory and representative decision-making at all levels. As far as labour market-related issues and transition processes are concerned, social dialogue should play a key role.

8.6. Goal 17 in turn advocates encouraging and promoting effective public, public-private, and civil society partnerships, building on the experience and resourcing strategies of partnerships. Whilst the role of the public sector is vital, the EESC calls on EU policy-makers to fully recognise the vital role of bottom-up action and partnerships, as they contribute to finding the best possible solutions for transport-related challenges and ways of seizing the opportunities, for example through new models of production and consumption developed by businesses and citizens.

8.7. The EESC also calls on the Commission to assess the SDG indicators from the point of view of transport and to enhance the development of indicators that are relevant, give a realistic and informative picture of developments, and are in line with the integrated approach, as described above.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on
EU concepts for transition management in a digitalised world of work — key input for an EU White
Paper on the future of work

(Exploratory opinion requested by the Austrian Presidency)

(2018/C 367/03)

Rapporteur: **Franca SALIS-MADINIER**

Co-rapporteur: **Ulrich SAMM**

Opinion requested by the Austrian Presidency of the Council	Letter of 12.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union Rule 29(1) of the Rules of Procedure Exploratory opinion
Bureau decision	13.3.2018
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	6.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	152/1/4

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) supports a fair digital transition, underpinned by respect for EU values that advocate full employment, social progress, a high level of protection, and reducing poverty and inequalities.

1.2. The EESC calls for the huge potential offered by new technologies to benefit everyone: workers, citizens and companies. In this transition process, there should be no losers. As a matter of priority, policies need to be geared towards strengthening the individual trajectories, in order to provide all citizens with the right skills, and the collectively-organised social security systems in order to facilitate the entitlement to social security benefits as provided for by the Charter of Fundamental Rights, the priorities declared in Gothenburg by the European institutions in the framework of the European Pillar of Social Rights, and the ILO conventions.

1.3. Jobs are likely to be altered as a consequence of automation, digitalisation and artificial intelligence. The EESC considers upskilling for European workers to be a priority, particularly for those whose low or obsolete skills prevent them from taking up the new jobs or the jobs that will be modified as a result of technologies. It stresses the urgent need for a policy at EU and Member State levels to transform initial training and lifelong learning to promote relevant teaching methods, so as to develop the creative and digital skills that are increasingly required for the new jobs.

1.4. Diversity must be a top priority: the situation in sectors with a strong digital component is quite alarming in terms of the low number of women⁽¹⁾. It is important to monitor and measure these trends and to promote access for women in these sectors.

⁽¹⁾ European Commission (2018). Women in the Digital Age.

1.5. The EESC notes that investment in social policies accounts for only 0,3 % of total public expenditure in the EU ⁽²⁾. Sufficient resources, in particular under the forthcoming post-2020 multiannual financial framework ⁽³⁾, should be made available to strengthen these policies and support the digital transformation in the world of work, for the benefit of workers, companies and society as a whole.

1.6. Additional resources could be found in the productivity gains generated by digitalisation. The EESC recommends that the social dialogue on sharing the added value be organised at sector and company level in order to agree on how they are to be used.

1.7. In order to cover all the flexible forms of employment that digitalisation produces and not to leave any worker behind ⁽⁴⁾, the EESC counts preserving the quality and financial viability of social protection systems among its priorities. It encourages the European Commission and the Member States to organise dialogue with the social partners on adapting social protection systems for the benefit, in particular, of workers who, because of their status, are not sufficiently covered by these systems.

1.8. In connection with the introduction of new technologies such as robots and smart machines, the EESC highlights in its study the importance of informing and consulting workers' representatives in advance and the need for collective bargaining to accompany the changes generated by these technologies ⁽⁵⁾. It also points out that the directive on European works councils makes such consultation mandatory ⁽⁶⁾.

1.9. Turning to artificial intelligence (AI), the EESC points out that the lack of clarity surrounding how algorithms work and how they make the choices that are beyond human control poses massive challenges for the EU and fundamental questions about the society we want to live in. The EESC has previously emphasised that, in the new world of work, it is crucially important to define the human-machine relationship. An approach focusing on human control over machines is vital ⁽⁷⁾.

1.10. The EESC is in favour of global policy frameworks for AI that would give the EU a competitive advantage ⁽⁸⁾, and encourages the development of socially responsible AI that serves the common good. It emphasises that the EU should support the new research field of 'cognitive ergonomics', aimed at adopting measures facilitating a human-centred use of smart technologies.

2. Introduction

2.1. The EESC has already expressed its views on new forms of work and the future of work, in three exploratory opinions requested by the Estonian and Bulgarian Presidencies of the Council ⁽⁹⁾. These opinions have been supplemented by a broader reflection on 'a socially sustainable concept for the digital era', developed in connection with another exploratory opinion requested by the Bulgarian Presidency ⁽¹⁰⁾.

2.2. The EESC disagrees with the assumption that 'digitalisation will result in winners and losers'. In this opinion, the EESC puts forward proposals aimed at ensuring that digitalisation benefits all citizens and that no one is pushed aside.

2.3. In order to avoid leaving some workers and citizens behind, expenditure on investment in social policies, currently amounting to only 0,3 % of overall public expenditure in the EU ⁽¹¹⁾, should be beefed up. Sufficient resources, in particular under the forthcoming post-2020 multiannual financial framework ⁽¹²⁾, must be made available to support the digital transformation in the world of work.

2.4. The EESC stresses that, in order for automation to benefit society as a whole, the EU and its Member States need to be able to rely on a well-functioning, high-quality lifelong learning system, permanent social dialogue among stakeholders, relevant collective bargaining and an adequate taxation system.

⁽²⁾ COM(2017) 206 final, p. 28.

⁽³⁾ OJ C 262, 25.7.2018, p. 1.

⁽⁴⁾ OJ C 303, 19.8.2016, p. 54 and OJ C 129, 11.4.2018, p. 7.

⁽⁵⁾ EESC (2017). Impact of digitalisation and the on-demand economy on labour markets and the consequences for employment and industrial relations.

⁽⁶⁾ OJ L 122, 16.5.2009, p. 28.

⁽⁷⁾ OJ C 288, 31.8.2017, p. 1.

⁽⁸⁾ OJ C 288, 31.8.2017, p. 1.

⁽⁹⁾ OJ C 434, 15.12.2017, p. 30 and p. 36 and OJ C 237, 6.7.2018, p. 8.

⁽¹⁰⁾ OJ C 237, 6.7.2018, p. 1.

⁽¹¹⁾ European Union (2017). Reflection paper on the Social Dimension of Europe, p. 24.

⁽¹²⁾ OJ C 262, 25.7.2018, p. 1.

2.5. It is urgently necessary to act now to ensure that the appropriate skills are available for the future, so that the EU and all of its Member States remain competitive and are able to create new businesses and new jobs, people are able to enter the labour market throughout their entire working lives, and well-being for all is assured.

3. AI at the service of mankind for a fair and high-quality transition

3.1. The EESC highlights the challenges for the EU posed by AI, i.e. all technologies aiming to use computers to carry out cognitive tasks traditionally performed by humans.

3.2. If digitalisation and increasingly powerful and effective AI are to be of benefit to workers, the public, businesses, the Member States and the EU, they must be harnessed and their potentially harmful effects anticipated and regulated.

3.3. The EESC considers the new generation of 'collaborative robots' to be an opportunity potentially of benefit to society in its entirety. Such robots can become real partners of workers, easing their daily work to make it less stressful. They can also help people with physical or cognitive disabilities, or those of limited mobility.

3.4. The EESC emphasises again⁽¹³⁾ the human-in-command approach for all parts of the digitisation process. Our society has to cope with the fear that AI systems in particular may one day decide on important aspects of our life without any human interaction involved. The human-in-command approach defines a principle which guarantees that machines clearly have the role of serving humans and that the more complex human-related issues, such as taking responsibility, judging controversial/ethical cases or irrational behaviour, remain under the control of humans. This general principle can serve as a guiding principle for future regulations.

3.5. As the EESC noted in its own-initiative opinion on artificial intelligence⁽¹⁴⁾, control of algorithms and their transparency pose a formidable challenge for our democracies and our fundamental freedoms, including in the world of work. A socially and ethically responsible digital transformation must be an EU objective. The EESC is in favour of global policy frameworks for AI that would give Europe a competitive advantage. It emphasises that the EU should support the new research field of cognitive ergonomics, aimed at adopting measures facilitating a human-centred use of smart technologies.

3.6. Biased algorithms could result in the decisions and choices made exacerbating discrimination within businesses, for example in recruitment practices and in human resource activities in general⁽¹⁵⁾. However, good programming of data and algorithms could also make recruitment and human resource policies 'smarter' and fairer.

3.7. European researchers, engineers and entrepreneurs who are involved in the design, development and marketing of AI systems must act in accordance with ethical and social responsibility criteria. One good response to this imperative could be to incorporate ethics and humanities into training courses in engineering⁽¹⁶⁾. An AI code of conduct might be appropriate.

3.8. The EESC would like to draw attention to a threat emanating from AI regarding cybersecurity and privacy. The new technology makes it much easier to produce high quality fake pictures, fake videos, fake speech and fake text. Coping with this serious threat has to be given the highest priority in EU policy.

⁽¹³⁾ OJ C 288, 31.8.2017, p. 1.

⁽¹⁴⁾ OJ C 288, 31.8.2017, p. 1.

⁽¹⁵⁾ ILO (2018). The impact of technology on the quality and quantity of job; see Villani, C. (2018). Donner un sens à l'intelligence artificielle: Pour une stratégie nationale et européenne.

⁽¹⁶⁾ See the report by Cédric Villani on artificial intelligence (March 2018).

4. General comments

4.1. *Impact on jobs*

4.1.1. The future impact on the volume of employment of automation, digitalisation and AI in various production processes is a highly controversial question. Depending on the method used — task analysis or occupation analysis — predicted job losses vary hugely ⁽¹⁷⁾.

4.1.2. Regardless of these variations, one thing is certain: the vast majority of jobs will be impacted by digitalisation; and some occupations will be more affected than others and might disappear in the near future ⁽¹⁸⁾. Others will be transformed and will require retraining.

4.1.3. There are significant differences between EU Member States when it comes to the impact of automation on jobs ⁽¹⁹⁾. According to an OECD study, jobs in the United Kingdom, the Nordic countries and the Netherlands are generally less vulnerable to automation than those in the eastern and southern EU countries ⁽²⁰⁾. These differences may be explained by several factors: differences in the organisation of tasks within economic sectors, differences in sector structures and in investment (those countries that have not yet adopted and invested in technologies likely to replace the workforce have a task structure that is more open to automation). There are also disparities in the way work is organised in general, as well as in workers' educational levels.

4.2. *Ensuring that all citizens have the key skills*

4.2.1. Given this situation, appropriate skills can help EU Member States to integrate better into globalised markets and to specialise in cutting edge technologies, with more innovative businesses that keep pace with developments. To do so, all sectors need workers not only with high levels of cognitive and creative skills (in literacy, numeracy and solving complex problems), but also with managerial and communication skills and the ability to learn.

4.2.2. The workers who need to be given priority and stronger support are those in low-skilled occupations at high risk of automation, transformation, replacement or even disappearance.

4.2.3. In the Union, the gap between available skills and future jobs is widening. In the EU Member States, 22 % of workers may not have the right digital skills to keep up with developments in their jobs ⁽²¹⁾. The average duration of unemployment and long-term unemployment has risen since 2008, particularly for unskilled workers.

4.2.4. As stated in a recent EESC opinion, given the difficulties for these unemployed people in gaining employment, there is an urgent need to address the issue of training and skills ⁽²²⁾ through social dialogue at sector and regional levels, and at national and European levels, so that all workers can gain high-quality employment and develop in their professional career.

4.3. *Transforming initial training and fostering lifelong learning*

4.3.1. In view of these challenges, the EESC stresses the urgent need for a targeted policy at EU and Member State levels to transform initial training and lifelong learning to promote relevant teaching methods, so as to develop the creative skills that are becoming increasingly indispensable.

4.3.2. A single uniform policy at European level is liable to be ineffective, as different Member States are facing different problems, but there is a universal need for a policy to reduce the gap between the available skills and future jobs ⁽²³⁾.

⁽¹⁷⁾ Nedelkoska, L. and G. Quintini (2018). Automation, skills use and training. OECD Social, Employment and Migration Working Papers, No 202, OECD Publishing, Paris.

⁽¹⁸⁾ France Stratégie (2018). Intelligence artificielle et travail: rapport à la ministre du travail et au secrétaire d'État auprès du premier ministre, chargé du numérique.

⁽¹⁹⁾ Cedefop (2018). Insights into skill shortages and skill mismatch: learning from Cedefop's European skills and job survey.

⁽²⁰⁾ Nedelkoska, L. and G. Quintini (2018). Automation, skills use and training. OECD Social, Employment and Migration Working Papers, No 202, OECD Publishing, Paris.

⁽²¹⁾ Cedefop (2018). Insights into skill shortages and skill mismatch: learning from Cedefop's European skills and job survey.

⁽²²⁾ OJ C 237, 6.7.2018, p. 8.

⁽²³⁾ Cedefop (2018). Insights into skill shortages and skill mismatch: learning from Cedefop's European skills and job survey.

4.4. Key focal points regarding the risk of discrimination in the workplace and society

4.4.1. *Gender equality*: The jobs of the future, and those that will gain the most recognition and the highest pay, will be in STEM fields (science, technology, engineering and maths), particularly in the IT sector. Diversity must be a top priority: the situation in sectors with a strong digital component is alarming in terms of the low number of women ⁽²⁴⁾. It is important to monitor and measure these trends, and promote women's access to these sectors, if we want to avoid greater inequalities in the future world of work ⁽²⁵⁾.

4.4.2. *Age inequalities*: Changes in the world of work have implications for workers' employment conditions, whatever their age. These shifts may have an impact on sustainable working throughout people's working lives. For example, the use of fixed-term contracts, which at the moment are — unfairly — earmarked mostly for young workers ⁽²⁶⁾, could be extended to older workers, with potential consequences. At the same time, the technological development associated with digitalisation could offer opportunities for older workers. Studies on work will entail monitoring these developments.

5. Innovative and anticipatory social and civil dialogue

5.1. Social dialogue at all levels — European, national, industry, region and enterprise — must fully incorporate digital issues and develop anticipation policies informed by relevant data on the occupations affected by changes, the new jobs created and the skills to be developed to enter into these new jobs.

5.2. Social dialogue should address working conditions more comprehensively at the point when automation is implemented, in order to take account of the new risks and opportunities. The European Commission should undertake an analysis of the agreements that have come out of social dialogue in various EU Member States and sectors, with a view to implementing the results (the right to switch off ⁽²⁷⁾, teleworking agreements, transferable rights for individuals, collective agreements signed with platforms ⁽²⁸⁾, etc.) ⁽²⁹⁾.

5.3. In order to cover all the flexible forms of employment that digitalisation produces and not to leave any worker behind ⁽³⁰⁾, the EESC counts preserving the quality and financial viability of social protection systems among its priorities, in keeping with the European pillar of social rights. The Committee encourages the European Commission and the Member States to organise dialogue with the social partners on adapting social protection systems to the new forms of work.

5.4. Additional resources could be found in the productivity gains generated by digitalisation. Social dialogue focusing on sharing and redistributing added value must be conducted at sector and company level.

5.5. In fiscal terms, reforms of the tax systems need to be reviewed carefully to ensure similar levels of taxation for all forms of income, whether it is generated in conventionally organised sectors or in the sharing economy.

5.6. Civil society stakeholders should be actively involved in these developments. Training policies for vulnerable groups faced with rapid technological change and AI and digitalisation development policies, the effects of which touch everyone, give legitimacy to the important role played by civil society organisations.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽²⁴⁾ EC (2018). Women in the Digital Age.

⁽²⁵⁾ EC (2015). Monitoring the digital economy & society 2016-2021.

⁽²⁶⁾ Eurofound (2017), Non-standard forms of employment: Recent trends and future prospects, p. 7, and Eurofound (2017) Working conditions of workers at different ages.

⁽²⁷⁾ OJ C 237, 6.7.2018, p. 8.

⁽²⁸⁾ See the agreement signed in Denmark.

⁽²⁹⁾ OJ C 434, 15.12.2017, p. 30.

⁽³⁰⁾ OJ C 303, 19.8.2016, p. 54 and OJ C 129, 11.4.2018, p. 7.

Opinion of the European Economic and Social Committee on**The situation of women with disabilities***(Exploratory opinion requested by the European Parliament)*

(2018/C 367/04)

Rapporteur: **Gunta ANČA**

Consultation	European Parliament, 3.4.2018
Legal basis	Article 29 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	13.3.2018
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	6.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	187/2/0

1. Conclusions and recommendations

1.1. Women and girls with disabilities continue to face multiple and intersectional discrimination based on both their gender and their disability. Women with disabilities do not have equal opportunities to participate on an equal basis with others in all aspects of society. They are too often excluded, among other things, from inclusive education and training, employment, access to poverty-reduction schemes, adequate housing and participation in political and public life, and a number of legislative acts prevent them from making decisions about their own lives, including their sexual and reproductive rights. They face barriers to the enjoyment of their rights as EU citizens ⁽¹⁾.

1.2. This opinion calls on the EU, jointly with all its Member States, to implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ⁽²⁾, the recommendations that the EU received from the UNCRPD Committee with regard to women and girls with disabilities in 2015 and the UN Committee's General Comment No 3 on Article 6 of the CRPD.

1.3. We call on the EU and its Member States to include a disability perspective in its forthcoming gender equality strategy, policies and programmes, and a gender perspective in its disability strategies, including its future European Disability Strategy 2020-2030 and the European Pillar of Social Rights ⁽³⁾. The successor to the Europe 2020 strategy for smart, sustainable and inclusive growth should also include the perspective of women with disabilities as their economic and social participation is essential for the success of Europe's overall economic and social strategy ⁽⁴⁾.

1.4. At both EU and national level, the necessary measures should be taken to set up a structured dialogue with an independent budget line sufficient to guarantee meaningful consultation with and participation of persons with disabilities, including women, girls and boys with disabilities, through their representative organisations in the implementation and the monitoring of the CRPD ⁽⁵⁾.

⁽¹⁾ UNCRPD, General comment No 3 (CRPD/C/GC/3), p. 1; EDF Alternative report to the UNCRPD, p. 57

⁽²⁾ UN Convention on the Rights of Persons with disabilities

⁽³⁾ UNCRPD, Concluding observations on the initial report of the EU, United Nations (Article 6 CRPD/C/EU/CO/1)

⁽⁴⁾ Report on women with disabilities, European Parliament, 14/10/2013, p. 6

⁽⁵⁾ Idem footnote 3, Article. 4.3; Idem footnote 1, p. 17

1.5. The use of current and future EU funding instruments, particularly the Structural Funds and the European Social Fund, should be used as key tools to support the Member States in promoting accessibility and non-discrimination regarding women and girls with disabilities ⁽⁶⁾.

1.6. The EU and its Member States should accede swiftly to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as a step towards combating violence against women and girls with disabilities ⁽⁷⁾. These measures should include criminalising sexual and other types of violence against women and girls with disabilities, including ending forced sterilisation ⁽⁸⁾.

1.7. The EU and the Member States should take all measures to ensure that women and girls with disabilities have equal access to disability-specific healthcare services for persons with disabilities, as well as to accessible mainstream services. All women and girls with disabilities must be able to exercise their legal capacity by taking their own decisions, with support when desired, with regard to medical and/or therapeutic treatment, including by taking their own decisions on retaining their fertility and reproductive autonomy ⁽⁹⁾.

2. Introduction

2.1. Women with disabilities are still on the sidelines of society. The situation of women with disabilities is not only worse than that of women without disabilities, it is also worse than that of their male peers ⁽¹⁰⁾.

2.2. Women with disabilities constitute 16 % of the total population of women in Europe. This figure is based on the current female population of just below 250 million, so in the European Union (EU) there are approximately 40 million women and girls with disabilities ⁽¹¹⁾.

2.3. The number of elderly people is increasing in Europe and worldwide, which means that the number of people with disabilities will increase accordingly. The number of women with disabilities will increase disproportionately due to the longer life expectancy of women ⁽¹²⁾.

2.4. This opinion calls on the EU, jointly with all its Member States, to implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ⁽¹³⁾, the recommendations that the EU received from the UNCRPD with regard to women and girls with disabilities in 2015 and the UN Committee's General Comment No 3 on Article 6 of the CRPD. A plan of action, time frame and resources for the implementation of the CRPD should be put in place immediately by the EU and its Member States.

3. General comments

International and European legal framework

3.1. The EU is a State Party to the UNCRPD, together with the 28 EU Member States. They are now bound to the CRPD by international law, which means that they are committed to jointly promote, protect and ensure the rights of persons with disabilities as enshrined in the CRPD, including those of women and girls with disabilities. The EU and its Member States should set the example as it is the only regional integration organisation worldwide that is a State Party to the CRPD and is in a unique position to ensure harmonised and equal protection of women and girls with disabilities across Europe.

3.2. The CRPD recognises in Article 6 that 'women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention'.

⁽⁶⁾ Idem footnote 4, p. 9

⁽⁷⁾ Idem footnote 3, Article 16

⁽⁸⁾ Report on ending forced sterilisation against women and girls with disabilities, European Disability Forum, 2018, p. 49

⁽⁹⁾ 2nd Manifesto on the Rights of Women and Girls with Disabilities in the EU, European Disability Forum, 2011, pp. 18 and 34

⁽¹⁰⁾ Idem footnote 9, p. 4

⁽¹¹⁾ Ad hoc module of the EU Labour Force Survey (LFS) on people with disabilities and long-term health problems, 2002.

⁽¹²⁾ Idem footnote 4, p. 24

⁽¹³⁾ UN Convention on the Rights of Persons with Disabilities

3.3. In 2015, it received important recommendations from the UN Committee on the Rights of Persons with Disabilities on how to improve the situation of persons, including women and girls with disabilities in the European Union.

3.4. In 2016, the UNCRPD Committee adopted its General Comment No 3 on Article 6 CRPD which highlights that States Parties to the CRPD, including the EU, should take the measures mentioned above to promote the rights of women and girls with disabilities.

3.5. All EU Member States are also States Parties to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the most comprehensive international legal instrument to advance the equal recognition, enjoyment and exercise of all human rights of women in the political, economic, social, cultural, civil and domestic fields. Women and girls with disabilities should also fully enjoy and be included in national efforts to implement the CEDAW.

3.6. Articles 10 and 19 of the Treaty on the Functioning of the European Union (TFEU) require the EU to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation when defining and implementing its policies and activities, and by adopting appropriate actions. Article 8 of TFEU states that: 'In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women'.

3.7. Articles 20 and 26 of the EU's Charter of Fundamental Rights prohibit discrimination on the ground of disability and recognise the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. The Charter also refers to equality between men and women and to non-discrimination across a range of grounds — including sex.

4. General recommendations

4.1. Contrary to the references in the CRPD, CEDAW, TFEU and the Charter, the European Union has neither mainstreamed a disability perspective in all its gender policies, programmes and strategies, nor adopted a gender perspective in its disability strategies. The EU and its Member States currently lack a strong legal framework to protect, promote and ensure all human rights of all women and girls with disabilities. We call on the EU and its Member States to include a disability perspective in its forthcoming gender equality strategy, policies and programmes, and a gender perspective in its disability strategies, including its future European Disability Strategy 2020-2030 and the European Pillar of Social Rights. The successor to the Europe 2020 strategy for smart, sustainable and inclusive growth should also include the perspective of women with disabilities as their economic and social participation is essential for the success of Europe's overall economic and social strategy⁽¹⁴⁾.

4.2. The EU and its Member States do not sufficiently consult and fund representative organisations of women and girls with disabilities. At both EU and national level, the necessary measures should be taken to set up a structured dialogue with an independent budget line sufficient to guarantee meaningful consultation with and participation of persons with disabilities, including women, girls and boys with disabilities, through their representative organisations in the implementation and monitoring of the CRPD⁽¹⁵⁾.

4.3. Women and girls with disabilities still find themselves on the fringes of all human rights organisations. Periodic reports produced by the relevant European Union and Member State human rights treaty bodies must automatically include information on women with disabilities. This practice should be extended to all institutions engaged in human rights advocacy both at European level and nationally, including the representative organisations of persons with disabilities and their families, women in general and women with disabilities⁽¹⁶⁾.

⁽¹⁴⁾ Idem footnote 3, Article 6; Idem footnote 4, p. 6

⁽¹⁵⁾ Idem footnote 3, Article 4.3; Idem footnote 1, p. 17

⁽¹⁶⁾ Idem footnote 9, p. 47

4.4. The EU and its Member States lack consistent and comparable data and human rights indicators on women and girls with disabilities, as well as research on the situation of women and girls with disabilities in the EU ⁽¹⁷⁾. The EESC recommends that the European agencies, notably Eurofound, Cedefop, the FRA and EIGE, should adopt a more systematic approach in their work regarding people with disabilities and their situation in the labour market and in society. This should particularly take into account the situation of women and the fact that intersectionality can lead to multiple forms of discrimination. The EESC further recommends that this issue should be clearly included in their Work Programmes. At both EU and national level, the issues of women and girls with disabilities should be incorporated into the collection of data and statistics on gender and age as well as into existing statistical series and surveys in accordance with UNCRPD principles. A mechanism should be established to monitor progress and fund data collection, studies and research on women and girls with disabilities and the intersectional discrimination they face, including by the most marginalised groups in society such as from ethnic and religious minorities, to guide policy planning. All research on the rights of persons with disabilities should take a gender perspective into account, and research on women and girls should take the disability perspective into account.

4.5. The use of current and future EU funding instruments, particularly the Structural Funds and the European Social Fund, should be used as key tools to support the Member States in promoting accessibility and non-discrimination regarding women and girls with disabilities ⁽¹⁸⁾ and to raise awareness and increase visibility of funding opportunities for measures of this kind in post-2020 programmes. Organisations of persons with disabilities should receive accessible information and support in accessing funding opportunities.

4.6. Women and girls with disabilities are at increased risk of being victims of multiple and intersectional discrimination in Europe. The intersection of race, ethnic origin, social class, age, sexual orientation, nationality, religion, sex, disability, refugee or migrant status, etc. has a multiplier effect which increases the discrimination experienced by women and girls with disabilities ⁽¹⁹⁾. This discrimination arises from the way in which people construct their identities, failing to recognise the diversity which exists among women with disabilities and tending to homogenise women with disabilities in all social spaces and view their reality from an exclusive perspective ⁽²⁰⁾. The EU and its Member States should repeal all discriminatory legislation, policies and practices, and outlaw all gender- and disability-based discrimination and its intersectional forms, including by adopting strong and broad EU legislation that protects women with disabilities from intersectional discrimination in all areas of life ⁽²¹⁾.

4.7. History, attitudes and prejudices in the community, including in the family circle, have stereotyped women and girls with disabilities negatively, thus contributing to their social isolation and exclusion. They are almost completely ignored by the media and when they do appear, the approach is to treat women with disabilities from an asexual medical perspective and ignore their capabilities and contribution to the surrounding environment ⁽²²⁾. Women and girls with disabilities are not sufficiently aware of their rights under the CRPD, CEDAW and EU law. The EU and its Member States should develop a comprehensive campaign to raise awareness about the CRPD and CEDAW, raise visibility regarding the situation of women with disabilities and combat prejudice against women and girls with disabilities ⁽²³⁾. The media should be encouraged to consult and involve women with disabilities, preferably nominated by their organisations, which should also take part in presentations and monitor programmes. Organisations of persons with disabilities should receive the necessary funding to inform and train women and girls with disabilities and their families regarding their rights under the CRPD.

4.8. The EU as a public administration has a duty to implement the CRPD internally within its institutions. The EU should ensure that issues of women and girls with disabilities are fully included and respected in their events and meetings, communication, information and consultation efforts and social security and employment policies, and should make an effort to ensure that its budgets are sensitive to gender issues. Positive actions should be taken to ensure that women with disabilities can participate on an equal basis with others in the work and functioning of the EU institutions.

⁽¹⁷⁾ Idem footnote 4, p. 16

⁽¹⁸⁾ Idem footnote 4, p. 9

⁽¹⁹⁾ Idem footnote 1, p. 2

⁽²⁰⁾ Idem footnote 9, p. 52

⁽²¹⁾ Idem footnote 1, p. 15

⁽²²⁾ Idem footnote 9, p. 11

⁽²³⁾ Idem footnote 3, Article 8

5. Specific comments

5.1. Violence

5.1.1. Women with disabilities are at heightened risk of violence, exploitation and abuse compared to other women. Violence may be interpersonal, institutional and/or structural. Institutional and/or structural violence is any form of structural inequality or institutional discrimination that keeps a woman in a subordinate position, whether physically or ideologically, compared to other people in her family, household or community⁽²⁴⁾. A 2014 study by the European Fundamental Rights Agency estimated that women and girls with disabilities are three to five times more likely to be victims of violence, particularly domestic violence⁽²⁵⁾.

5.1.2. EU and national legislation on the prevention of exploitation, violence and abuse often lacks a focus on women and girls with disabilities. The EU should take the necessary measures to mainstream disability in all legislation, policies and strategies to combat violence, abuse and exploitation⁽²⁶⁾. Violence against women should be criminalised. They should take all appropriate legislative, administrative, social and educational measures to protect women and girls with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse and to facilitate their access to justice through the provision of suitable community-based assistance and support, taking into consideration their specific needs, including assistive devices, in order to avoid isolation and confinement in the home⁽²⁷⁾.

5.1.3. The EU and its Member States should accede swiftly to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as a step towards combating violence against women and girls with disabilities. These measures should include criminalising sexual and other types of violence against women and girls with disabilities, including ending forced sterilisation⁽²⁸⁾.

5.2. Sexual and reproductive health and rights, including respect for the home and the family

5.2.1. Wrongful stereotyping related to disability and gender is a form of discrimination that has a particularly serious impact on the enjoyment of sexual and reproductive health and rights, and the right to found a family. Harmful stereotypes of women with disabilities include the belief that they are asexual, incapable, irrational and/or hypersexual⁽²⁹⁾.

5.2.2. The choices of women with disabilities, especially women with psychosocial or intellectual disabilities, are often ignored and their decisions are often substituted by those of third parties, including legal representatives, service providers, guardians and family members, in violation of their rights under Article 12 of the CRPD⁽³⁰⁾. Too often, women and girls with disabilities are forcibly subjected to sterilisation and abortion, or other forms of controlling their fertility. The EU and the Member States should take all measures to ensure that all women with disabilities must be able to exercise their legal capacity by taking their own decisions, with support when desired, with regard to medical and/or therapeutic treatment, including by making their own decisions on retaining their fertility and reproductive autonomy, exercising their right to choose the number and spacing of children, matters related to their sexuality and exercising their right to establish relationships. This should happen free of coercion, discrimination and violence. Forced sterilisation and forced abortion are a form of violence against women and should be criminalised, as defined by Article 39 of the Council of Europe's Convention on preventing and combating violence against women and domestic violence⁽³¹⁾.

⁽²⁴⁾ Idem footnote 1, p. 8

⁽²⁵⁾ Survey on Violence against women, Fundamental Rights Agency, 2014, p. 186

⁽²⁶⁾ Idem footnote 3, Article 16

⁽²⁷⁾ Idem footnote 9, p. 21

⁽²⁸⁾ Idem footnote 3, Article 16; Idem footnote 8, p. 49

⁽²⁹⁾ Idem footnote 1, p. 10

⁽³⁰⁾ Idem footnote 1, p. 11

⁽³¹⁾ Report on ending forced sterilisation against women and girls with disabilities, European Disability Forum, 2018, pp. 49 and 50

5.2.3. Women with disabilities may also be denied access to information, communication and education on their sexual and reproductive health and rights, based on harmful stereotypes that assume that they are asexual and therefore do not require such information on an equal basis with others. Information may also not be available in accessible formats. Healthcare facilities and equipment, including mammogram machines and gynaecological examination beds, are often physically inaccessible for women with disabilities⁽³²⁾. The EU and the Member States should take all measures to ensure that women and girls with disabilities have equal access to disability-specific healthcare services for persons with disabilities, as well as to accessible mainstream services, such as dental and eye care, sexual and reproductive health and preventive services, including gynaecological consultations, medical examinations, family planning and adapted support during pregnancy.

5.2.4. Necessary measures should be taken in terms of training professionals, above all healthcare professionals and those involved in the legal field, to ensure that they listen to the voices of girls and women with disabilities during legal investigations and proceedings. These measures should be taken in close cooperation with representative organisations of persons with disabilities.

5.3. Education and training

5.3.1. Harmful gender and disability stereotypes combine to fuel discriminatory attitudes, policies and practices, such as: using educational material perpetuating wrongful gender and disability stereotypes, carrying out gender-based family activities, assigning caregiver roles to women and girls and in some areas giving greater value to the education of boys over girls, encouraging the child marriage of girls with disabilities and not providing accessible sanitation facilities at schools to ensure hygienic menstrual management. In turn, these result in higher rates of illiteracy, school failure, uneven daily attendance rates, absenteeism and dropping out of school entirely⁽³³⁾.

5.3.2. A comparative analysis of the EU showed that in 2011, only 27 % of persons with disabilities aged 30-34 had completed tertiary or equivalent education in the EU⁽³⁴⁾. No data are however available on women and girls with disabilities specifically. In the European schools and in different EU Member States, many girls and women with disabilities cannot access inclusive, high quality education in line with the CRPD. It has been demonstrated that the financial crisis has negatively influenced efforts towards inclusive education.

5.3.3. Inclusive mainstream education for girls and women with disabilities must be viewed through the paradigm of high quality education, equal opportunities, support and reasonable accommodation⁽³⁵⁾, and universal accessibility throughout the entire life cycle, ensuring that women with disabilities enjoy access to continuing education as a means to enhance their personal independence, the free development of personality and their social inclusion, while exercising permanently the right to decide for themselves and choose their way of life. Parents of pupils with disabilities should be provided with the necessary information regarding the benefits of inclusive mainstream education.

5.3.4. The EU and the Member States should evaluate the current situation and take measures to facilitate access to and enjoyment of inclusive, high quality education for all students with disabilities in line with the CRPD by promoting the use of European funding instruments, and include disability-specific indicators in the Europe 2020 strategy when pursuing the education target.

5.3.5. Relevant EU Regulations and student exchange programmes (such as Erasmus+) have been improved in recent years by including financial support for the mobility of students with disabilities. However, in practice disabled students face many barriers when trying to access the national educational services of the country of destination (attitude, physical, communication and information barriers and lack of flexibility in the curricula)⁽³⁶⁾. The EU programmes on higher education, training and lifelong learning should include support for women with disabilities. The European Entrepreneur Exchange programme should include financial support for young persons with disabilities, as is currently not the case.

⁽³²⁾ Idem footnote 1, p. 11; Idem footnote 9, p. 34

⁽³³⁾ Idem footnote 1, p. 14

⁽³⁴⁾ EU — SILC 2011

⁽³⁵⁾ Idem footnote 9, p. 32

⁽³⁶⁾ Alternative report to the UNCRPD, p. 43

Good practices and challenges for student and young entrepreneur exchange programmes should be shared, and training should be provided for educational professionals, social partners and the media.

5.3.6. Equal access to various components of ICT facilities and the information society should be ensured for women and girls with disabilities. When developing information and communication technologies, economic factors, the need for training and equal opportunities regardless of age should be taken into account to give girls and women with disabilities at risk of social exclusion or poverty access to them.

5.4. *Employment*

5.4.1. The participation of women in general in the labour market remains much lower than that of men (46,6 % compared to 61,9 %). The labour markets across all Member States show persistent and significant gender segregation. Women with disabilities are however much more excluded from the labour market. Only 18,8 % of women with disabilities are employed in the EU according to the 2015 Gender Equality Index of the European Institution of Gender Equality. 28,1 % of men with disabilities are employed. The high rate of unemployment among women with disabilities remains unacceptable and makes them more likely to live in poverty and social exclusion. Women and girls with disabilities encounter greater difficulties in entering the labour market, making it harder for them to lead independent lives. Women and girls with disabilities often face underpayment. Barriers to mobility as well as higher dependence on family members and carers create obstacles to their active participation in education, the labour market and the social and economic life of the community ⁽³⁷⁾.

5.4.2. Considering the high unemployment and labour market inactivity rates among women with disabilities, the EU and its Member States need to develop both mainstream and positive actions targeting women with disabilities to promote training, job placements, access to employment, job retention, equal pay for equal work, equal career path, adaptations in the workplace and work-life balance. Women with disabilities must have the right, on an equal basis with others, to just and favourable working conditions, including equal opportunities and equal remuneration for work of equal value ⁽³⁸⁾.

5.4.3. Bearing in mind the EU instrument for microfinancing and the European Social Fund to boost employment and promote social inclusion, opportunities for self-employment, entrepreneurship among women with disabilities, equal representation in management boards of enterprises, development of social enterprises or starting one's own business should be promoted. Women with disabilities should have equal rights to financial assistance throughout the lifecycle of the company and should be seen as competent entrepreneurs. Positive action measures should be provided in this regard to women with disabilities who are entrepreneurs by means of soft loans, microcredit and non-returnable grants, including for women living in rural areas.

5.4.4. The increase in the number of people with disabilities will increase the burden on carers, and in particular on family carers, who are mainly women who are forced to work shorter hours and even to leave the labour market in order to care for dependent family members ⁽³⁹⁾.

5.4.5. The EU and Member States should promote a better balance between professional and private life for women with disabilities and carers of persons with disabilities through effective measures based on their specific demands. Possible measures that may be options to achieve this goal include salary transparency, recruitment procedures and social security payments, flexible working hours or part-time teleworking, balance between disability-associated expenses in relation to motherhood and care for other persons with high support needs, promoting universal access to affordable, high quality support services at different times of the day, such as nurseries or care services for older people and other persons with high support needs, may be some options to reach this goal ⁽⁴⁰⁾.

5.4.6. The EU and the Member States should include women with disabilities and families of persons with disabilities in its proposed Directive on Work-Life Balance for Parents and Carers, and other policy measures to improve the work-life balance of workers and carers ⁽⁴¹⁾.

⁽³⁷⁾ Idem footnote 4, p. 7

⁽³⁸⁾ Idem footnote 9, p. 41

⁽³⁹⁾ Idem footnote 9, p. 45; Idem footnote 4, p. 6

⁽⁴⁰⁾ Idem footnote 4, p. 14; Idem footnote 9, p. 43

⁽⁴¹⁾ Idem footnote 3, Article 23

5.4.7. Women with disabilities also face unique barriers to their equal participation in the workplace, including sexual harassment, unequal pay and lack of access to seek redress because of discriminatory attitudes dismissing their claims. The EU and the Member States should also ensure safe and healthy working conditions for women with disabilities and carers of persons with disabilities, including protection from harassment and the redress of grievances. Harassment in the workplace should be prevented through the adoption of effective harassment protocols in accordance with the application of EU Directive 2000/78/EC⁽⁴²⁾.

5.5. Participation in political and public life

5.5.1. The voices of women and girls with disabilities have historically been silenced, which is why they are disproportionately underrepresented in public decision making. In the majority of EU Member States, the deprivation of legal capacity of citizens with disabilities results in their losing the right to vote. Barriers to the right to vote also take the form of inaccessible voting procedures, including inaccessible polling stations⁽⁴³⁾. The EU should ensure that women with disabilities can fully participate in public and political life, and especially in the 2019 European Parliamentary elections.

5.5.2. Owing to power imbalances and multiple discriminations, they have had fewer opportunities to establish or join organisations that can represent their needs as women, children and persons with disabilities. The EU should take measures to encourage women with disabilities to take leadership roles in public decision-making bodies at all levels and enable them to form and join organisations and networks of women with disabilities⁽⁴⁴⁾. Training and mentorship programmes should be provided for women with disabilities to empower them to enter political and public life.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee
Luca JAHIER*

⁽⁴²⁾ Idem footnote 4, p. 25

⁽⁴³⁾ Alternative report to the UNCRPD

⁽⁴⁴⁾ Idem footnote 1, p. 16

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

536TH EESC PLENARY SESSION, 11.7.2018-12.7.2018

Opinion of the European Economic and Social Committee on**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges***(COM(2018) 163 final — 2018/0076 (COD))**(2018/C 367/05)*Rapporteur: **Daniel MAREELS**

Consultation	European Parliament, 19.4.2018 European Council, 3.5.2018
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible:	Single Market, Production and Consumption
Adopted in section	7.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	116/0/0
<i>(for/against/abstentions)</i>	

1. Conclusions and recommendations

1.1. The Committee welcomes this proposal, which aims to reduce the cost of cross-border payments in euro in the non-euro-area Member States and which will also introduce greater transparency on currency conversion charges. The EESC urges that the proposal be rapidly implemented.

1.2. The direct impact of the proposal will be felt in the first instance in the non-euro-area Member States. The heavy charges levied there for cross-border payments in euro within the EU will disappear, as they will have to be aligned with the lower charges for domestic transactions in the national currency. The Committee welcomes these lower costs, which will particularly benefit consumers and businesses, especially SMEs.

1.3. In turn, this reduction of costs will undoubtedly lead to an increase in cross-border free movement and free trade in the EU as a whole, thus benefiting all EU Member States. The Committee considers this deepening of the single market and its positive economic impact to be important.

1.4. The Committee also welcomes the fact that the initial objective of the SEPA — for all payments in euro in the EU to be regarded as domestic payments — will thus be achieved. At the same time, the single market for retail financial services will be completed, by removing the existing division in this market between users from within and outside the euro area. The lower charges that euro-area users pay will thus become available to users from outside the euro area.

1.5. In connection with its repeated advocacy of biodiversity in the banking landscape as a guarantee of the system's stability and efficiency, and in order to take account of various future developments and challenges, the Committee calls for a greater focus on the cost to the banks arising from this proposal.

1.6. Market participants will be required to provide full information to users on the cost of foreign currency conversion before they conduct their transactions. The Committee considers these new, additional transparency requirements to be appropriate, as they will enable consumers to make the appropriate choices regarding these transactions, at a fair price. But here too it is important to take into consideration the technically very complex nature of this matter and the related costs to providers.

1.7. Finally, the Committee would also point out that, despite this being a very technical issue, there is undoubtedly a great opportunity here for fruitful and clear communication with all citizens in the Union. The changes made here can be used to explain how the EU brings positive changes for all and solutions for day-to-day problems.

2. Background

2.1. Since the beginning of the 2000s work has been in progress on harmonising the system for cashless payments in Europe. Ever since the euro was introduced work has been ongoing on a European single market for payments, the Single Euro Payments Area (SEPA) ⁽¹⁾. In that context, there has been a gradual shift from national to European payment systems. That process was completed in 2014.

2.2. On this basis, governments, traders and companies can make payments easily throughout the euro area and the European Union ⁽²⁾ using identical means of payment: cards, credit transfers and direct debits. No distinction will be made any more according to the country you live in: all payments will be 'internal payments' within Europe.

2.3. A number of other initiatives have also been launched aimed not only at making the cost of payments more transparent but also at reducing them. On this basis, charges for cross-border payments in euro within the EU have, inter alia, now been aligned with those for domestic payments in euro. This was achieved by Regulation (EC) No 2560/2001, later replaced by Regulation (EC) No 924/2009.

2.4. In effect, this only used to apply in the euro-area Member States ⁽³⁾; also in Sweden, which made use of the option ⁽⁴⁾ for other Member States to extend this scheme to the national currency.

2.5. In its March 2017 Consumer Financial Services Action Plan: Better Products, More Choice, the Commission undertook to propose measures to reduce charges for cross-border transactions in all Member States and to review practices in dynamic currency conversion ⁽⁵⁾.

2.6. The current proposal ⁽⁶⁾ amending Regulation (EC) No 924/2009 seeks to extend the benefits of this scheme for transactions in euro within the EU to individuals and businesses in non-euro-area Member States. In this way the costs of cross-border payments within the EU will be reduced by aligning them with charges for domestic transactions in the national currency of a Member State.

2.7. At the same time ⁽⁷⁾, additional transparency requirements are imposed for currency conversion practices. As a result, the cost of cross-border transactions will in future be publicised.

⁽¹⁾ For more information on the SEPA, see the website of the European Payments Council at <https://www.europeanpaymentscouncil.eu/>

⁽²⁾ The SEPA scheme currently applies to 34 countries and territories: the 28 EU Member States plus Iceland, Norway, Liechtenstein, Switzerland, Monaco and San Marino. See website referred to in footnote 1.

⁽³⁾ and thus for payments in euro.

⁽⁴⁾ Option applicable to all Member States provided for in Regulation (EC) No 2560/2001 and its successor, Regulation (EC) No 924/2009 on cross-border payments.

⁽⁵⁾ See COM(2017) 139 final; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0139> See in particular proposed Actions 1 and 2.

⁽⁶⁾ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 924/2009 as regards certain charges on cross-border payments in the Union and currency conversion charges <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524213305690&uri=CELEX:52018PC0163>

⁽⁷⁾ in the same proposal for a Regulation.

2.8. The Committee welcomes the fact that a number of additional transparency requirements are to be imposed on market participants for currency conversions. The full costs of a cross-border transaction will thus be known to users before they carry out their transaction.

3. Comments

3.1. The Committee welcomes the proposals extending the benefits of the SEPA to individuals and businesses in non-euro-area Member States. This will as a rule reduce the cost of cross-border payments in euro within the EU, particularly in these Member States. At the same time, transparency obligations relating to currency conversion charges are increased.

3.2. These proposals thus contribute to the completion of the single market for retail financial services by removing the existing division of the market for cross-border payments in euro within the EU. Users within the euro area will be able to fully enjoy the benefits of the SEPA for this type of payment, which is not currently the case for users in non-euro-area Member States.

3.3. Most users in the euro area can make payments of this kind at a low or even negligible cost, while this is not the case for users outside the euro area. As a general rule, they incur high costs. It is a welcome and very positive development that this situation will now end. Providers of payment services in these Member States will be required to align their charges for cross-border transactions in euro with the — generally lower — charges for domestic transactions in the national currency.

3.4. This cost reduction should have beneficial effects for cross-border free movement and free trade in the EU, in all Member States. Thus consumers from outside the euro area will benefit from easier access to euro-area markets. This easier access will also apply to businesses, particularly SMEs, which will thus benefit from being able to improve their market position and competitiveness.

3.5. The EESC approves the decision to restrict the proposed scheme to transactions in euro. In its opinion on the Consumer Financial Services Action Plan, the Committee 'welcomes the fact that at this stage the European Commission is refraining from regulatory measures' ⁽⁸⁾. At the same time it is a major step forward for those Member States which for some time have had this option but have not exercised it ⁽⁹⁾.

3.6. Leaving aside other reasons for this choice ⁽¹⁰⁾, this approach also strikes a balance between the more explicit requirements of both payment service providers ⁽¹¹⁾ and users ⁽¹²⁾. Furthermore, the proposed solution also comes closer to a 'tailor-made solution'. Thus, it allows account to be taken of the specific conditions and situation in the Member States concerned, including with regard to payment systems and service providers.

3.7. In order to give enable consumers to make the right choice with regard to foreign currency conversions, which at present is difficult as they do not always have reliable and up-to-date information, a series of additional transparency obligations are to be imposed on market participants. Thus, the full costs of a cross-border transaction will be known to users before they carry out their transaction.

3.8. The Committee considers this transparency requirement benefiting users and consumers to be very important, as is the safety of transactions. The same consideration applies to the placing of a cap on the cost of such services, pending the drafting of the final, concrete implementing measures ⁽¹³⁾. For payment service providers, this is a very complex and difficult issue, and attention should therefore also be paid to the related cost aspect.

⁽⁸⁾ See OJ C 434, 15.12.2017, p. 51, point 1.1.

⁽⁹⁾ See the option referred to in point 2.4.

⁽¹⁰⁾ A number of these are summarised in the Cross-border payments FAQ published together with the press release on the current proposals. See http://europa.eu/rapid/press-release_MEMO-18-2424_en.htm

⁽¹¹⁾ who tended to support the status quo.

⁽¹²⁾ who tended to be in favour of regulating even more transactions.

⁽¹³⁾ Because of the rapidly changing environment and the technical nature of this issue, a period of up to 36 months is provided for after the entry into force of the Regulation.

3.9. The costs and revenue shortfalls to be borne by payment service providers as a result of these proposals are not negligible ⁽¹⁴⁾. Although the current situation is not entirely satisfactory and although these losses can be mitigated to some extent over time, sufficient attention needs to be paid to the cost aspect.

3.10. This focus on the cost aspect is needed, as the Committee recently pointed out ⁽¹⁵⁾ in the context of its advocacy of the biodiversity of the banking landscape, as a guarantee of the stability and efficiency of the system ⁽¹⁶⁾. Moreover, it should be borne in mind that banks are currently faced with a number of major challenges, such as regulatory and supervisory issues, a number of future trends ⁽¹⁷⁾, a long period of low interest rates and a number of other situations ⁽¹⁸⁾.

3.11. Finally, the Committee would also point out that, despite this being a very technical issue, there is undoubtedly a great opportunity here for fruitful and clear communication with all citizens in the Union. The changes made here can be used to explain how the EU brings positive changes in the lives of businesspeople, citizens and consumers, and solutions for day-to-day problems, for example when people are travelling.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹⁴⁾ The explanatory memorandum of the proposal mentions an amount of EUR 900 million per year, with regard to cross-border transactions in euro.

⁽¹⁵⁾ See OJ C 434, 15.12.2017, p. 51; opinion INT/822, point 3.6.

⁽¹⁶⁾ See OJ C 251, 31.7.2015, p. 7, point 1.1 and OJ C 451, 16.12.2014, p. 45, point 1.11.

⁽¹⁷⁾ For example, FinTech and blockchain and the financing of a sustainable economy. Action plan on financing sustainable growth, see https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en (COM(2018) 97 final).

⁽¹⁸⁾ Inter alia, the EU approach to non-performing loans (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/managing-risks-banks-and-financial-institutions/non-performing-loans-npls_en).

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 168/2013 as regards the application of the Euro 5 step to the type-approval of two- or three-wheel vehicles and quadricycles

[COM(2018) 137 final — 2018/0065 (COD)]

(2018/C 367/06)

Rapporteur: **Gerardo LARGHI**

Consultation	European Parliament, 16.4.2018 Council, 4.4.2018
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	7.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	125/0/1
(for/against/abstentions)	

1. Conclusions and Recommendations

1.1. The European Economic and Social Committee (EESC) welcomes proposal for a regulation COM(2018) 137 final since it amends certain parts of Regulation (EU) No 168/2013 to strike a balance between the need to develop technologies with a low environmental impact (Euro 5 type-approval step) and the actual ability of some companies to introduce these within the stipulated timeframe (*technical feasibility*). The derogations are intended, then, to avoid adverse effects on the market and employment levels, while ensuring better emissions standards are achieved in a timely manner.

1.2. The EESC notes that the Commission's proposed changes are in line with the recommendations of its own previous opinion on the matter ⁽¹⁾. These include: the gradual and flexible application of the regulation to match actual technical feasibility, reasonable cost to undertakings and consumers and exclusion of the use of on-board diagnostics (OBD) in category L1 and L2 vehicles ⁽²⁾. The Committee also notes the broad support the proposal received from the Member States and all the stakeholders involved.

1.3. The EESC believes that the legislation will have a beneficial effect on the costs to companies and, consequently, on those borne by consumers. It is worth noting here the social role L-category vehicles play in rural areas — where they are often an alternative to the lack of public transport — and in cities, since they help to reduce congestion caused by traffic.

1.4. The EESC is in favour of renewing the Commission's power to adopt delegated acts for a further period of five years. The Committee sees this as a crucial condition for a timely adjustment of the legislation in force to keep pace with constant technological and market developments affecting the sector.

1.5. The EESC notes that the Commission's study ⁽³⁾ does not address the cost, technical feasibility and reproducibility of the energy consumption test (test type VII) for electrically propelled approved cycles (L1e-A) and approved cycles with pedal assistance (L1e-B). In fact, the study focuses solely on combustion motor vehicles. For this reason, the Committee recommends that the Commission instigate an additional study as soon as possible on the energy consumption of category L1e-A and L1e-B vehicles so the industry has a clear legal framework.

⁽¹⁾ OJ C 84, 17.3.2011, p. 30.

⁽²⁾ OJ C 84, 17.3.2011, p. 30, points 4.1, 4.3 and 5.3.

⁽³⁾ 'Effect study of the environmental step Euro 5 for L-category vehicles', EU-Books (ET-04-17-619-EN-N).

1.6. The EESC endorses the Commission's proposal to postpone the application of the Euro 5 emissions limits for light quadricycles (L6e-B), three-wheel mopeds (L2eU), trial motorcycles (L3e-AxT) and enduro motorcycles (L3e-AxE). However, these being niche products ⁽⁴⁾ made by small and micro businesses, the EESC recommends extending this derogation to 2024, as initially envisaged by the impact assessment. This measure should mean a less traumatic transition for companies in the sector, which would help sustain job levels.

2. Introduction

2.1. The L-category vehicles sector covers a broad range of light vehicles with two, three and four wheels and is further divided into seven categories: pedal-assisted bicycles, mopeds with two (L1e) and three (L2e) wheels, motorcycles with two (L3e) and three wheels (L4e — with side-cars), motor tricycles (L5e) and light (L6e) and heavy (L7e) quadricycles. Each category is further subdivided into a total of 25 subcategories.

2.2. The range of different models and propulsion systems make the L category one of the most diverse and versatile in the vehicles sector. More than 35 million L-category vehicles are estimated to be in use in the EU.

2.3. As of 1 January 2016, type-approval requirements for L-category vehicles ⁽⁵⁾ have been set out in Regulation (EU) No 168/2013 and its four delegated and implementing acts ⁽⁶⁾.

2.4. The Commission, drawing on the findings of the 'Effect study of the environmental step Euro 5 for L-category vehicles', proposes to amend or expand some articles of Regulation (EU) No 168/2013 to make its principles clearer and to facilitate its implementation.

2.5. This proposal, also called for by the industry itself ⁽⁷⁾, has been drafted after formal consultation of all the stakeholders concerned (manufacturers, type-approval authorities and social partners).

3. Gist of the Commission proposal

3.1. On-board diagnostic system

3.1.1. The OBD system ⁽⁸⁾ monitors the general running of the vehicle and in particular gives warning of failures or malfunctions giving rise to harmful emissions. Already a part of Euro 4, OBD will be developed further in Euro 5. Under the Euro 5 legislation, OBD will cover vehicle sensors and actuators to monitor the smooth running not just of the engine, but also of the treatment of exhaust gases and of the catalyst.

3.1.2. The Commission proposes postponing to 2025 certain aspects relating to the obligation to install OBD stage II, particularly in relation to catalyst monitoring. This measure is only intended for certain types of vehicles, since the equipment will not be available in 2020 for technical reasons. The amendment of this provision should ensure sufficient time for companies to comply with the legislation.

3.1.3. The Commission also makes it clear that there are exemptions from the OBD system stage II requirement for mopeds (L1 and L2 categories) and for light quadricycles (L6e category) and to the enduro (L3e-AxE) and trial (L3e-AxT) motorcycle subcategories.

⁽⁴⁾ These subcategories of vehicle make up less than 1 % of total production of L-category vehicles.

⁽⁵⁾ OJ L 60, 2.3.2013, p. 52: Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles.

OJ L 53, 21.2.2014, p. 1: Commission Delegated Regulation (EU) No 134/2014 of 16 December 2013 supplementing Regulation (EU) No 168/2013 of the European Parliament and of the Council with regard to environmental and propulsion unit performance requirements and amending Annex V thereof.

OJ L 25, 28.1.2014, p. 1: Commission Delegated Regulation (EU) No 44/2014 of 21 November 2013 supplementing Regulation (EU) No 168/2013 of the European Parliament and of the Council with regard to the vehicle construction and general requirements for the approval of two- or three-wheel vehicles and quadricycles.

OJ L 7, 10.1.2014, p. 1: Commission Delegated Regulation (EU) No 3/2014 of 24 October 2013 supplementing Regulation (EU) No 168/2013 of the European Parliament and of the Council with regard to vehicle functional safety requirements for the approval of two- or three-wheel vehicles and quadricycles.

⁽⁶⁾ See footnote 3.

⁽⁷⁾ <https://www.acem.eu/newsroom/press-releases/329-stefan-pierer-acem-president-we-urgently-need-clarity-from-the-ec-regarding-the-implementation-of-euro-5>.

⁽⁸⁾ On-board technology. Article 21 and Annex IV points 1.8.1, 1.8.2 and 1.8.3. of Regulation (EU) No 168/2013.

3.2. Emissions control system (mathematical durability procedure)

3.2.1. The environmental impact study on Euro 5 points out that the method of testing vehicles ‘after 100 km of use’ does not permit the real degradation of the vehicle’s emission control system during its lifetime to be gauged ⁽⁹⁾.

3.2.2. The Commission proposes phasing this method out by 2025. In the meantime, it is proposed to increase the distance travelled by the vehicle before being tested to make the data more reliable. Consequently, the proposal provides for vehicles registered between 1 January 2020 and 31 December 2024 to undergo an environmental performance test after 2 500 km if the vehicle’s top speed is under 130 km/h and after 3 500 km if it is 130 km/h or above.

3.3. Application of Euro 5 limits

3.3.1. The impact study on Euro 5 confirms that the technology necessary to meet the new environmental limits is already available, except for some types of L-category vehicles (L6e-B, L2e-U, L3e-AxT and L3e-AxE).

3.3.2. The Commission proposes, therefore, to postpone the application of these limits to those subcategories from 2020 to 2022. This measure will enable manufacturers, especially SMEs, to meet the deadline for the transition towards zero emission powertrains and at the same bring cost benefits for consumers.

3.3.3. The Commission also notes that the Euro 5 sound level limits need to be further clarified. To this end, it proposes to extend the application of the current Euro 4 emission limits until the new limits for Euro 5 can be established.

3.4. Delegated acts

3.4.1. Regulation (EU) No 168/2013 empowered the Commission to adopt delegated acts for a period of five years, which expired on 21 March 2018. Given the need to continuously update the legislation to keep pace with technological advances, the Commission asks to renew the power to adopt delegated acts for a further five-year period, with the possibility of tacit extension.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽⁹⁾ Article 23(3)(c).

Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Annex XVII to Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 on the marketing and use of explosives precursors

[COM(2018) 209 final — 2018/0103 (COD)]

(2018/C 367/07)

Rapporteur: **David SEARS**

Referral	European Parliament, 28.5.2018 Council, 31.5.2018
Legal Basis	Article 114 of the TFEU
Section responsible	Single Market, Production and Consumption
Adopted in section	7.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	128/0/1

1. Conclusions and recommendations

1.1. The EESC welcomes the proposed Regulation. It builds on and replaces the existing Regulation, on which the EESC commented in January 2011 ⁽¹⁾, and tries to learn from experiences at national and EU level since it came into force in 2013 and into (intended) full effect by September 2014.

1.2. The EESC notes that the time allowed for preparation of the new Regulation has been limited by procedural factors, including the short time now available before the end of the current term of office of both the Commission and European Parliament. Given the rather short life and slow implementation of the existing Regulation and the need for serious support and buy-in from Member States and all the supply chain actors for its replacement, this is to be regretted. The reasons for this slow implementation, in particular by major countries experiencing terrorist acts against their own populations, need to be examined more closely.

1.3. The EESC notes a number of areas where greater clarity on the scope and implementation of the Regulation should be considered; these will also need to be discussed in greater detail with Member States in the months ahead. The provisions with respect to sales via the internet require further work if they are to have any real effect; it is difficult to see how these can be effective solely at Member State level.

1.4. Finally, and once again, the EESC questions the effectiveness of grouping such widely disparate substances under a single regulatory regime. This makes the legislation hard to draft and even harder to implement or comprehend as a professional user or member of the general public. A different substance-specific approach is therefore recommended. EU legislation in respect of drug precursors provides a useful model for this ⁽²⁾.

2. Introduction

2.1. Improvised explosive devices (IEDs) incorporating a variety of home-made explosives (HMEs) are used by terrorists and other non-state actors to carry out static, vehicle-borne (VB) or person-borne (PB) attacks on military and economic targets, primarily to instil terror in civilian populations, in pursuit of political or religious ideals.

⁽¹⁾ OJ C 84, 17.3.2011, p. 25.

⁽²⁾ OJ C 76, 14.3.2013, p. 54.

2.2. The knowledge required to build, store and deliver such devices is readily available on the internet. Raw materials may be in general use (flour, sugar, diesel oil, fertilisers). More powerful explosives and detonators (TATP, PETN, HMTD) require chemical synthesis from other substances available on the retail market for legitimate purposes. Commercial explosives (including dynamite, black powder and TNT) are already tightly controlled and are now rarely used, at least in the developed world.

2.3. The majority of terrorist incidents take place, often on a daily basis and not always fully recorded, in the less developed world. These account for close to 99 % of all terrorist-related deaths. However, the richer — and more stable and better protected — countries are also targets and when attacks succeed, their effects can be devastating, as citizens in a number of major cities of the EU (and US) can now testify.

2.4. Despite this, the actual daily risk remains low (at least compared to other natural or generally accepted hazards) — and the responses from governments tend to vary according to their local experience and national practice. Naturally authoritarian regimes may not (yet) have been seen as targets; more liberal legislatures may be more frequently attacked but are also concerned over the preservation of human rights. As ever there are no easy answers.

2.5. These questions have been addressed in previous opinions from the EESC, in 2008 ⁽³⁾, on the marketing and use of 'certain dangerous substances' including ammonium nitrate (AN) used in very large quantities as a nitrogen-based fertiliser and also as an effective low-cost component of commercial and home-made explosives, and in 2011 ⁽⁴⁾, on the first Regulation on the control of explosives precursors, now to be repealed and replaced in the light of experience. Precursors for illicit drugs and their diversion from legitimate use have also been addressed and the related legislation may provide a useful model to be followed here.

3. The Commission's proposals

3.1. The proposed new Regulation on the control of explosives precursors (15 pp.) comes with an introduction (17 pp.), 3 Annexes (each 1 p.) and an impact assessment (IA) (188 pp.). It is based on Article 114 TFEU concerning the functioning of the internal market. It imposes new obligations on Member States and on all those concerned with trade in the substances listed in Annexes I (for 'restricted' precursors) and II (for 'reportable' precursors), and sets out the required format for a licence for 'professional users' in Annex III. The Regulation is intended to come into force 20 days after publication in the Official Journal and to apply one year after that date.

3.2. The general approach therefore remains as before; a number of substances (nine) are listed as being *restricted* in terms of their concentration (and therefore their value and usability in the manufacture of HMEs) for sales to the general public. A further set of substances (again nine) may be sold freely but 'suspicious' transactions are *reportable* to nationally designated contact points.

3.3. Within these lists, ammonium nitrate (AN) has been moved from the second to the first list (with a corresponding amendment to Annex XVII of the REACH Regulation on the registration of chemical substances) and three new substances or groups which had been added by delegated acts of the Commission in November 2016 have been included in the second list (aluminium powders, magnesium powders and magnesium nitrate hexahydrate). The other 14 substances already listed remain unchanged. The IA sets out the rationale for these changes (although the three additions are not discussed in detail and there is no information provided here or as part of the delegated acts on the supply chains affected, potential market impacts, or quantities likely to be purchased by either professional users or members of the general public).

3.4. The Regulation also provides much-needed clarification of the different roles in the various supply chains, in particular providing clear definitions of 'economic operators', 'professional users', 'farmers' and 'members of the general public'.

3.5. As the existing Regulation falls under the scope of the Commissions REFIT programme, the new proposal seeks to reduce costs and increase efficiency (and hopefully effectiveness) by reducing the number of options available to Member States. Members of the public (non-professional users) will be required to obtain a *licence* to use *restricted precursors* at certain concentrations above the limit values specified in Annex 1 and the existing less stringent process of self-registration will no longer suffice. Existing licences may be renewed only if they are deemed to meet the requirements of the new Regulation.

⁽³⁾ OJ C 204, 9.8.2008, p. 13.

⁽⁴⁾ OJ C 84, 17.3.2011, p. 25.

3.6. The need to inform and to keep aware all those in the relevant physical and online supply chains of the new measures is recognised — although the actual mechanics of doing so remain unclear. Safety data sheets, for instance, are intended to keep workers and consumers safe when handling the substances, not to prevent their illegal use. The all-important limit values set out in Annex I are hard to interpret for some of the substances listed and may need revision, especially as each refers to a different supply chain and set of economic operators, if there are any best practices in this respect at Member State level, these should clearly be shared as widely as possible.

3.7. Member States can propose more stringent controls (including lower levels of concentration or complete bans) and the Commission can add new substances to the Annexes should this prove necessary to control terrorism.

3.8. Member States are required to provide to the Commission annual summaries of the number of suspicious transactions, licence applications and reasons for refusal, actions on awareness-raising, and details of inspections undertaken of on- and offline activities.

3.9. Finally, the Commission will, *no sooner than* six years after the date of application, review and report on the effectiveness of the Regulation to the European Parliament, Council and EESC.

4. General and specific comments

4.1. The EESC welcomes the proposal for a new Regulation and strongly supports its objectives. The substances being controlled are broadly in line with priority lists in other parts of the developed world. The new definitions should bring clarity to those trying to follow it. There will be some additional costs for governments, but they seem to be proportional to the benefits of further minimising terrorist activity. A common regulatory regime across all Member States should benefit suppliers and other economic operators. The need to reduce risks to the general public (and others including high-profile individuals, police and military personnel) whilst allowing the free movement of goods for legitimate purposes seems to be reasonably balanced.

4.2. The EESC also agrees that there is a need for urgent and coordinated action by Member States and shares the Commission's concerns over the slow and non-uniform response to the existing Regulation.

4.3. However, this in turn raises concerns over the processes followed in the preparation of its replacement, in particular in the content and quality of the supporting documents. The IA, prepared by the Commission based on work by consultants Ernst & Young, relies heavily on publically available EU-level statistics which may or may not be adequate or complete. The format, following internal guidelines, does not make for easy reading or clarity. The Open Public Consultation attracted only 83 responses of variable significance. Both were prepared over a short period including Christmas and New Year 2017-18, with little or no time to fill gaps in the evidence presented. The availability of products online was checked by searches of Amazon; no mention is made of more obscure sources on the dark web.

4.4. The EESC understands that the key question of the scope of the Regulation, i.e., which products should be controlled, was reviewed by the Commission at an early stage but this is not spelled out in the IA. As already noted, there seems to be no market analysis for the three substances added in 2016 by delegated acts. The absence of controls on hydrochloric acid, which was included in the IA prepared for the current regulation but dropped at the last moment from the existing list without explanation. Other medium-priority precursors including potassium permanganate, sodium nitrite, urea and zinc powder which appear on other lists of potential dual-use products should at least be discussed. Progress toward a globally recognised list, at least for the developed world, would be a useful aim.

4.5. The EESC agrees with the list of possible control measures which were discarded at an early stage. However there has to be some concern over the narrow range of controls now proposed, especially given the highly disparate nature of the products concerned. Package sizes, bar codes and insistence on payment by traceable cards or bank transfers from personal or corporate accounts can all play their part in limiting or tracking sales. Current practices in Member States may well differ, but this does not appear to be a compelling argument in the war against terror.

4.6. Differences in application of the existing Regulation will however affect the costs for some Member States and for those involved in the lawful distribution and use of the restricted products. Given that a number of infringement orders were required to ensure action under the current regime, there may be some reluctance to accept the licence-only approach, whatever the long-term benefits. Controls on sales via the internet are mentioned but left without further analysis as being a national responsibility.

4.7. The proposal includes a lengthy analysis of its compatibility with and legality under other EU legislation, including that on General Data Protection (GDPR) just now coming into full force. The limitations of the current system of CN codes which are used to identify cross-border movements of substances and mixtures are also discussed — as they were eight years ago when the previous opinion was written. Given that there are only 18 substances currently listed — and probably no more than 12 that could still be listed — it should be possible to develop appropriate customs codes specifically for use under this Regulation and to ensure that other EU legislation developed for other purposes does not conflict with the basic aims of the safety and security of EU citizens.

4.8. The EESC also notes that the products listed differ widely in their production volumes, supply chains and legitimate end-uses for both professional users and the general public. The only thing they have in common is that they are potentially of value to terrorists — and the intent of the legislation is therefore to disrupt these unwanted supply chains using all available measures.

4.9. These measures will not be the same for each product; force-fitting them into a single control system is unlikely to be as effective as it should be. A preferred approach would be a simple framework directive setting out the broad objectives, with specific consultations, analyses, IAs and Regulations applying to each of the listed substances. Overall this would save time and lives — and would certainly better meet the requirements of the REFIT programme.

4.10. This would also allow closer long-term collaboration and information exchange with the manufacturers and others affected, all of whom support measures to reduce misuse of their products. The volumes diverted to illegal uses are trivial in comparison with any loss of reputation or the risk of wider restrictions. Global efforts to control the very small amounts of acetic anhydride required for the manufacture of illicit drugs including heroin provide a useful example of what can be achieved in this respect. The EESC published its opinion on this proposal with respect to drug precursors in January 2013 ⁽⁵⁾. Many of the ideas considered then apply equally to the explosives precursors subject to restriction or reporting under this proposal.

4.11. Finally the EESC welcomes its continuing involvement in the development and application of this Regulation but, especially in light of the tight timetables in force during the development of the proposal, considers that any subsequent review by the Commission should be undertaken by *no later than*, rather than *no sooner than*, six years after its date of application.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽⁵⁾ OJ C 76, 14.3.2013, p. 54.

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 952/2013 laying down the Union Customs Code

[COM(2018) 259 final — 2018/0123 (COD)]

(2018/C 367/08)

Rapporteur: **Antonello PEZZINI**

Referral	European Parliament, 28.5.2018 Council, 29.5.2018
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	12/07/2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	147/0/2

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) has always maintained that an effective customs union is a prerequisite for the European integration process in order to guarantee the efficient, safe and transparent free movement of goods. It offers maximum protection for consumers and the environment, with better quality jobs, and an effective means of combating fraud and counterfeiting.

1.2. The EESC underscores the importance of ensuring that the regulatory framework is clear, transparent and unequivocal for all operators and stakeholders, both public and private, working within the Customs Union. It should use clear definitions, procedures and terms applicable to all goods entering or leaving the EU customs territory, enabling the Customs Union itself to operate in a manner that is effective and consistent with the implementation of the common commercial policy.

1.3. The EESC therefore supports the proposed regulatory framework, comprising:

- amendments to the technical standards and rules of the Union Customs Code (UCC);
- corrections of technical errors and omissions, aligning the code with the Canada-EU Comprehensive Economic and Trade Agreement (CETA);
- the inclusion of the municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory, as requested by the Member State concerned.

1.4. The Committee considers it vital for the Union and those countries with which it has concluded free trade agreements to support this common commitment to enhancing free and fair trade in a vibrant and forward-looking society. The aim is to stimulate economic activity and promote the shared values and ideas that were specifically set out in the Single European Act of 1986 and the Customs Code of 1992, culminating in the UCC of 2013 — values that have also been included as a proposal in the long-term budget for 2021-2027 to promote more efficient tax and customs cooperation in the Union.

1.5. With regard to the inclusion of 'territorial enclaves', the Committee recommends paying particular attention to making the necessary amendments at the same time to Directive 2008/118/EC (Excise duties) and Directive 2006/112/EC (the VAT Directive).

1.6. The EESC would ask the Commission to send it the interim evaluation report on the UCC legal framework to be published in 2021 for the purpose of assessing the adequacy of the amendments to the present regulation and the efficiency of the common electronic systems which should be in place by that time.

2. Introduction

2.1. The Customs Union (CU) falls under the exclusive competence of the EU, in accordance with Article 3 of the Treaty on the Functioning of the European Union (TFEU), and the Union Customs Code (UCC) has made it possible to:

- harmonise the previous, disparate rules;
- apply equal treatment;
- impose legitimate sanctions.

2.2. New customs rules entered into force on 1 May 2016 with the aim of simplifying matters for firms operating in Europe and providing better consumer protection. The new Union Customs Code represented a major renewal of EU customs law, in force since 1992.

2.3. The 1986 Single European Act, which came into force in July 1987, ushered in a process which, in three phases — for capital in 1990, goods in 1993 and the single currency in 1999 — gave meaning to the terms of Article 28 TFEU, namely: '[...] the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect'.

2.4. After the code in 1992 and the regulation in 2008, 2013 saw the arrival of the UCC (supplemented by a variety of delegated and implementing regulations), a milestone for the European Customs Union: the UCC is the framework enabling goods worth more than EUR 3 000 billion to enter and leave the EU every year.

2.5. Following the entry into force of the new substantial provisions of Regulation (EU) No 952/2013 laying down the Union Customs Code (UCC) in May 2016, the process of regular consultation with Member States and businesses has made it possible to identify errors and technical anomalies that need to be corrected in order to ensure legal certainty and consistency.

2.6. The EU customs territory does not completely match that of the overall areas making up the geophysical entity of the EU. This means that some areas within various national boundaries are excluded from the EU customs territory, whilst others that are not a part of the geophysical entity of the EU are in practice considered to be an integral part of its customs territory.

2.7. Thus, whilst the Austrian territories of Jungholz and Mittelberg, the Principality of Monaco, the Republic of San Marino, the French overseas departments (ODs) (Martinique, Guadeloupe, French Guiana and Reunion), the Isle of Man and the Canary Islands are part of the EU customs territory, others which are part of the EU's geophysical area are excluded: these include the Faroe Islands, the Island of Heligoland and the territory of Büsingen, Ceuta and Melilla, the French overseas territories (TOMs) (French Polynesia, Wallis and Futuna, New Caledonia, the French Southern and Antarctic Territories and the territorial communities of Mayotte and Saint Pierre and Miquelon) and Livigno. Also hitherto excluded were Campione d'Italia and the Italian waters of Lake Lugano, between Ponte Tresa and Porto Ceresio, territories which Italy has asked to be included.

2.8. Negotiations for an EU-Canada Comprehensive Economic and Trade Agreement (CETA) were concluded in September 2014, in Council Decision (EU) 2017/37 of 28 October 2016. The agreement, which entered into force on 21 September 2017, abolished 99 % of customs duties and many other barriers which up until now have represented a burden for traders.

2.9. CETA — on which the EESC was able to express its views on several occasions ⁽¹⁾ — contains a number of aspects that are of major interest for customs, given that Article 1.4. of the agreement establishes between Canada and the European Union a free trade area, in keeping with Article XXIV of GATT (1994) ⁽²⁾ and Article V of GATS ⁽³⁾. In any event, CETA does not affect other rights and obligations between the contracting parties under the WTO agreement, and nor does it affect the other agreements to which they are respectively party ⁽⁴⁾.

⁽¹⁾ OJ C 48, 15.2.2011, p. 87; OJ C 332, 8.10.2015, p. 45; OJ C 227, 28.6.2018, p. 27.

⁽²⁾ *General Agreement on Tariffs and Trade*.

⁽³⁾ *General Agreement on Trade in Services*.

⁽⁴⁾ See Article 1.5 CETA.

2.10. Unless otherwise specified ⁽⁵⁾, the free trade area applies:

- for Canada: to its land territory, air space, internal waters and territorial sea; its exclusive economic zone, as determined by Canadian domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 ('UNCLOS' ⁽⁶⁾); and its continental shelf, as determined by Canadian domestic law, consistent with Part VI of UNCLOS;
- for the European Union: to the territories in which the TEU (Treaty on European Union) and the TFEU are applied and under the conditions laid down in those Treaties and also, as regards the provisions concerning the tariff treatment of goods, to the areas of the European Union customs territory not included in the above territories.

2.10.1. Together with CETA, the EU and Canada signed a joint interpretative instrument ⁽⁷⁾ which will have legal force and which clearly and unambiguously outlines the content of the agreement between Canada and the European Union in a number of CETA articles, such as those concerning the new investment court system, the right to regulate, public services and environmental and labour protection.

2.10.2. The regular consultation process with the Member States and firms has identified some errors and technical anomalies that need to be corrected in order to guarantee legal certainty and coherence. This is the backdrop to the Commission proposals, including the alignment of the UCC with an international agreement which had not entered into force at the time of adopting the code and the request for inclusion of part of its territory by Italy.

3. The Commission's proposals

3.1. The Commission proposes to amend the Union Customs Code with a view to:

- correcting the technical errors and omissions, including the alignment of the UCC with the provisions of international agreements that were not in force at the time of its adoption, such as the Canada-EU Comprehensive Economic and Trade Agreement (CETA);
- modifying the definition of the EU customs territory to include the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano;
- providing specifications and additions regarding decisions and procedural time-limits on binding tariff information (BTI), entry summary declarations, declarations for temporary storage, exit summary declarations or a re-export notifications and exemptions from import duties, under the outward processing procedure.

4. General comments

4.1. The EESC fully shares the Commission's aim of making technical changes to the Union Customs Code (UCC) to ensure that the code complies with the objectives of improving the competitiveness of European enterprises, but also of better protecting the financial and economic interests of the Union, providing better quality jobs and ensuring the security of EU consumers.

4.2. The Committee notes the importance attached by CETA to trade and sustainable development, and the commitments undertaken in this respect by the contracting parties, under the joint interpretative instrument, to strengthen these measures. It also notes the positive approach of the new model adopted for settling investment disputes.

4.3. The Committee therefore welcomes the aim of aligning EU regulatory norms with the agreements signed with Canada in the following areas:

- binding tariff information;
- temporary storage;
- entry summary declarations and particulars to be included in the event of failure to submit pre-arrival information concerning non-Union goods;

⁽⁵⁾ See Article 1.3 CETA.

⁽⁶⁾ *United Nations Convention on the Law of the Sea*.

⁽⁷⁾ Approved by the Council at the time of signing the agreement on 28 October 2016, it provides a binding interpretation of CETA pursuant to Article 31 of the Vienna Convention on the Law of Treaties: <http://data.consilium.europa.eu/doc/document/ST-13541-2016-INIT/en/pdf>.

- invalidation of a temporary storage declaration;
- total relief from import duties in some cases;
- exact terms of the invalidation, in cases where there is a temporary storage declaration, of the exit summary declaration or re-export notification.

4.4. The Committee is in favour of agreeing to the request by the Italian government to include, from 1 January 2019, the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the EU customs territory.

4.5. The Committee would recommend that, in parallel to this process of inclusion, the necessary amendments be made to Directive 2008/118/EC (Excise duties) and Directive 2006/112/EC (VAT Directive), to be applicable from the same date of 1 January 2019.

4.6. The EESC would ask the Commission to send it the interim evaluation report, to be published in 2021, on the efficiency, coherence and correctness of the UCC legal framework, as amended by the current legislative proposals.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on

Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures

[COM(2018) 134 final — 2018/0060 (COD)]

Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral

[COM(2018) 135 final — 2018/0063 (COD)]

(2018/C 367/09)

Rapporteur: **Juan MENDOZA CASTRO**

Consultation	Council of the European Union, 24.4.2018 European Parliament, 19.4.2018
Legal basis	Articles 114 and 53(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	145/0/2

1. Conclusions and recommendations

NPL package

1.1. The EESC welcomes the Commission's package, a centrepiece in the EU offensive to address the persisting issue of NPLs and fundamental to progress towards the Banking Union.

1.2. The EU's financial institutions have made progress both in the quality of loan portfolios and in the total volume of non-performing loans (NPLs); however, additional measures are required at EU level to prevent NPLs from accumulating in the future.

1.3. Any EU comparison of the level of NPLs should take into account the fact that banks in some countries benefited from substantial amounts of state aid in the early phase of the crisis (2008-2012), while others were unable to do so due to changes in the state aid rules.

1.4. The EESC draws attention to the social consequences of the financial crisis in terms of exclusion, social justice and obstacles to the completion of the internal market.

1.5. Removing impaired debts from the financial institutions' accounts is vital in order to avoid the consequences of over-indebtedness in the future. The EESC also calls for responsible lending by credit institutions.

Statutory prudential backstops

1.6. The EESC agrees with the application of statutory prudential backstops as a preventive measure to ensure that credit losses on future NPLs are sufficiently provisioned.

1.7. The EESC takes notice of the Commission's rationale for the proposal, adding that backstops would be justified by the different objectives pursued by the accounting framework relative to the prudential regulation.

1.8. However, the EESC must also point out that that:

- The 'one size fits all' approach, does not take into account the differences that still exist national civil laws and the length of procedures in civil courts.
- The calendar for the provisioning of new NPLs may force the banks to sell them quickly, rather than waiting for the financially distressed company/firm to return to a more viable situation.

1.9. The Commission should consider, if possible, the specific situation of smaller and specialised firms with a less complex asset structure.

1.10. The EESC considers that IFRS 9 should be mandatory for all EU banks.

1.11. The EESC proposes launching a specific impact analysis aimed at estimating the potential impact of the proposed regulation on banks, on the transmission of credit to households, on SMEs and on GDP growth.

1.12. The EESC notes that the ECB has already issued its addendum, without considering the Pillar 1 rules to be issued by the Parliament/Council/Commission and without waiting for the European Banking Authority (EBA) guidelines.

Development of secondary markets

1.13. The EESC recognises that the Commission gives an answer to many of the problems of fragmented NPLs secondary markets in the EU and highlights the specific proposals in this aspect. However, it is of the view that regulators must not encourage the sale of NPLs.

1.14. The EESC's suggestions regarding the consequences of credit transfers are as follows:

- Consumer protection: in general the Commission's proposals are welcomed. The authorities must pay attention to specific measures and recommendations to protect debtors' rights.
- Workers' protection: the competent authorities must take account of the mobility and protection of the workers of the companies involved in transfers of companies according to EU and national laws.

Accelerated extrajudicial collateral enforcement

1.15. The EESC highlights, in a positive sense, the right to a fair trial in a national court if it is necessary and if the application of this procedure as proposed in the directive is restricted.

1.16. In many Member States the enforcement process is already efficient. The solution to the problem of NPLs lies mainly in strengthening judicial procedures across the whole EU.

2. European Commission proposals

2.1. On 14 March, the Commission presented a proposal for a regulation ⁽¹⁾ amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (NPEs), together with a proposal for a directive ⁽²⁾ on credit servicers, credit purchasers and the recovery of collateral.

⁽¹⁾ COM(2018) 134 final — Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures.

⁽²⁾ COM(2018) 135 final — Proposal for a Directive of the European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral.

2.2. Both proposals were accompanied by Commission staff working documents and impact assessments, and on the same day the Commission also published its Second Progress Report ⁽³⁾ on the Reduction of Non-Performing Loans in Europe and a Blueprint ⁽⁴⁾ providing technical guidance on how to set up national Asset Management Companies (ACMs).

2.3. These proposals are important components of the Commission's efforts to strengthen Europe's Economic and Monetary Union (EMU) and are essential to completing the Banking Union. Addressing high stocks of non-performing loans (NPLs) and non-performing exposures (NPEs), as well as their possible accumulation in the future, is an integral part of the Union's efforts to further reduce risks in the banking system and enable banks to focus on lending to businesses and citizens.

2.4. In the proposal for a regulation, the Commission proposes to establish a statutory prudential backstop by setting common minimum levels of coverage for newly originated loans that turn non-performing, with the aim of preventing any excessive future build-up of NPLs without sufficient loss coverage on banks' balance sheets and making their resolution easier.

2.5. In the proposal for a directive, the Commission aims to increase the efficiency of debt recovery procedures through the availability of a distinct common accelerated extrajudicial collateral enforcement procedure (AECE). The proposal also encourages the development of secondary markets for NPLs by harmonising requirements and creating a single market for credit servicing and the transfer of bank loans to third parties across the EU.

3. General comments

3.1. The EESC welcomes the Commission's package, a centrepiece in the EU offensive to address the persisting issue of NPLs ⁽⁵⁾ and fundamental to progress towards the Bank Union.

3.2. Given that solvency and stability in the financial system is fundamental for the EU, the large volume of NPLs accumulated in the banks of some Member States during the crisis and ensuing recession is bad for the financial system as a whole, detrimental to the economy and has, in certain cases, incurred heavy costs for the taxpayer.

3.3. In recent years, the EU's financial institutions have made progress both in the quality of loan portfolios and in the total volume of NPLs; however, the latter remain at the high level of gross EUR 813 billion ⁽⁶⁾. Banks and supervisors have the necessary tools to reduce the number of defaulted or impaired loans, but additional measures are required at EU level to prevent them accumulating in the future.

3.4. The EESC points out that banks in some countries benefited from substantial amounts of state aid in the early phase of the crisis (2008-2012), while others were unable to do so due to changes in the state aid rules for the financial sector. For this reason, any comparison of the level of NPLs should take into account these differences.

3.5. The EESC draws attention to the social consequences of the financial crisis in terms of exclusion, social justice and obstacles to the completion of the internal market. In some Member States, NPLs are a reflection of how severely families and SME entrepreneurs have been affected, including being at risk of losing their homes or subject to foreclosure.

3.6. Removing impaired debts from the financial institutions' accounts is vital in order to avoid the consequences of over-indebtedness in the future, and the ECOFIN plan must contribute to this objective. The EESC also calls for responsible lending, which will require credit institutions to pay greater attention to the needs and situations of their individual borrowers and to find the financial instrument most appropriate to each one's circumstances ⁽⁷⁾.

⁽³⁾ COM(2018) 133 final — Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank — Second Progress Report on the Reduction of Non-Performing Loans in Europe.

⁽⁴⁾ SWD(2018) 72 final — AMC Blueprint — Commission Staff Working Document accompanying the Communication from the Commission to the European Parliament, the European Council, the Council and the European Central Bank — Second Progress Report on the Reduction of Non-Performing Loans in Europe.

⁽⁵⁾ Council Conclusions on Action plan to tackle non-performing loans in Europe (11 July 2017).

⁽⁶⁾ EBA risk dashboard Q4 2017 data.

⁽⁷⁾ EESC Opinion on Credit and social exclusion in an affluent society (OJ C 44 of 16.2.2008, p. 74).

4. Specific comments

4.1. *Statutory prudential backstops*

4.1.1. The EESC agrees with the application of statutory prudential backstops as a preventive measure to ensure that credit losses on future NPLs are sufficiently provisioned.

4.1.2. To reduce NPLs and NPEs ⁽⁸⁾, the proposed amendment of the Capital Requirements Regulation (CRR) includes a progressive calendar for secured (up to eight years) and unsecured (two years) loans.

4.1.3. The Commission's rationale for the proposal is ⁽⁹⁾:

- Loan loss work might not always be adequate from a prudential perspective, which has a different scope, objective and purpose.
- IFRS 9 ⁽¹⁰⁾ is expected to bring much closer alignment with prudential standards than IAS 39 ⁽¹¹⁾ and to contribute to addressing the issue of delayed and inadequate provisions, as it operates on an 'expected loss' approach. However, the new standard still leaves room for discretion in the evaluation of NPLs and of the underlying collateral and, as a consequence, in the determination of provisions.
- Prudential regulation empowers the bank supervisor to influence a bank's provisioning level (including as regards NPLs) within the limits of the applicable accounting framework and to require specific adjustments to the own funds calculations of that bank. Binding measures and requirements, however, can only be applied by the supervisor on a case-by-case basis depending on the individual circumstances of the bank (referred to as Pillar 2 measures).
- Individually tailored supervisory measures on a case-by-case assessment by the competent supervisor are appropriate for dealing with the specific NPL-related risks of individual banks.

4.1.4. The EESC would add that backstops would be justified by the different objectives pursued by the accounting framework relative to the prudential regulation.

4.1.5. However, the EESC must also point out that:

- The proposed regulation, which follows a 'one size fits all' approach, does not take into account the still existing differences in national civil laws and the length of procedures in civil courts.
- The calendar for the provisioning of new NPLs may force the banks to sell them quickly, rather than waiting for the financed distressed company/firm to return to a more viable situation. This could reduce the possibility of allowing for a debt restructuring and a giving entrepreneurs a second chance, with a potentially high negative social impact and negative impact on the employment ratio.
- According to one analysis ⁽¹²⁾, smaller and specialised firms with a less complex asset structure are likely to be more severely affected by the concurrent introduction of IFRS 9 and prudential backstops for NPE. The Commission should consider whether it is necessary to fine-tune the proposal to address this problem.

⁽⁸⁾ European Banking Authority (EBA) definition: 'NPE is every exposure that is 90 days past-due or unlikely to be paid without collateral realisation, even if it is not recognised as defaulted or impaired. Defaulted and impaired exposures according to Article 178 CRR and the applicable accounting framework, respectively, are always considered as non-performing. In addition, any exposure to a debtor has to be considered non-performing when its on-balance sheet 90 days past-due reaches 20 % of the outstanding amount of total on-balance sheet exposure to that debtor ("pulling effect"). The total NPE is given by the sum of non-performing loans, non-performing debt securities and non-performing off-balance sheet items'.

⁽⁹⁾ Consultation document on statutory backstops.

⁽¹⁰⁾ International Financial Reporting Standard. In force from 1.1.2018.

⁽¹¹⁾ International Accounting Standards.

⁽¹²⁾ Eurofinas: response to European Commission consultation on statutory prudential backstops.

4.1.6. Even though the proposed backstops can mitigate the differences in provisioning stemming from the adoption of different accounting frameworks (IFRS 9 as opposed to National GAAPs⁽¹³⁾), the EESC considers that IFRS 9 should be mandatory for all EU banks.

4.1.7. The EESC suggests launching a specific analysis aimed at estimating the potential impact of the proposed regulation on banks, on the transmission of credit to households, on SMEs and on GDP growth.

4.1.8. Other risks may produce similar problems to those of NPLs, in particular the risks connected to heavy complex derivatives and level 2 and level 3 repossessed assets. In view of this, the EESC is of the opinion that these risks should be included in the priority list for risk reduction.

4.1.9. The EESC notes that the ECB has already issued its addendum, without considering the Pillar 1 rules to be issued by the Parliament/Council/Commission and without waiting for the EBA guidelines (still under discussion) to be finalised. This could violate the better regulation principles. The ECB addendum on NPLs should therefore be adapted to the future Pillar 1 framework on NPLs, so as to continue to ensure the consistency of European rules.

4.2. *Measures to further develop secondary markets for NPLs*

4.2.1. In the EU, secondary markets transactions are relatively small⁽¹⁴⁾. The causes include: fragmented regulation; legislative limitations on holders of some asset classes, on the scope for the involvement of servicer companies and on types of investor (in some cases only other banks may be able to service or buy NPLs); and differing views on the economic outlook between local banks and foreign investors. The EESC considers that the Commission offers an answer to many of these problems.

4.2.2. One of the key challenges for the NPL market is the lack of high quality data on NPLs, resulting in information asymmetries. The EESC welcomes the data templates aimed at providing uniform and standardised data for non-performing credit agreements.

4.2.3. However, the EESC considers that regulators must not encourage the sale of NPLs because managing impaired loans within banks could imply a higher value through their recovery than the prices collected for their sale.

4.2.4. The EESC would highlight and supports the following aspects of the Commission proposal:

- **Credit servicers.** The EU-wide rules set specific requirements and procedures for the granting, refusing or withdrawing of authorisation (Articles 5 to 7), including ‘sufficiently good repute, clean police record and not currently subject to any insolvency procedure’. They also cover: the register (Article 8), the contractual relationship with the creditor (Article 9), outsourcing activities (Article 10) and cross-border servicing (Articles 11 and 12).
- **Credit purchasers.** The creditor shall provide all necessary information regarding the credit agreement (Article 13) according to technical standards that will be developed by the EBA (Article 14) and which cannot be submitted to any additional requirements other than those provided for under national laws of transposition (Article 15). They can enforce the credit directly (Article 18) or transfer it (Article 19).
- **Credit servicers, credit institutions or their subsidiaries,** which play an active role in operations related to NPLs, are included in Article 16.
- **Supervision.** A crucial aspect, because it calls for application of the same rules throughout the EU, a supervisory role of competent national authorities and administrative penalties (Articles 20 to 22).

⁽¹³⁾ Generally Accepted Accounting Principles.

⁽¹⁴⁾ KPGM: EUR 100 billion, less than 10 % of the outstanding stock.

- **Data protection.** A condition for the transfer of a loan is the ‘respect for borrower rights and compliance with personal data protection rules in accordance with the laws governing the credit agreement’ (Article 5(1)(c)).

4.2.5. *Consumer protection*

- The EESC considers it important to ensure a high level of consumer protection in the area of financial services.
- In this sense, it appreciates the general principle in the proposal, which is ‘to ensure the same level of protection, irrespective of who owns or services the credit and irrespective of the legal regime in force in the Member State of the credit purchaser or the credit servicer’; in particular, the Mortgage Credit Directive⁽¹⁵⁾, the Consumer Credit Directive⁽¹⁶⁾ and the Unfair Contractual Terms Directive⁽¹⁷⁾ must be observed.
- The EESC also highlights the obligations of the creditor towards the consumer in the event of modifications to the credit agreement (Article 34).
- The EESC observes that the transfer of a loan means that the debtor must deal with a non-financial company that has different personnel, different working methods and a different purpose. It is therefore appropriate that national authorities pay attention to measures and recommendations to protect debtors’ rights, as is the case with the US Consumer Financial Protection Bureau⁽¹⁸⁾.

4.2.6. *Workers protection*

In all instances of the credit transfers to external companies, the competent authorities must take account of the mobility and protection of the workers of the companies involved such transfers according to EU and national laws.

4.3. *Accelerated extrajudicial collateral enforcement (AECE)*

4.3.1. The EESC highlights, in a positive sense, the obligation of the Member States to ensure that the business borrower has the right to challenge the use of this mechanism before a national court (Article 28). This should adequately protect the fundamental right of citizens and companies to a fair trial⁽¹⁹⁾, especially in the event of unfair or abusive contractual terms.

4.3.2. Nevertheless, the EESC notes the doubts expressed by some Member States that such an instrument could significantly accelerate the enforcement process in those Member States where procedures in the courts are already handled in a short period of time; while out-of-court procedures may be beneficial for the creditor, the solution to the problem of NPLs lies mainly in strengthening judicial procedures across the EU.

4.3.3. In any case, the EESC positively highlights the restrictions on the application of AECE in the proposal. Firstly, only agreements concluded between creditors and business borrowers are included. Moreover, the following are specifically excluded:

- consumers engaged in non-professional activities⁽²⁰⁾;
- non-profit-making companies;
- financial collateral arrangements⁽²¹⁾, and
- immovable residential property which is the primary residence of a business borrower⁽²²⁾.

⁽¹⁵⁾ Directive 2014/17/EU (OJ L 60, 28.2.2014, p. 34).

⁽¹⁶⁾ Directive 2011/83/EU (OJ L 304, 22.11.2011, p. 64).

⁽¹⁷⁾ Directive 93/13/EEC (OJ L 95, 21.4.1993, p. 29).

⁽¹⁸⁾ <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-reminds-mortgage-servicers-of-legal-protections-for-consumers-when-transferring-loans>.

⁽¹⁹⁾ Charter of Fundamental Rights of the European Union, Article 47.

⁽²⁰⁾ Directive 2008/48/EC on credit agreements for consumers, Article 3 a).

⁽²¹⁾ Directive 2002/47/EC on financial collateral arrangements, Article 2(1)(a).

⁽²²⁾ ‘The financial crisis, which has led to the insolvency of many home-buyers, forced to sell on their properties at rock-bottom prices’. EESC Opinion on the Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property (OJ C 318 of 29.10.2011, p. 133).

4.4. *Asset Management Companies (AMCs) Blueprint*

State aid rules

4.4.1. The EESC agrees with the Commission that AMCs have been an important part of solutions to clean up banks' balance sheets in some Member States, especially in the wake of the financial crisis. However, it also agrees that — in the case of publicly supported or guaranteed vehicles — they may also contribute to financial stability risks, including potentially reinforcing what is known as the 'sovereign feedback loop'.

4.4.2. The EESC therefore supports consistency with the EU legal framework, especially the Bank Recovery and Resolution Directive (BRRD) ⁽²³⁾ and the Single Resolution Mechanism Regulation (SRMR) ⁽²⁴⁾.

4.4.3. In practice, nearly all national AMCs have benefited from government support in some form, including: guarantees to meet any losses or to guarantee AMC funding (this can result in the AMC having a 'sovereign' rating, so that AMC securities are, for example, eligible as repo collateral); AMCs buying assets above their market value (the value an investor would pay), as a result of taking a longer-term view of economic value — the excess of economic value over market value constitutes state aid and requires bank-level approval by the European Commission; and the government recapitalising banks that participate in AMC schemes ⁽²⁵⁾.

4.4.4. Even where some form of government assistance has been permitted, the most recent EU rules generally require that as a minimum the subordinated debt of a bank be bailed-in (written off or converted into equity), so that any recapitalisation burden is at least shared between the public and private sectors.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽²³⁾ Directive 2014/59/EU.

⁽²⁴⁾ Regulation (EU) No 806/2014 (OJ L 225, 30.7.2014, p. 1).

⁽²⁵⁾ KPGM.

Opinion of the European Economic and Social Committee on

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the applicable law to the proprietary effects of transactions in securities

[COM(2018) 89 *final*]

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EU and Directive 2011/61/EU on cross-border distribution of collective investment fund

[COM(2018) 92 *final* — 2018/0041 (COD)]

Proposal for a Regulation of the European Parliament and of the Council on the law applicable to the third-party effects of assignments of claims

[COM(2018) 96 *final* — 2018/0044 (COD)]

Proposal for a Regulation of the European Parliament and of the Council on facilitating cross-border distribution of collective investment funds and amending Regulations (EU) No 345/2013 and (EU) No 346/2013

[COM(2018) 110 *final* — 2018/0045 (COD)]

(2018/C 367/10)

Rapporteur: **Petr ZAHRADNÍK**

Consultation	Council of the European Union 12.4.2018 European Parliament, 16.4.2018
Legal basis	Articles 53(1), 114 and 304 of the Treaty on the Functioning of the European Union
Odpovědná specializovaná sekce	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	152/0/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC supports systematic efforts to launch all the key elements of the Capital Markets Union by 2019 and anticipates that the prospective benefits will include expanding investment opportunities, streamlining the process of financial intermediation, diversifying investment and better risk management capabilities.

1.2. The EESC thinks it important, when it comes to opening up new opportunities for the cross-border distribution of investment funds, to establish a balanced relationship between investor protection requirements, which are key in this regard, while also giving the designers and distributors of investment products enough room for creativity.

1.3. Like the European Commission, the EESC thinks that the key regulatory barriers to cross-border distribution of investment funds at this time are marketing requirements, regulatory fees, notification procedures and administrative requirements at national level. At the same time, it is aware of the existence of other obstacles that the proposed measures do not cover, such as the harmonisation of tax rules, which is realistically more feasible in the long run.

1.4. However, the EESC also takes the view that the main reasons for the existing barriers to the cross-border distribution of investment funds lie primarily not with the current regulations and directives, but above all from the lack of detailed guidance and instructions from the European Securities and Markets Authority (ESMA), as a result of which each national jurisdiction has different rules. Most of the proposals should therefore be accompanied by detailed and explanatory ESMA instructions and the proposal for a new regulation should serve merely as the general framework ensuring a uniform approach to regulation.

1.5. The EESC believes that in order to achieve an economy-of-scale effect, manifestations of 'national inventiveness' in working out charging structures should be curbed and a path taken of having clearly defined and unambiguous national provisions that are consistent throughout the EU.

1.6. The EESC welcomes and supports the intention to improve transparency regarding regulatory fees, since this can help accelerate the cross-border distribution of investment funds. The role of ESMA is crucial here.

1.7. The EESC calls for the introduction of rules for the systematic notification of marketing communications that are rigorous enough in their effect to prevent the continuation of practices that may fragment the EU market.

1.8. The EESC welcomes the creation of the ESMA database, but notes that this should not involve the imposition of additional notification requirements on asset managers and that these requirements should apply exclusively to the competent national authorities.

1.9. Regarding the proposed rules for discontinuing promotion and marketing of investment funds, the EESC is inclined to take the view that the decision on termination should be optional and depend on the decision of the asset manager.

1.10. The EESC recommends more detailed rules be established to ensure the verification of qualifications and competence of persons providing investment services.

2. Background and broader context: introducing all elements of the Capital Markets Union by 2019

2.1. The Capital Markets Union is a long-term EU project to make financial intermediation more efficient and effective. Its impact should be seen after 2019 — when all of its currently envisaged building blocks are expected to be launched — with the creation of a favourable investment environment over the long term that will help towards strong economic growth, competitiveness and jobs.

2.2. In symbiosis with the Banking Union, a functioning Capital Markets Union will support the single market's operational environment and strengthen the Economic and Monetary Union. It will also help to make the EU more attractive worldwide for investment. A crucial element is strengthening the diversification aspect as a means of cross-border private risk-sharing. For this prerequisite to work, the spreading of poor-quality assets must be prevented. The risk would otherwise be further increased.

2.3. The European Commission's proposals continue the steps taken to create the Capital Markets Union since it was launched in 2015 with the aim of raising capital effectively and placing it — depending on its profitability — in such a way that it is available to all types of businesses, including SMEs.

2.4. The European Commission's current proposals specifically target support for the cross-border market in investment funds and focus on the covered bond market within the EU as a source of long-term financing and on providing greater legal certainty for cross-border transactions in securities and claims. These proposals must be seen in terms of their interconnectedness. At the same time, it is also essential to respect the FinTech action plan and the action plan on sustainable finance, since these too are very important for achieving a full-fledged Capital Markets Union.

2.5. The idea is to make greater progress on the Capital Markets Union by 2019 on at least three fronts: strengthening the role of European labels and passports for financial products, harmonising and simplifying rules to deepen and homogenise capital markets across borders and ensuring their more consistent and efficient supervision.

2.6. The intended purpose of the proposed measures is to achieve higher levels of integration and homogeneity in the investment funds market, reduce costs across borders, substantially increase the offer to investors and achieve better investor protection based on common rules. In this spirit, the opening up of markets for the cross-border distribution of investment funds is an opportunity, albeit one that necessitates the removal of national legislative and non-legislative barriers.

3. Purpose of facilitating cross-border distribution of collective investment funds

3.1. Collective investment funds are an important tool in the financial intermediation process that enable both private and public financial assets to be placed and invested in real business projects and productive public investment projects. The EU investment funds market amounts to a total of EUR 14,3 trillion, which is very close to the EU's GDP.

3.2. However, its potential has not yet been fully realised in the cross-border context, where around 37 % of undertakings for collective investment in transferable securities and about 3 % of alternative investment funds are registered for sale in more than three Member States.

3.3. The reasons for this state of affairs, in addition to remaining natural barriers, are regulatory restrictions impeding a wider cross-border distribution of investment funds. The intention of the Commission's proposals is to reduce the catalogue of these restrictions for all types of investment fund and to facilitate their cross-border distribution, which could speed this up and make the distributed products cheaper thanks to the economies of scale achieved. Regulatory restrictions are to be found primarily in the field of marketing requirements, regulatory fees, notification procedures and administrative requirements at national level. The way to remove these obstacles is by ensuring transparency and harmonisation. The proposed measures are mainly of a technical nature.

4. General comments

4.1. The EESC thinks the main reasons for the existing barriers to the cross-border distribution of investment funds lie primarily not with the relevant regulations and directives as currently framed, but rather with the lack of detailed guidance or instructions from ESMA and hence the different rules in various European jurisdictions. The new regulation should therefore be adopted for a minimum number of cases, while most of the proposals should focus on detailed and explanatory ESMA instructions that would ensure a clear explanation of the existing rules, rather than on adopting new standards, and thus build on ESMA's positive contribution so far to the alignment of the rules.

4.2. The EESC considers that the measures proposed in this opinion are certainly significant, although many of them are mainly supporting procedures of a technical nature. Overall, however, they also constitute a major contribution to the functioning of the EMU. At the same time, the EESC recommends incorporating the substance of all four documents in question into a new comprehensive proposal for a regulation.

4.3. The EESC believes that, when bringing in new rules of the game, the balanced relationship must be respected between investor protection requirements and giving enough room for creativity to the originators and vendors of investment products. The investor protection impact is bolstered by systematic financial education.

4.4. Highly accomplished EU legislation, such as the provisions on undertakings for collective investment in transferable securities (UCITS) and the Directive on Alternative Investment Fund Managers (AIFM), should take precedence over the general rules embodied in, for instance, the Markets in Financial Instruments Directive (MiFID). This is because actual experience shows that UCITS and AIFM provide a very sound framework for investment funds, whereas the EESC believes that MiFID involves — along with a number of benefits — a number of uncertainties, as a result of which it has, paradoxically, triggered further fragmentation of the single market and differences between countries within the EU.

4.5. The EESC respects the fact that the cross-border distribution of investment funds requires a stable tax system that creates the essentials for a sustainable business environment. Full harmonisation of tax rules, including tariffs, is not a consideration at this stage. Nevertheless, it must be envisaged that, in future, efforts toward tax harmonisation could help create uniform tax conditions in this segment throughout the whole of the EU. Current endeavours to align tax parameters, however, are focused on other tax instruments.

4.6. The EESC's view is that the way to achieve the desired economies of scale is to curb 'national inventiveness' in working out charging structures (in many cases going further than EU regulation in order to recoup essential costs) and having national provisions that are clearly defined, unambiguous and consistent.

4.7. Commission communication on the applicable law to the proprietary effects of transactions in securities

4.7.1. The EESC supports the aim of bringing in measures to reduce legal uncertainty for cross-border transactions in securities and claims. It considers it important to ensure clarity and predictability of the domestic law to be used for determining the owner of the assets underlying the transaction, since the legal risks stemming from uncertainties may create additional losses. It is therefore fundamental and necessary to explain the legal terminology for specifying the ownership and contractual elements.

4.8. Regulation on the law applicable to the third-party effects of assignments of claims

4.8.1. Further to the above-mentioned communication, the EESC welcomes the idea of eliminating the legal uncertainty described earlier by proposing uniform rules to determine which national law governs the ownership of a claim assigned on a cross-border basis. Cross-border assignment of a claim is a process by which firms can acquire liquidity and access to credit through specialised companies. The EESC acknowledges that legal certainty in this area will contribute to the strengthening of cross-border investments, including by engaging small and medium-sized enterprises (SMEs); this involves factoring, collateralisation and securitisation.

4.9. Directive on cross-border distribution of collective investment funds

4.9.1. The EESC supports the creation of an environment aimed at better exploiting the potential for cross-border distribution of investment funds by making national requirements for placing on the market more transparent at national and EU level, making the structure of regulatory fees more transparent at EU level and ensuring these fees are set in compliance with certain common principles.

4.9.2. The EESC prefers the choice of means to support local investors to be left to investment fund managers.

4.9.3. The EESC welcomes the harmonisation of procedures for using the 'passport' to distribute investment funds in a cross-border context.

4.9.4. The EESC supports the creation of harmonised rules for marketing communication.

4.9.5. The EESC supports the creation of a system in which Member States will ensure easy access of the legislation governing cross-border marketing of investment funds on their territory (by electronic means and in a language customary in the sphere of international finance).

4.10. Regulation on facilitating cross-border distribution of collective investment funds

4.10.1. The EESC welcomes the essential purpose of this regulation, which is to arrive at a shared understanding regarding the specification of requirements for marketing communications and measures aimed at ensuring the transparency of national provisions on the requirements for the marketing of funds.

4.10.2. The EESC supports the proposed practice whereby fees are proportionate to the supervisory tasks carried out. The EESC expects real benefits to come from maintaining an online database of fees and the relevant methods for calculating them and sees this as a genuine challenge. However, it recommends that these benefits be evaluated against the costs incurred and that possible risks associated with the functioning of the database be identified. The EESC plans to develop implementing technical standards for information about fees, as well as for ESMA to publish and maintain an online fee database.

4.10.3. The EESC appreciates the specification of the requirements for information flows and their standardisation and simplification, as well as the regulation of the pre-marketing process, in which investor appetite for forthcoming investment opportunities or strategies is tested.

5. Specific comments

5.1. Regarding the fees and charges levied by national competent authorities and their transparency, the EESC supports the proposal's intention to boost transparency on regulatory fees, including specifying ESMA's role in gathering the information needed. This measure has the potential, the EESC believes, to further facilitate the cross-border distribution of investment funds.

5.2. The suggestion is to introduce rules at the level of national competent authorities for the systematic notification of marketing communications in order to enable *ex-ante* checking of such material. However, the EESC thinks that having different rules for the national competent authorities could occasion a fragmentation of the EU market, given that there should be no differences within the single market. The EESC recommends that it should not be possible for the various competent national authorities to take different approaches in this matter.

5.3. While the EESC welcomes the creation of an ESMA database listing AIFMs, UCITS management companies, AIFs and UCITS, it would nevertheless add that it is not desirable to impose further notification requirements on asset managers. The EESC thinks it should be clear, therefore, that the notification requirements based on Articles 10 and 11 of the proposal for a regulation should be notification requirements for the competent national authorities and these should not place additional such requirements on market participants.

5.4. The EESC points out that that the proposed definition of pre-marketing should not be taken from the definition in the Directive on Alternative Investment Fund Managers; further legal purity and consistency are needed and experience in practice suggests non-legislative means and instruments could be a better — or the only — way to achieve this. The EESC fears that the present proposal could lead to further fragmentation of the single market by encouraging national interpretations.

5.5. Regarding the rules for discontinuing promotion and marketing of investment funds, the EESC takes the view that the proposed rules could lead to the distortion of the single market where investment funds are concerned. The decision to end the marketing of any investment fund units/shares in any jurisdiction should be exclusively a business decision of the company managing the assets. In terms of investor protection, this is adequately provided for (as practical experience attests) by:

- publication of decisions;
- providing information to investors;
- giving investors the chance to withdraw from the fund within a specified period of time.

5.6. *Other barriers to cross-border distribution of investment funds*

5.6.1. One of the other existing barriers to cross-border distribution are the rules on checking the qualifications of persons providing investment services. The EESC thinks more detailed rules should be adopted, for example:

- to which services the existing rules apply;
- to what type of activities in the provision of these services the rules apply;
- how the checking of qualifications should be performed when local (national) regulators are not able to introduce national procedures;
- recognition of various ways of checking qualifications at EU level using pan-European or worldwide procedures, such as CFA tests.

5.6.2. The EESC supports the establishment of detailed and unambiguous rules regarding what legislation covers the distribution of investment funds: it is not clear at present which rules (either MiFID or UCITS/Directive on Alternative Investment Fund Managers) apply to the distribution of funds. One of the main obstacles to cross-border distribution is, in the EESC's view, if each legislator takes a different approach. It should be clearly stated that the distribution of funds falls solely within the scope of UCITS/Directive on Alternative Investment Fund Managers (for own funds, managed funds and funds from third parties), where the management company needs neither a MiFID licence nor licences for services under MiFID.

5.6.3. The EESC is convinced that no local (national) notification should be required. Regulators should not have the opportunity to introduce reporting on local (national) funds either by means of regulatory reports in relation to the regulators, or by means of any obligation to publish data — in the press, for example.

5.6.4. The EESC thinks the ESMA interactive database on fees and charges should be extended in future to include:

- requirement of the time needed for any type of licence/registration;
- requirement of detailed information needed for local (national) reporting;
- requirement of local (national) distribution rules.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

**Opinion of the European Economic and Social Committee on the
Proposal for a Regulation of the European Parliament and of the Council on amending Regulation
(EU) No 575/2013 as regards exposures in the form of covered bonds**

[COM(2018) 93 final — 2018/0042 (COD)]

**Proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds
and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU**

[COM(2018) 94 final — 2018/0043 (COD)]

(2018/C 367/11)

Rapporteur: **Daniel MAREELS**

Consultation	Council of the European Union, 28.3.2018 European Parliament, 16.4.2018
Legal basis	Articles 53, 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	165/0/1

1. Conclusions and recommendations

1.1. For the reasons set out below, the EESC very much welcomes the proposals on covered bonds (see point 1.2 and following). The Committee calls for every effort to be made to make rapid progress and achieve a successful outcome. In this regard, it also makes a number of suggestions (see point 1.7 and following).

1.2. Firstly, these proposals fit into a broader context and contribute to the achievement of objectives that are close to the Committee's heart, such as the rapid establishment of a CMU and the completion of EMU. Furthermore, covered bonds promote cross-border financing operations and therefore more private risk-sharing too.

1.3. In addition, a number of EU Member States have traditionally held a very strong position in the international and global markets. The European approach to the prudential treatment of covered bonds serves as a guide throughout the world. The current proposals should be used not only to consolidate this leading position, but where possible also to strengthen it. Particularly in view of the various global power shifts under way between East and West, it is vital that the EU take up a decisive and effective position.

1.4. The opportunity presented in these proposals should be seized upon for promoting the widespread take-up of covered bonds and developing markets for them throughout the EU. Every effort should be made to achieve success here, particularly in the Member States where these instruments and markets are as yet unknown.

1.5. The Committee also broadly welcomes both the chosen approach of minimum harmonisation based on national regimes and the content of the proposals, for which, moreover, solid foundations were laid by the European Parliament, the supervisors and other stakeholders. All of this has enabled a qualitative result to be achieved without distorting existing markets, and at a reasonable cost.

1.6. It is very important that covered bonds enable banks to create additional resources for the long-term financing of the economy. These new funds must then be used to provide additional financing for governments, businesses and households. If this is the case, this proposal could help rebuild confidence in the banking and financial world.

1.7. The Committee is particularly pleased that the proposal also envisages bringing covered bonds within the reach of smaller banks. Nevertheless, the Committee calls for further consideration to be given to how this possibility can be fully harnessed. Without deviating from the generally applicable rules, consideration could be given, for example, to what administrative requirements and other obligations could be adapted for smaller banks.

1.8. The EESC also strongly recommends that use of the European label for covered bonds be made mandatory, and not optional as currently envisaged. A global, forward-looking vision is needed here. Generalised compulsory use of the European label will inevitably enhance Europe's leading position at global level and create opportunities for the (mainly smaller) Member States that will wish to take full advantage of the opportunities offered by the new system. This would give them a guarantee that their products can be distributed on the market and this mandatory use of the label could also enhance investor confidence.

1.9. Taking into account the generally accepted safety and liquidity of covered bonds, as well as the additional protection that they provide since they are not subject to bail-in, the Committee calls for consideration to be given to what further measures need to be taken to attract private savers and consumers to such bonds. As long-term instruments, covered bonds would appear to be particularly suited to pension formation, and consideration could be given here to the PEPP proposals.

1.10. The Committee welcomes the fact that an evaluation of the new system is provided for, but the proposal that this take place after three years seems too short a timeframe. As this is a market matter, and sufficient time must be allowed to gain useful experience with the new rules, the Committee calls for this period to be extended, to 5 years, for example. And Member States could of course closely monitor the situation at national level.

2. Background

2.1. Upon taking office in 2014, the Juncker Commission drew up an 'investment plan for Europe' with a view to achieving its top priorities: growth, jobs and investment⁽¹⁾. One of the plan's main goals is the gradual pursuit of a capital markets union, alongside a digital single market and an energy union. The aim is to develop a well-functioning and integrated capital markets union, encompassing all Member States.

2.2. With the Action Plan on Building a Capital Markets Union⁽²⁾, the Commission committed itself to putting all building blocks for such a union in place by 2019. In total, more than 33 initiatives and actions were planned.

2.3. Following calls for swift progress⁽³⁾⁽⁴⁾, a mid-term review of the Action Plan was conducted in 2017. This resulted in a number of new priority actions with a view to taking account of evolving challenges and changing circumstances, including 'Brexit'.

2.4. Furthermore, the Commission indicated on that occasion that it was necessary 'to step up the level of ambition, to address the obstacles but more importantly to take advantage of those new opportunities'⁽⁵⁾. Against this backdrop, on 8 March 2018 the Commission published a communication on *Completing the Capital Markets Union by 2019 — time to accelerate delivery* and announced a package of measures.

⁽¹⁾ See the website of the European Commission.

⁽²⁾ Action plan of September 2015. *Action Plan on Building a Capital Markets Union* — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. See COM(2015) 468 final.

⁽³⁾ For example, the European Council called for 'swift and determined progress' on the plan, 'to ensure easier access to finance for businesses and to support investment in the real economy'.

⁽⁴⁾ The Commission also adopted a communication calling for reforms to be stepped up. See COM(2016) 601 final.

⁽⁵⁾ See Communication from the Commission on *Completing the Capital Markets Union by 2019 — time to accelerate delivery*. See COM(2018) 114 final.

2.5. The current proposals on covered bonds, which form part of this package ⁽⁶⁾, include two texts, specifically:

2.5.1. a proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU ⁽⁷⁾; and a

2.5.2. proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds ⁽⁸⁾.

2.6. These proposals are aimed at creating an enabling framework for covered bonds at EU level. That includes a definition of such bonds, the use of a European label in the market, the prudential requirements for obtaining preferential capital treatment and certain obligations on the part of the competent authorities.

3. Observations and comments

3.1. The EESC very much welcomes these proposals which form part of measures to build a CMU, and calls for every effort to be made to move quickly here and achieve a successful outcome.

3.2. First and foremost, these proposals contribute to a number of broader objectives which are of particular interest to the EESC and which it has previously advocated ⁽⁹⁾. These include:

3.2.1. The building of the CMU, which should go hand in hand with greater economic and social convergence and with financial and economic integration, and should increase the security, stability and resilience of the financial and economic system by broadening and diversifying the financing sources of the economy. Rapid implementation of the CMU must remain a top priority.

3.2.2. The proposed rules for covered bonds promote cross-border financing operations and therefore more private risk-sharing too. For the Member States, this is of key importance in preventing asymmetric shocks in the event of crisis, or in reducing the impact thereof. Furthermore, the CMU makes an important contribution to convergent growth between the Member States of the Union, which should enable less developed economies to catch up more quickly with those that are performing better.

3.2.3. The CMU is also vital for the further completion of the EMU, and its implementation is indispensable. Together with a fully-fledged banking union, the CMU should lead to a genuine financial union, one of the four fundamental pillars of the EMU.

3.2.4. Europe is traditionally very strong in the area of covered bonds ⁽¹⁰⁾. These proposals should be used as an opportunity to further strengthen Europe's leading position at global level. More generally, and from an international perspective, it is important that the EU acts effectively and positions itself strongly, especially as a number of global power shifts between East and West are under way.

3.3. These proposals will help to create additional resources for the long-term financing of the economy. Indeed, the issuance of covered bonds enables banks to acquire cost-effective long-term funding. The total size of the currently untapped market potential for covered bonds in terms of issuance could be up to EUR 342 billion and this could lead to potential annual savings for EU borrowers of EUR 1,5 to 1,9 billion ⁽¹¹⁾.

⁽⁶⁾ In addition to the proposal mentioned, the package also includes a proposal on facilitating the cross-border distribution of collective investment funds, a proposal for an enabling framework on European crowdfunding service providers (ECSP) for business, as well as a proposal on the law applicable to the third-party effects of assignments of claims and a communication on the applicable law to the proprietary effects of transactions in securities.

⁽⁷⁾ See Proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision and amending Directive 2009/65/EC and Directive 2014/59/EU.

⁽⁸⁾ See Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds.

⁽⁹⁾ See, inter alia, ECO/437 — *Mid-term review of the Capital Markets Union Action Plan* (OJ C 81, 2.3.2018, p. 117).

⁽¹⁰⁾ Around 90 % of all covered bonds worldwide are issued by nine European countries. See also the figures published by the European Covered Bond Council (ECBC) in its *European Covered Bond Fact Book*, 12th edition (2017). Globally, the outstanding volume of covered bonds amounts to EUR 2.5 trillion, of which EUR 2.1 trillion has been issued by EU resident institutions (see Commission Staff Working Document — *Impact Assessment SWD(2018) 50 final*).

⁽¹¹⁾ See the Commission Staff Working Document — *Impact Assessment (SWD(2018) 50 final)* accompanying the proposals under discussion.

3.4. In any event, it is important that the new resources benefit the economy. This additional funding should be used by banks for additional lending to governments, households and businesses. If that is the case, this proposal could help rebuild confidence in the banking and financial world.

3.5. In the interests of the stability and safety of the financial system, it is important that this new funding comes through instruments that are safe and liquid in all circumstances, and these proposals contain a number of safeguards to that end. A robust regime for covered bonds should also benefit investors through more and better choices in the markets. The dual recourse⁽¹²⁾ mechanism is of great importance to these investors and it is therefore important that the authorities insist that underlying assets are properly valued by the issuers.

3.6. In line with this, the proposal to create an enabling framework that facilitates the development of covered bonds and markets for these instruments throughout the EU merits the Committee's full support. Every effort should be made to achieve success here, particularly in the Member States⁽¹³⁾ where these instruments and markets are as yet unknown. It is important to remove the last blank spots on the map and ensure that a framework for covered bonds is in place in all Member States.

3.7. With this support, the Committee wishes to recognise and endorse the earlier efforts made over several years by the Commission, the European Parliament, the EBA and others towards a covered bond regime at EU level. The majority of Member States and other stakeholders, such as the trade association the European Covered Bond Council, have also expressed support for this proposal⁽¹⁴⁾.

3.8. The chosen policy option of minimum harmonisation at European level based on national regimes is also fully endorsed by the Committee, since it enables several objectives to be achieved at a reasonable cost. It will also prevent distortions in the existing markets and result in lower transition costs. However, it is important that the existing national regimes endorse the aim of the European proposal in order to spur on the covered bond market. Possible obstacles or restrictions at national level that run counter to this proposal are thus also undesirable.

3.9. As mentioned above, a number of Member States are very strong in this market, but at the same time recent developments show that interest in covered bonds is growing elsewhere in the world. In the light of this, the Committee also considers it important to ensure that Europe's current leading position in this area in the international context be further reinforced, and efforts made to promote the European approach as a global benchmark.

3.10. The Committee also welcomes the fact that an evaluation of the results and success of these new rules is provided for. As this is a market matter, and sufficient time must be allowed to gain useful experience, particularly in the Member States for which this is new, the Committee believes that the proposed period of three years is too short and calls for this period to be extended, for example to five years. Member States are of course free to closely monitor the situation at any time.

4. Further observations and comments

4.1. Overall, therefore, the Commission's approach to covered bonds in providing for clear and comprehensive rules, including a definition, a description of their structural features, public supervision and a European label for covered bonds, as well as the prudential treatment of this instrument, can be supported.

4.2. It is important that this scheme is accessible to and can be effectively used by all banks. In this regard, the Committee welcomes the fact that special attention is being given to the difficulties and problems that smaller banks may encounter when they wish to issue covered bonds. The Committee deems it important that this possibility be fully harnessed. Without deviating from the generally applicable rules, consideration could be given, for example, to what administrative requirements and other obligations could be adapted for smaller banks.

⁽¹²⁾ The dual recourse for holders of covered bonds is the double claim against the cover pool and the issuer.

⁽¹³⁾ Currently, there are still about a dozen Member States in the EU that have no legislative framework in place for covered bonds.

⁽¹⁴⁾ For an overview, see chapter 3 of both the proposal for a Directive and the proposal for a Regulation.

4.3. The use of the European label for covered bonds is to be purely optional, in order to enable the Member States to keep their own national denominations and labelling framework in place⁽¹⁵⁾. The Committee does not share this view, but rather would strongly argue in favour of mandatory use of the European label. A global, forward-looking vision is needed here. Compulsory use of the European label will inevitably enhance Europe's leading position at global level and create opportunities for the (mainly smaller) Member States that will wish to take full advantage of the opportunities offered by the new system. For them the EU label will be a guarantee that their covered bonds can be distributed on the markets. This mandatory use could also enhance investor confidence.

4.4. The covered bond market is currently dominated by professional and institutional investors⁽¹⁶⁾. The Committee calls for consideration to be given to what further measures need to be taken to more actively attract private savers and consumers to such bonds. There are a number of factors in their favour. Covered bonds have traditionally, and even in times of crisis, been considered to be safe and liquid assets; on top of this, the contribution that the current proposals would make should be considered. Moreover, they are not bail-in-able, which is not insignificant in the context of protecting private savers. They thus seem more suitable than some other products⁽¹⁷⁾. As long-term instruments, covered bonds would certainly appear to be useful as regards pension formation, and reference could be made here to the PEPP proposals.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹⁵⁾ See recital 33 of the proposal for a Directive.

⁽¹⁶⁾ According to information provided orally by representatives of the Commission, banks account for one third of the market, the ECB one third, and other parties such as investment funds and pension funds the remaining third.

⁽¹⁷⁾ Reference could also be made to the proposals on crowdfunding and peer-to-peer lending. The financial instruments offered in that framework are essentially negotiable financial instruments serving as equity (e.g. shares) or debt (e.g. bonds). The protection provided for in this context for savers and investors can be considered very limited.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions — FinTech action plan: for a more competitive and innovative European financial sector

[COM(2018) 109 final]

(2018/C 367/12)

Rapporteur: **Petru Sorin DANDEA**

Consultation	European Commission, 10.4.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote	126/1/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The Committee supports the Commission's plan and considers that the development of FinTech within the European financial sector can deliver a number of benefits to both European businesses and their clients.

1.2. The Committee considers that the plan presented by the Commission could spur on the development of the capital markets, and serve as a stimulus for small and medium-sized enterprises active in the financial sector.

1.3. The Committee considers that the measures included in the action plan on improving cyber security and the resilience of the financial sector are important, but should be supplemented by rules to ensure uniformity in the development of FinTech in the EU. Similarly, the Committee believes that FinTech players should be subject to the same rules as the financial sector, particularly as regards resilience, cyber security and supervision.

1.4. The EESC believes that in order to achieve a level playing field as regards access to customer data under PSD2 and the GDPR, it is essential that the right to portability of personal data be implemented in a manner that is compatible with PSD2.

1.5. Given the growth of crypto-assets and their high degree of volatility, the EESC recommends that the Commission keep a close eye on the situation in this regard on an ongoing basis, in cooperation with the European supervisory authorities. Where necessary, all necessary action should be taken at EU level to ensure that the security and stability of the financial and economic system are not threatened in any way or at any time.

1.6. Recent studies have shown that the emergence of FinTech is leading to the loss of a significant number of jobs in financial institutions. The EESC recommends that the Member States design and implement active labour market measures enabling workers affected by the introduction of innovative technologies in the financial sector to take up a new job as soon as possible.

1.7. The EESC calls on the Commission to identify possible rules for companies offering cloud services with regard to their responsibility for securing the data they host. They should be held to the same rules on the protection of personal data as companies which outsource such services.

2. Commission proposal

2.1. To foster a more competitive and innovative financial market, on 8 March 2018 the European Commission unveiled an action plan on harnessing the opportunities presented by technology-enabled innovation in financial services — FinTech.

2.2. The action plan aims to enable the financial sector to incorporate and take advantage of rapid advances in new technologies such as blockchain⁽¹⁾, artificial intelligence and cloud services. According to the Commission, Europe should become a global hub for FinTech, with EU businesses and investors able to make the most of the advantages offered by the single market in this fast-moving sector.

2.3. Drawing on the findings of the public consultation that took place between March and June 2017, the Commission considers that the case for legislative or regulatory reform at EU level at this stage is limited. A number of targeted initiatives aimed at the EU embracing digitisation of the financial sector are, however, needed.

2.4. The FinTech action plan includes measures aimed at: enabling innovative business models to reach EU scale, supporting the uptake of technological innovation in the financial sector and improving the security and resilience of the financial sector.

2.5. Alongside this communication, and as part of the action plan, the Commission has presented a proposal for a regulation on investment-based and lending-based crowdfunding service providers (ECSP) for business.

2.6. As regards the licensing of FinTech companies, the Commission has invited the European Supervisory Authorities (ESAs) to evaluate the existing licensing procedures and present recommendations to the Commission, where appropriate, on the need to adapt the EU financial services legislation. During 2018, the Commission will also continue monitoring developments in the area of crypto-assets, in cooperation with the ESAs, the European Central Bank and the Financial Stability Board. On the basis of a risk assessment, the Commission will establish whether regulation is needed at EU level.

2.7. In the area of common standards and interoperable solutions for FinTech, the Commission will work with the European Committee for Standardisation and the International Organisation for Standardisation, including as regards blockchain technology. To develop innovative business models across the EU, the Commission will invite the relevant authorities at Member State level to take initiatives to facilitate innovation. The Commission is also calling on the ESAs to facilitate supervisory cooperation, including coordination and dissemination of information regarding innovative technologies, the establishment of innovation hubs and regulatory sandboxes.

2.8. To support technological innovation in the financial sector, the Commission will set up an expert group to assess whether there are regulatory obstacles to financial innovation. The Commission is inviting the ESAs to explore the need for guidelines on outsourcing to cloud service providers. It will facilitate the development of standard contract clauses for cloud outsourcing by financial institutions.

2.9. The Commission considers that the regulatory framework and European oversight should enable businesses operating in the single market to reap the benefits of financial innovation and thus provide their clients with higher quality products.

2.10. The Commission will consult publicly on further digitisation of regulated information about companies listed on EU regulated markets, including the possible implementation of a European Financial Transparency Gateway based on distributed ledger technology — RegTech.

⁽¹⁾ A blockchain, is a continuously growing list of records, called blocks, which are linked and secured using cryptography. By design, a blockchain is resistant to modification of the data. It is 'an open, distributed ledger that can record transactions between two parties efficiently and in a verifiable and permanent way'. Once recorded, the data in any given block cannot be altered retroactively without alteration of all subsequent blocks, which requires consensus of the network majority. (Source: Wikipedia).

2.11. With regard to blockchain technologies, the Commission launched an EU observatory and forum in February 2018, as well as a study on the feasibility of an EU public blockchain infrastructure to develop cross-border services. The Commission wants to assess the extent to which blockchain could be deployed as a digital services infrastructure under the Connecting Europe Facility. The Commission is also intending to host an EU FinTech laboratory.

2.12. To enhance the security and resilience of the financial sector, the Commission will organise a public-private workshop to assess barriers hindering information sharing on cyber threats between financial market participants and to identify potential solutions. Furthermore, the Commission is inviting the ESAs to evaluate the costs and benefits of developing a coherent cyber resilience testing framework for significant participants and infrastructures across the whole EU financial sector.

3. General and specific comments

3.1. The Committee supports the Commission's plan, considering that the development of FinTech within the European financial sector will deliver a number of significant benefits to both businesses and consumers.

3.2. The EESC considers that the FinTech action plan could be instrumental as regards deepening and broadening the capital markets by integrating digitisation, and thus also as regards the capital markets union, which is an important priority on the European agenda. The EESC also considers that the FinTech action plan could constitute a vital stimulus for the SME sector — which accounts for 99 % of all EU businesses — by increasing funding opportunities, and enabling SMEs to adopt simpler and more affordable solutions.

3.3. The Committee considers that the measures included in the action plan on improving cyber security and the resilience of the financial sector are important, but should be supplemented by rules to ensure uniformity in the development of FinTech in the EU.

3.4. The EESC shares the Commission's view that the European regulatory and supervisory framework should enable businesses operating in the single market to reap the benefits of financial innovation and thus provide their clients with higher quality products. For the Committee, however, this should not be at the expense of safety. A level playing field is needed for all operators, irrespective of the nature of their activities⁽²⁾.

3.5. The rules governing financial institutions at both EU and Member State levels have been strengthened following the last financial crisis. They also cover cyber security and establish binding security rules and standards for financial sector institutions. The EESC believes that cyber security standards should also be implemented at EU level for companies that provide FinTech services. In order to ensure uniform implementation, these standards should be regulated at European level and even extended globally.

3.6. The EESC points out that cyber attacks are generally cross-border in nature. Currently, the exchange of information between Member State authorities on cyber threats or cyber attacks is rather limited because of the different provisions in national legislation. A higher level of coordination, regulation and supervision at EU level is vital.

3.7. In the area of crypto-assets, and in particular cryptocurrencies, we have recently seen in Europe how much they are taking off and how volatile they are. In view of these developments, the lack of transparency and the high risks they may entail, the EESC recommends that the Commission keep a close eye on the situation in this regard on an ongoing basis, in cooperation with the European supervisory authorities. Moreover, action needs to be taken wherever the security and stability of the financial system could be put at risk, at any time and in any way. Such action should in the first instance apply to the whole of the EU, and should therefore be taken at that level.

3.8. In the area of crypto-assets, it has been noted that technology-based innovations can avoid coming within the scope of regulation, even though they are in fact operating in a highly regulated market. Given the high degree of volatility and lack of transparency in this area, as well as the high degree of risk that crypto-assets can pose for investors, the EESC recommends that the Commission and Member States explore methods that should be established to supervise crypto-asset transactions.

⁽²⁾ OJ C 227, 28.6.2018, p. 63.

3.9. The Commission has proposed setting up an observatory on blockchain technologies. The EESC considers that, given the fast pace at which financial technology applications are developing, the observatory's remit should be extended to the whole of the FinTech sector. Furthermore, blockchain-based applications raise jurisdictional and liability issues as regards the law applicable. The EESC supports the Commission's idea of launching a blockchain initiative at EU level, which could clarify how it should be used and overcome the existing fragmentation.

3.10. It has been noted that the emergence of FinTech is leading to the loss of a significant number of jobs in financial institutions. The EESC recommends that the Member States design and implement active labour market measures enabling workers affected by the introduction of innovative technologies in the financial sector to take up a new job as soon as possible.

3.11. The Commission is concerned about the fact that the outsourcing of services by financial companies to cloud service providers could result in too great a concentration of information and data transfer among a small number of companies participating in this market, which are usually non-EU companies. The EESC calls on the Commission to identify possible rules for companies offering cloud services with regard to their responsibility for securing the data they host.

Brussels, 12 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments

[COM(2018) 99 *final* — 2018/0047 (COD)]

Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business

[COM(2018) 113 *final* — 2018/0048 (COD)]

(2018/C 367/13)

Rapporteur: **Daniel MAREELS**

Consultation	European Parliament, 16.4.2018 Council of the European Union, 27.3.2018
Legal basis	Article 114 and Article 53(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	146/0/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC strongly welcomes these proposals to create an enabling framework for crowdfunding by means of a 29th regime. The Committee therefore calls for swift action in order to achieve a successful outcome, particularly as it fits into a broader framework that is of particular interest to the Committee ⁽¹⁾.

1.2. The EESC welcomes the fact that the financing of small, young and innovative enterprises has been taken into consideration. Crowdfunding is an important part of their funding escalator, particularly when they move from a start-up to an expansion phase and traditional financing is not always available. At the same time, more and better opportunities are being created for investors.

1.3. It is very positive that, to this end, use is being made of innovative products and solutions supported by modern technology, meaning that this forward-looking proposal also forms part of the implementation of a digital single market. The proposal also adds a cross-border dimension, which contributes to the effective integration and deepening of capital markets. The creation of a single harmonised market in the EU with the same rules for both entrepreneurs and investors should be a primary consideration.

1.4. Taking account of the fact that artificial obstacles should not act as a brake on this innovative framework, the Committee nevertheless calls — on the basis of a global and holistic approach — for stronger proposals and additional measures in connection with certain points, at least in the initial stages (see point 1.5 and following). The Committee is guided in particular here by the principles of ‘credibility’, ‘clarity’ and ‘trust’. That also means certainty and protection for all those concerned.

1.5. First of all, the Committee welcomes the consideration given to the risk aspects associated with crowdfunding operations and markets, but at the same time believes that — at least in the initial stages — there should be an even stronger focus on these aspects in order to better identify them or mitigate them where possible. This concerns the following issues:

⁽¹⁾ See points 3.1 to 3.4.

1.5.1. Transparency and protection of investors. The Committee is of the view that the risk assessment of specific projects on crowdfunding platforms is left too much to markets and investors. The EESC believes that appropriate measures are needed to better identify or mitigate all risks, both financial and non-financial. Ultimately, it is about better protection for investors. The MiFID approach could provide a basis in this connection. Furthermore, there is a danger here of creating an uneven playing field with traditional providers, such as financial institutions which have to apply strict protection rules in relationships with their clients.

1.5.2. Possible areas of tension in the status of providers and the services they offer. The possibility that providers can enter into contracts with investors under which they may 'exercise discretion' to obtain the best result for these investors, may lead to sensitive situations for providers who must act first and foremost as 'neutral intermediaries'.

1.5.3. Supervision. The role of ESMA seems clear, that of national supervisors less so. The Committee is of the view that more clarity is needed here. Furthermore, the EESC wonders whether a substantial role should perhaps be assigned to national supervisors, especially as they are closer to national markets and can better assess local circumstances. In any case, it is important for the Committee that authorities and supervisors at national and European level consult and cooperate on a permanent and consistent basis, both with an eye to further harmonisation and integration in the Union and to the success of the current proposals.

1.6. Since the 29th regime and national systems will exist in parallel as a result of the choices made, interested parties may be confronted with different laws, different conditions and unequal protection at the same time and in the same market, which may give rise to confusion and uncertainty. Further measures are needed here to ensure greater clarity:

1.6.1. In the Committee's view, there should be additional obligations on authorities and supervisors to provide all users with accurate, easily accessible information that provides certainty and is available in their own language.

1.6.2. One option is to oblige crowdfunding platforms to mention their 'EU label' explicitly and clearly whenever they address the public and in all their external communications.

1.7. The Committee also considers that the proposed rules on the fight against money laundering and terrorism financing remain relatively limited and largely indirect, and that the provisions on subjecting crowdfunding platforms to these rules should be extended and strengthened. The EESC believes that it cannot be the case that this possibility exists only once, and that only the Commission has the power to propose subjecting crowdfunding service providers to the aforementioned rules. In addition, clear criteria and conditions for such a decision should be laid down.

1.8. It is also striking that the tax treatment of income from crowdfunding and tax obligations on debtors are not addressed, in spite of the fact that one might still reasonably assume taxation to be one of the decisive factors in whether or not this initiative is successful. The Committee therefore calls for these aspects to be included in the discussion. If necessary, the rules should be adapted at the appropriate level.

1.9. As this is a market matter, the Committee considers it to be of the utmost importance that everyone is on the same page in order to make a real success of these proposals. It is essential that companies and investors make effective and extensive use of the 29th regime. From a market perspective, this raises the question as to whether the restriction to EUR 1 million per project will be an obstacle.

1.10. Finally, in order to ensure the future and continued success of crowdfunding platforms, the Committee takes the view that provision should also be made for regular measures to monitor, evaluate and measure the success of the 29th regime. Consultation and dialogue with all stakeholders and interested parties are equally important here.

2. Background

2.1. Upon taking office in 2014, the Juncker Commission drew up an 'investment plan for Europe' with a view to achieving its top priorities: growth, jobs and investment⁽²⁾. One of the plan's main goals is the gradual pursuit of a capital markets union, alongside a digital single market and an energy union. The aim is to develop a well-functioning and integrated capital markets union, encompassing all Member States.

⁽²⁾ See the European Commission's website http://ec.europa.eu/priorities/jobs-growth-investment/plan/index_en.htm.

2.2. With the Action Plan on Building a Capital Markets Union⁽³⁾, the Commission committed itself to putting all building blocks for such a union in place by 2019. In total, more than 33 initiatives and actions were planned.

2.3. Following calls for swift progress⁽⁴⁾,⁽⁵⁾, a mid-term review of the action plan was conducted in 2017. This resulted in a number of new priority actions with a view to taking account of evolving challenges and changing circumstances, including 'Brexit'. At the same time, it is important to make real progress on establishing the Banking Union and the Capital Markets Union. Coherence and consistency are the primary considerations here.

2.4. Furthermore, the Commission indicated on that occasion that it was necessary 'to step up the level of ambition, to address the obstacles but more importantly to take advantage of those new opportunities'⁽⁶⁾. It is in this context that on 8 March 2018 the Commission published a communication with two action plans⁽⁷⁾.

2.5. The Action Plan on Financial Technology (FinTech) seeks to give voice to the ambition to turn Europe into a global FinTech hub, where businesses and investors in the EU are able to derive maximum benefit from the advantages of the single market in this fast-evolving sector⁽⁸⁾.

2.6. The promotion of crowdfunding and peer-to-peer lending is one of the key measures under the Action Plan. The focus is on both the development of new services and labels and the integration of capital markets.

2.7. More specifically, the Commission's ideas are set out in:

2.7.1. The 'Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business'⁽⁹⁾ and

2.7.2. the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments'⁽¹⁰⁾.

2.8. These proposals are aimed at introducing a European label for crowdfunding platforms which facilitates cross-border activities. It should allow crowdfunding services to scale up their activities and to develop at EU level while providing greater access to financing for entrepreneurs and businesses, especially small, young and innovative enterprises. The proposals apply only in relation to transferable securities for investment-based crowdfunding services.

2.9. At the same time, the aim is to subject these platforms to regulation and oversight that are both adapted and appropriate. This should make it possible not only to maintain economic and financial stability in the EU but, even more importantly, to increase investors' confidence, particularly in a cross-border context.

⁽³⁾ Action plan of September 2015. 'Action Plan on Building a Capital Markets Union' — Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2015) 468 final. See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447000363413&uri=CELEX:52015DC0468>

⁽⁴⁾ The Commission also adopted a communication calling for reforms to be stepped up. See COM(2016) 601 final.

⁽⁵⁾ For example, the European Council called for 'swift and determined progress' on the plan, 'to ensure easier access to finance for businesses and to support investment in the real economy'. See <http://www.consilium.europa.eu/en/press/press-releases/2016/06/28-euco-conclusions/>.

⁽⁶⁾ See Communication from the Commission 'Completing the Capital Markets Union by 2019 — time to accelerate delivery'. See <https://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-114-F1-EN-MAIN-PART-1.PDF>.

⁽⁷⁾ The 'Action Plan on Sustainable Finance', in addition to the Action Plan referred to in point 2.5.

⁽⁸⁾ Press release of 8 March 2018 'FinTech: Commission takes action for a more competitive and innovative financial market'. See http://europa.eu/rapid/press-release_IP-18-1403_en.htm.

⁽⁹⁾ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1521456325451&uri=CELEX:52018PC0113>

⁽¹⁰⁾ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1521456325451&uri=CELEX:52018PC0099>

3. Observations and comments

General comments — a welcome initiative

3.1. The EESC very much welcomes these proposals to introduce a 29th regime on crowdfunding, and calls for every effort to be made to achieve a swift and successful outcome.

3.2. First and foremost, these proposals contribute to a number of broader objectives which are of particular interest to the EESC and which it has previously advocated ⁽¹¹⁾. These include:

3.2.1. The building of the CMU, which should go hand in hand with greater economic and social convergence and with financial and economic integration, and should increase the security, stability and resilience of the financial and economic system by broadening and diversifying the financing sources of the economy. Rapid implementation of the CMU must remain a top priority.

3.2.2. A single EU label for crowdfunding platforms promotes cross-border financing operations and therefore more private risk-sharing too. This is important in preventing asymmetric shocks in the event of crisis, or in reducing the impact thereof. In this way an important contribution can be made to convergent growth between the Member States of the Union, meaning that less developed economies will be able to catch up more quickly with those that are performing better.

3.2.3. The CMU is also vital for the further deepening and completion of the EMU, and its implementation is indispensable. Together with a fully-fledged banking union, the CMU should lead to a genuine financial union, one of the four fundamental pillars of the EMU.

3.2.4. Since crowdfunding is underdeveloped in the EU compared with other major economies, the position of the EU vis-à-vis the rest of the world might also be mentioned here. The EU must firmly establish its position and prepare itself effectively, especially as a number of global power shifts between East and West are under way.

3.3. In earlier opinions ⁽¹²⁾, the Committee has raised concerns and questions as regards the relevance and effectiveness of the CMU for SMEs. The Committee welcomes the fact that a relevant approach is now taking shape. Crowdfunding is aimed in particular at a certain group of SMEs and a specific part of the funding escalator. The EESC welcomes the current proposals which improve the financing of small, young and innovative companies and make such financing easier, while creating more and better opportunities for investors.

3.4. Finally, the future-oriented nature of the proposals might be mentioned here as part of the FinTech Action Plan, which seeks to give voice to the ambition to turn Europe into a global FinTech hub. By tapping the potential of innovative products and solutions supported by modern technology, this proposal also forms an integral part of the implementation of a digital single market.

The proposals — a good basis but additional protective measures are needed

3.5. The EESC believes that every effort must be made to make a success of these proposals. For the Committee, it is of great importance that the new system is characterised by 'credibility', 'clarity' and 'trust'. Crowdfunding should be provided within a framework that provides certainty and protection to all those concerned.

3.6. The EESC strongly welcomes the choice of the '29th regime', which, by drawing on new and future-oriented technologies, lays the foundations for the creation of a single harmonised market with the same rules, both for young entrepreneurs looking for cross-border financing and for investors seeking additional investment opportunities.

⁽¹¹⁾ See the EESC opinion on the *Mid-term review of the Capital Markets Union Action Plan* (OJ C 81, 2.3.2018, p. 117).

⁽¹²⁾ See in particular EESC opinions on the *Action Plan on building a capital markets union* (OJ C 133, 14.4.2016), p. 17, and on the *Mid-term review of the Capital Markets Union Action Plan* (OJ C 81, 2.3.2018), p. 117.

3.7. The choice of a 'regulation' to achieve this objective is therefore entirely appropriate here. This proposal may be regarded as an example of effective integration and deepening of capital markets.

3.8. Notwithstanding the following, the Committee also welcomes the fact that the Commission has, from the outset, paid attention to the risk aspects associated with crowdfunding operations and markets. The EESC is in favour of the conditions to be met by crowdfunding platforms and the services they provide⁽¹³⁾, as well as the plans for supervision. Moreover, investors are advised to limit the risks they take⁽¹⁴⁾.

3.9. At the same time, and from a holistic perspective, the Committee believes that — at least in the initial stages — there should be an even stronger focus on these risk aspects. The Committee is of the view that all risks, both financial and non-financial, need to be better identified and mitigated where possible. In addition, closer attention should be paid to a number of other environmental factors that are important for the success of these proposals.

3.10. The policy choice made in favour of a complementary service-based solution⁽¹⁵⁾ means that national and EU regulations will exist and apply in parallel. Interested parties will be confronted, at the same time and in the same market, with operators of differing status, such as EU-labelled providers that operate across borders, the same providers working locally and providers that come under (existing) national rules or existing authorisations⁽¹⁶⁾. Different laws, different conditions and unequal protection⁽¹⁷⁾ may result. The Committee calls for more attention to be paid to this issue, which may give rise to uncertainty and confusion⁽¹⁸⁾. A number of specific proposals are set out below.

Providers of crowdfunding services

3.11. Crowdfunding service providers will be able to carry out their activities across the European Union using a single authorisation, which enables them to scale up their activities. This is an important innovation and a major step forward compared with the current situation where it is almost impossible to carry out cross-border activities.

3.12. Notwithstanding the above⁽¹⁹⁾, the EESC calls for more attention to be paid to possible areas of tension concerning the status of providers and the services they offer. For example, the option available to providers of entering into contracts with investors under which they may 'exercise discretion', seems likely to give rise to sensitive situations. As intermediaries, providers must be 'neutral', even though they are contractually obliged 'to obtain the best possible result for their clients'⁽²⁰⁾. For the Committee, the obligation of neutrality may not be called into question under any circumstances. Additional measures are needed here. Platforms should offer high-quality services.

3.13. For all potential users, entrepreneurs and investors, it is essential and paramount at all times to clearly know which platform they are dealing with. This is all the more important given that, as mentioned above, national and EU regulations will exist and apply in parallel⁽²¹⁾. In this connection, the registers of EU platforms to be kept by ESMA are considered to be insufficient as a means of publicity. In the Committee's view, there should be additional obligations on authorities and supervisors to provide all users with accurate, easily accessible information that offers certainty and is available in their own language.

⁽¹³⁾ See the explanatory memorandum to the draft regulation and Articles 1 to 9 thereof.

⁽¹⁴⁾ See Article 16 of the draft regulation. The key investment information sheet to be made available to interested parties includes the following recommendation: 'you should not invest more than 10 % of your net wealth in crowdfunding projects.'

⁽¹⁵⁾ The impact assessment put forward 4 policy options. See draft regulation, Chapter 3, 'Impact Assessment'.

⁽¹⁶⁾ Including those on the basis of the Markets in Financial Instruments Directive (MiFID II), the Payment Services Directive (PSD) and the Alternative Investment Fund Managers Directive (AIFMD).

⁽¹⁷⁾ Depending on whether the interested party is an entrepreneur or an investor.

⁽¹⁸⁾ This is one of the 'environmental factors' which the Committee asked to be considered in point 3.9.

⁽¹⁹⁾ See point 3.8.

⁽²⁰⁾ See recital 16 of the draft regulation.

⁽²¹⁾ See point 3.10.

3.14. The Committee believes that platforms should also be subject to publicity obligations. Specifically, it might be stipulated that platforms should state explicitly and clearly that they have an 'EU label' whenever they address the public or interested parties ⁽²²⁾ and in all their external communications ⁽²³⁾.

3.15. The supervisory role and responsibility of ESMA seems clear, but the question may also arise as to whether a role should be assigned to national supervisors, especially as they are closer to national markets and more familiar with local circumstances. In any event, clarity is needed here. This is also important for others, including those entrepreneurs wishing to make use of crowdfunding.

3.16. More generally, and as mentioned above, since national and EU rules will exist and apply in parallel, it is important for the Committee in any event ⁽²⁴⁾ that the various authorities and supervisors at national and European level consistently and permanently consult one another and cooperate, not least with an eye to further harmonisation and integration in the Union. Furthermore, they also have a major role to play in the 'trust' that is vital if crowdfunding is to succeed.

3.17. If ESMA imposes sanctions as part of its supervisory role, any appeal must, where appropriate, be brought before the European Court of Justice. Not only is this a heavy process but, moreover, it also raises the question of whether this should come under the remit of the Court of Justice.

Enterprises that make use of crowdfunding

3.18. Crowdfunding is mainly aimed at start-ups and early-stage enterprises that have less easy access to bank financing or deal with more risky and innovative projects, in the initial period of their activities, especially when they move from a start-up to an expansion phase. The Committee welcomes the fact that the new proposals create additional possibilities for financing for this type of SME and enterprise which is broader and more easily accessible, and with a cross-border dimension too.

3.19. Furthermore, the Committee agrees with the view ⁽²⁵⁾ that there are other benefits to crowdfunding apart from those already mentioned. For example, it can provide concept and idea validation to the project owner, give access to a large number of people providing the entrepreneur with insights and information and be a marketing tool if a crowdfunding campaign is successful.

3.20. Enterprises have the option of having their projects financed up to an amount of EUR 1 million over a period of 12 months. This raises the question as to whether or not this threshold is too low, especially when crowdfunding is 'investment-based' ⁽²⁶⁾. In such circumstances, the obligatory transferability of securities is an important safeguard for investors wishing to exit a project ⁽²⁷⁾. One might ask whether the planned 1 million threshold might be an obstacle to the establishment and smooth functioning of the markets for this type of securities. Furthermore, higher thresholds seem possible under national rules ⁽²⁸⁾.

(Potential) investors

3.21. The Committee welcomes the fact that a new channel is opening up for investors which operates on a cross-border basis. This will broaden investors' options and increase choice.

⁽²²⁾ For example on their website.

⁽²³⁾ For example in all documents intended for interested parties.

⁽²⁴⁾ Irrespective of the monitoring and the issue referred to in point 3.15.

⁽²⁵⁾ Recital 4 of the draft regulation.

⁽²⁶⁾ For example, shares or securities of the same type.

⁽²⁷⁾ See recital 11 of the draft regulation.

⁽²⁸⁾ The Prospectus Regulation (which comes into force in July 2018) contains no specific derogation for crowdfunding. Many Member States, including Belgium, have their own derogation arrangements in place. This is allowable for transactions below EUR 8 million, which are not harmonised (above this figure, a prospectus is required in every case). The result is that each Member State has developed its own system of exemptions from the obligation to provide a prospectus for crowdfunding transactions, leading to market fragmentation. Platforms which seek to be active in several Member States must therefore monitor and comply with the national system in each case. The proposal is currently limited to transactions of less than EUR 1 million, and therefore contributes little to the crowdfunding market for transactions of more than EUR 1 million.

3.22. It is undoubtedly positive that the proposal provides for an initial assessment of a potential investor's suitability by means of an entry knowledge test, and for the possibility of simulating the ability to bear losses ⁽²⁹⁾, but the same cannot be said of the fact that the risk (and the assessment thereof) will be left entirely to the market and potential investors.

3.23. Actually, the fact that, under the proposal, the competent authorities shall not require 'ex ante' approval ⁽³⁰⁾ of the 'key investment information sheet', or even any notification ⁽³¹⁾, certainly does not serve to protect potential investors. The limited obligations concerning the translation of key documents ⁽³²⁾ do not help either. This situation seems unsatisfactory. The Committee believes therefore that, at least during the initial stages of the regime, appropriate measures are needed in order to better identify the risk or mitigate it where possible, as regards investors. The same applies to the information they receive.

3.24. If one also takes into account the more traditional way of offering securities, particularly via banks and stock-exchange companies, then the limited protection of investors under the current proposals risks creating an uneven playing field between the different providers ⁽³³⁾. The Committee believes that excessive differences in this area should be avoided because it may undermine confidence in certain market participants and lead to uncertainty and regulatory arbitrage. Ultimately, it may also have consequences for the EU's financial stability.

Additional remarks

3.25. Concerning the fight against money laundering and terrorism financing, the proposed rules are not bold enough, particularly as ESMA has previously highlighted specific risks and hazards in this area ⁽³⁴⁾. Questions have been raised about the relatively limited nature of the rules proposed in this connection ⁽³⁵⁾, and the power given to the Commission to potentially subject crowdfunding service providers to the relevant rules ⁽³⁶⁾. The question arises here as to whether this decision should fall to the Commission. If so, what criteria apply in this case ⁽³⁷⁾? Moreover, why is this possibility, i.e. to subject crowdfunding service providers to these rules, provided for only once ⁽³⁸⁾? The Committee believes that this option should exist at all times and should not be the sole competence of the Commission. Moreover, the conditions and criteria under which it is possible should be made clear.

⁽²⁹⁾ Article 15 of the draft regulation.

⁽³⁰⁾ See Article 16 of the draft regulation.

⁽³¹⁾ In particular, the national competent authorities. See Article 16(8) of the draft regulation.

⁽³²⁾ The proposal stipulates that, 'The key investment information sheet shall be drafted in at least one of the official languages of the Member State concerned or in a language customary in the sphere of international finance'. An investor 'may request a crowdfunding service provider to arrange for a translation of the key investment information sheet into a language of the investor's choice', but the provider does not appear to have any absolute obligation to provide such a translation. See Article 16 of the draft regulation.

⁽³³⁾ Banks and stock-exchange companies are subject to MiFID rules, while crowdfunding platforms are exempt (see draft directive). The latter are subject to specific rules, as set out in the draft regulation.

⁽³⁴⁾ ESMA argued that 'Investment-based crowdfunding carries a risk of misuse for terrorist financing, particularly where platforms carry out limited or no due diligence on project owners and their projects. Project owners could use investment-based crowdfunding platforms to raise funds for terrorist financing, either overtly or secretly.' ESMA, Questions and Answers Investment-based crowdfunding: money laundering/terrorist financing. See https://www.esma.europa.eu/sites/default/files/library/2015/11/esma_2015_1005_qa_crowdfunding_money_laundering_and_terrorist_financing.pdf.

⁽³⁵⁾ See the draft regulation. In particular, Article 9 requires that payments for crowdfunding transactions must take place via entities that are authorised under the Payment Service Directive (PSD) and, therefore, subject to the 4th Anti-Money Laundering Directive (AMLD), whether the payment is made through the platform itself or via a third party. Article 9 also sets out that crowdfunding service providers must ensure that project owners accept funding of crowdfunding offers or any payment only via an entity authorised under the PSD. Article 10 introduces requirements for the 'good repute' of managers, which include the absence of any criminal record under anti-money laundering legislation. Article 13 requires National Competent Authorities (NCAs), including national competent authorities designated under the provisions of Directive (EU) 2015/849, to notify ESMA of any issue that is relevant under the AMLD and involves a crowdfunding platform. ESMA may subsequently withdraw the authorisation based on this information.

⁽³⁶⁾ Article 38 of the draft regulation.

⁽³⁷⁾ See Article 38 of the draft regulation. In a point-by-point overview, the proposal states that the Commission must submit a report to the Parliament and the Council on the application of the regulation within a timeframe to be specified (2 years). The report must assess 'the necessity and proportionality of subjecting crowdfunding service providers to obligations for compliance with the national provisions' (on money laundering and terrorism financing). Where appropriate, this report shall be accompanied by a legislative proposal.

⁽³⁸⁾ See previous footnote: on the basis of the aforementioned Art. 38, this seems therefore to be the only time in which a decision can be taken on whether or not to subject crowdfunding platforms to these rules.

3.26. Particularly in light of the objectives pursued, it is striking that the tax treatment of the income from crowdfunding and the obligations on debtors ⁽³⁹⁾ in this area are not addressed or discussed in the current proposals ⁽⁴⁰⁾. This is in spite of the fact that one might reasonably assume taxation to be one of the decisive factors in whether or not this initiative is successful. The Committee therefore calls for these aspects to be taken into consideration. If necessary, the rules should be adapted at the appropriate level.

Start cautiously, build credibility and have an eye for the future

3.27. In order to make a real success of this market-related proposal, it is of the utmost importance that everyone is on the same page. This will only happen if enterprises and investors make effective and extensive use of the enabling framework created under the current proposals. Only then will a true market emerge where credit demand and supply can come together. For the EESC, it is important to build credibility in the initial phase, and to begin carefully and cautiously, with a stronger focus on risk management and environmental factors.

3.28. In the Committee's view, the proposals should most definitely provide for regular measures to follow up, evaluate and measure the success of the 29th regime in order to secure its future. Other crowdfunding systems that exist in the Member States should also be involved in this exercise. It is important to learn from best market practices and to incorporate them into the European system. Consultation and dialogue with all stakeholders and interested parties are equally important here.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽³⁹⁾ What is being specifically referred to here are the obligations on debtors of (*inter alia*) interest and dividends, on the basis of transparency obligations, for instance withholding and reporting obligations.

⁽⁴⁰⁾ This concerns another 'environmental factor' which the Committee asked to be considered in point 3.9.

Opinion of the European Economic and Social Committee on

‘Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence’

(COM(2018) 147 final — 2018/0072 (CNS))

‘Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services’

(COM(2018) 148 final — 2018/0073 (CNS))

(2018/C 367/14)

Rapporteur: **Krister ANDERSSON**

Co-rapporteur: **Petru Sorin DANDEA**

Consultation	Council of the European Union, 11.4.2018
Legal basis	Articles 113 and 115 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	27.6.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	175/6/3

1. Conclusions and recommendations

1.1. The EESC welcomes the fact that the Commission is taking digital tax initiatives, giving further momentum to international discussions by providing a clear example of how the current tax principles could be transformed.

1.2. The EESC considers the entire economy to be digitalized and, like the Commission, strongly believes that the solution must ultimately be a global one in order to better harness the benefits of globalisation, with proper global governance and global rules. The EESC therefore welcomes close cooperation between the Commission, Member States and the OECD to support the development of an international solution.

1.3. The EESC believes that it is very important to develop new principles on how to attribute corporate profits to an EU country and tax them, in dialogue with trading partners, in order to avoid any escalation of trade and tax tensions between major economic players in the world. The EESC underlines the need for fair and consensus-based solutions.

1.4. The EESC believes that the impact assessment should be complemented by an analysis of what impact the interim measure will have on investments, start-ups, jobs and growth. It also needs to show how the proposal will affect SMEs.

1.5. The interim measure proposed by the Commission to tax certain digital services does not tax corporate profits but instead turnover. The EESC underlines that this approach is different from the global corporate tax system, which is based on the taxation of profits but it recognizes that for digital companies that do not have a physical presence, the country of sales will not receive corporate profit taxes.

1.6. The EESC is concerned that such a shift in taxation will benefit larger economies with many consumers at the expense of smaller exporting economies. The EESC underlines that any solution, whether short or longer term, to the taxation of digital business models must result in a fair and equal economic outcome for all economies in the EU.

1.7. When assessing the effective level of taxation of the digital sector, the EESC underlines the need to take into account the changes in the tax codes going forward due to the ongoing implementation of BEPS rules, and, in particular, to consider the substantially increased level of taxation in the US of US digital firms operating in the EU, due to changes in the US Tax Code.

1.8. The EESC notes that there is no sunset clause or other mechanism ensuring that the interim tax measure is withdrawn when a longer-term solution is found. The EESC strongly encourages the Council to develop such rules if the interim measure should be introduced.

1.9. The EESC stresses that the proposal to implement a turnover tax has initiated an intensive international debate, which was one of the purposes of the initiative. Europe now needs to come to a common position, in the ongoing discussions at the OECD.

2. Introduction and background

2.1. With its communication entitled *Time to establish a modern, fair and efficient taxation standard for the digital economy*, published on 21 March 2018, the Commission presented its legislative package for a harmonised reform of the EU's corporate tax rules for digital activities. The package contains two Council Directives accompanied by a soft-law recommendation relating to the corporate taxation of a significant digital presence.

2.2. In particular, the Commission proposed two new Directives: i) a long-term proposal, establishing rules and provisions for 'digital presence' (digital PE) ⁽¹⁾ which aims to reform corporate tax rules so that profits are registered and taxed where businesses have significant interaction with users through digital channels rather than where they make their profits; ii) a short-term proposal, an interim turnover tax on the provision of certain types of digital services ⁽²⁾. The EU single market needs a stable tax framework that is up-to-date with digital business models. This should stimulate innovation by providing a stable environment for businesses to invest in and enabling them to grow. Companies engaged in digital services, like all other companies, must contribute to public finances and share the tax burden needed to finance public services ⁽³⁾.

2.3. Specifically, the long-term proposal lays down rules establishing a taxable nexus for digital businesses operating across borders in the case of a non-physical commercial presence, as well as principles for attributing profits to a digital business which would better capture the value creation of digital businesses. These measures would apply to companies which fulfil one of the following criteria: i) threshold exceeding EUR 7 million in annual revenue in a Member State; ii) more than 100 000 users in a Member State in a taxable year; or iii) over 3 000 business contracts for digital services created between the company and business users in a taxable year.

2.4. The short-term proposal, the interim turnover tax, would apply, as an indirect tax, to activities whose revenues are created: i) from selling online advertising space; ii) from digital intermediary activities which allow users to interact with other users and which can facilitate the sale of goods and services between them; and iii) from the sale of data generated from user-provided information. This tax would only apply to companies with total annual worldwide revenues of EUR 750 million, and EU revenues of EUR 50 million each year. If applied at a 3 % rate, Member States could generate an estimated EUR 5 billion in revenues each year.

2.5. The Commission's proposal is to combine the new Directives with amendments to the Common Consolidated Corporate Tax Base (CCCTB), ensuring that Member States' corporate tax systems and the proposed CCCTB have rules which address the challenge of taxation of the digital economy ⁽⁴⁾.

⁽¹⁾ COM(2018) 147 final.

⁽²⁾ COM(2018) 148 final.

⁽³⁾ COM(2018) 146 final.

⁽⁴⁾ COM(2018) 146 final. For further information, see OJ C 434, 15.12.2017, p. 58.

<https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/common-consolidated-corporate-tax-base>

2.6. Looking ahead, the Commission strongly believes that the solution must be a global one, and is working closely with the Organisation for Economic Cooperation and Development (OECD) to support the development of an international solution in line with the OECD's interim report on taxation of the digital economy, published on 16 March 2018.

3. General comments

3.1. The EESC considers the entire economy to be digitalised. Given the rapid development of business models, in particular in the area of digital services, it is of the utmost importance to also develop our tax systems. The digitalised economy transcends borders and there is a growing need for the tax framework to be up-to-date with digital business models.

3.2. The EESC, like the Commission, strongly believes that the solution must ultimately be a global one in order to better harness the benefits of globalisation, with proper global governance and global rules. The EESC therefore welcomes the close cooperation between the Commission, Member States and the OECD to support the development of an international solution.

3.3. In parallel to international discussions, and following its Communication ⁽⁵⁾ published in September 2017, the Commission is now proposing solutions at EU level. As the Commission states ⁽⁶⁾, this will give further impetus to international discussions by providing a clear example of how the principles under discussion at international level can be transformed into a modern, fair and efficient corporate taxation framework adapted to the digitalised economy.

3.4. The EESC considers a level playing field in the area of corporate taxation to be very important. Recent years have demonstrated that individual companies have been able to make use of specific tax rules in some Member States, reducing their effective tax rate to almost zero. The lack of transparency has contributed to such an outcome. Some of the cases have involved multinationals active in the area of digital services. The Committee therefore shares the Commission's ambition to continue to address aggressive tax planning behaviour and non-transparency by Member States to ensure equal treatment of firms and promote European competitiveness.

3.5. The EESC welcomes the fact that the Commission is taking digital tax initiatives, giving further momentum to international discussions by providing a clear example of how the current tax principles could be transformed. The proposal of implementing a turnover tax has initiated an intensive international debate, which was one of the purposes of the initiative. Europe now needs to come to a common position, in the ongoing discussions at the OECD.

3.6. The EESC agrees with the Commission that any solution proposed at EU level must also take into account the global dimension, and recognises, like the Commission, that 'these proposals are the Commission's contribution to shaping the consensus-based solution that the OECD intends to seek by 2020. They provide an example of how the principles being discussed at international level can be operationalised' ⁽⁷⁾.

3.7. It is very important to develop new principles on how to attribute corporate profits to an EU country and tax them, in dialogue with trading partners, in order to avoid any escalation of trade and tax tensions between major economic players in the world. The EESC underlines the need for fair and consensus-based solutions.

3.8. The present corporate tax systems in the world are based on assessing the corporate profit attributable to each relevant jurisdiction. Taxation should be based on where value is created. Given the difficulties of telling where in the value chain profit emerges, there is a need to find universal principles of how to assess where value is created. Such rules have been developed within the comprehensive work of the OECD, formulating tax principles and definitions of how to price goods and services (transfer pricing rules) for companies within a business group.

⁽⁵⁾ COM(2017) 547 final.

⁽⁶⁾ COM(2018) 146 final, p. 5.

⁽⁷⁾ COM(2018) 146 final, p. 6.

3.9. The EESC believes that the international tax rules need to be revised from time to time as business models evolve. The current rules have very recently been revised in connection with the Base Erosion and Profit Shifting (BEPS) agreement ⁽⁸⁾. The new rules and definitions are now being implemented. They are expected to substantially reduce the opportunity for aggressive tax planning and erosion of tax bases ⁽⁹⁾.

3.10. It is important that other developments in the corporate tax area are in line with the achievements already made in BEPS. One of the principles in BEPS is to allocate profits to countries in accordance with where value is created.

3.11. The EESC would like to underline the need for proper impact assessments. The EESC believes that the impact assessment is not sufficiently comprehensive. The Commission has not analysed what impact the interim measure will have on investments, start-ups, jobs and growth. Nor does the impact assessment show how the proposals will affect SMEs.

3.12. The revenue impact for smaller and larger economies also needs to be analysed as well as the effect stemming from the measures operating alongside BEPS implementation in various countries and the US tax reform.

3.13. The EESC is concerned that by taxing turnover, with the negative cascading effects explicitly recognised by the Commission, the development of digital services, and in particular start-ups, could be harmed. The cascading effect arises when the services are sold several times and taxed each time.

3.14. The EESC considers that the ceiling of EUR 7 million for creating a permanent establishment from which the new regime would apply, should be increased. It would be preferable if the deliberations in the Council resulted in an outcome that does not risk hampering digitalisation but instead enhanced the functioning of the single market. When assessing the effective level of taxation of the digital sector, the EESC underlines the need to take into account the changes in the tax codes going forward due to the ongoing implementation of BEPS rules, and, in particular, to consider the substantially increased level of taxation in the US of US digital firms operating in the EU, due to changes in the US Tax Code ⁽¹⁰⁾.

3.15. Taxing turnover instead of profit and levying taxes where sales take place instead of where value is created constitutes a fundamental change from the current principles of taxation. The EESC is concerned that such a shift in taxation will benefit larger economies with many consumers at the expense of smaller exporting economies. The EESC underlines that any solution, whether short or longer term, to the taxation of digital business models must result in a fair and equal economic outcome for all economies in the EU.

3.16. The interim measure proposed means that even unprofitable businesses would be taxed. The EESC underlines that the current global corporate tax system is based on the taxation of profits but it recognises that for digital companies that do not have a physical presence, the country of sales will not receive corporate profit taxes.

3.17. The EESC notes that there is no sunset clause or other mechanism ensuring that the interim tax measure is withdrawn when a longer-term solution is found. The EESC strongly encourages the Council to develop such rules if the interim measure should be introduced.

4. Specific comments

4.1. The flat rate of 3 %, one of the factors set by the European Commission, can only be considered on a provisional basis, with a proper evaluation necessary. Furthermore, a degree of flexibility could be contemplated in order to take account of the taxable capacity of individual businesses.

4.2. The lack of cross-border profit and loss relief and the large number of transfer pricing and PE disputes within the EU frequently result in international double taxation, thus constituting significant barriers to the single market. Introducing a turnover tax on digital services which would not be credited against income taxes in other countries would further increase double taxation, thus adding yet another barrier to the single market. The EESC considers it important to avoid introducing measures that would lead to any form of double taxation.

⁽⁸⁾ OECD 2015.

⁽⁹⁾ In the EU, corporate profit shifting and base erosion by companies have been reported by the Commission to amount to EUR 50-70 bn, equivalent to 4 per thousand of GDP (COM(2018) 81 final).

⁽¹⁰⁾ 'Tax Cuts and Jobs Act', 22 December 2017.

4.3. The OECD method of developing the PE definition is a dynamic procedure where the changes in principle have found global acceptance. By deviating from this procedure by proposing a unilateral definition, the complexity of the international tax system increases as does the uncertainty for investors. Even in the unlikely event that the OECD would adopt the same definition in its expected final report on the digital economy in 2020, it would not be long until the two systems would deviate ⁽¹¹⁾.

4.4. The EESC is concerned about having number of users of digital services as a criterion for a taxable nexus. The number of clicks on a website can easily be manipulated and companies risk losing control over which jurisdiction they are deemed to be operating in.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹¹⁾ The reason for this is that the PE definition enacted by the EU through a Directive would develop through judgements from the European Court of Justice, whereas the OECD definition applied in the rest of the world would develop through international consensus expressed by the OECD through its continuous revisions.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement’

(COM(2018) 212 *final* — 2018/0104 (COD))

(2018/C 367/15)

Rapporteur-general: **Jorge PEGADO LIZ**

Referral	European Parliament, 28.5.2018 Council, 18.6.2018
Legal basis	Articles 21(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Bureau decision	22.5.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	155/8/5

1. Conclusions and recommendations

1.1. The EESC warmly welcomes the initiative under consideration, which it deems to be necessary and urgent, agrees with its legal basis, which is appropriate for the limited scope of the proposal and approves of the choice of legal instrument. It confirms that the proposal complies with the principles of subsidiarity and proportionality as well as being in line with the fundamental rights, and calls for its urgent adoption.

1.2. The Committee also agrees with the mandatory inclusion of a facial image of the holder of the card and two fingerprints in interoperable formats and also with the need for the separability of biometric data from any other data stored on these cards.

1.3. The EESC believes however, that the Commission has not fully justified its legislative choice, nor has it explained the reasons that prevented it from putting forward a proposal based on greater legislative harmonisation, creating a genuine single system of identification documents, which would have undeniable security advantages in terms of the simplicity and speed of checks and the uniformity of the procedures, offering irrefutable benefits to citizens. The Committee does not understand why the mandatory elements included in the Appendix to the Impact Assessment have not been included, as happened with the residency permits for European citizens, namely the title of the document, name, sex, nationality, date of birth, place of birth and place of issue, signature and expiry date of the document.

1.4. The Committee also considers the proposal to fall short of the REFIT conclusions and citizens' consultations, which revealed situations that clearly hinder freedom of movement in the European area, insofar as the introduction of identity cards on their national territory remains optional for the Member States, as does the definition of the scope, minimum information and the type of identity cards.

1.5. The EESC would have liked the Commission to consider the possibility of introducing a European identity card that would give European citizens the right to vote through such a card, even if it were necessary to use another legal basis.

1.6. The EESC is concerned that the compliance costs involved in the new cards may fall on citizens by an indeterminate, unsuitable and disproportionate amount, since the decision is left entirely to Member State administrations.

1.7. The EESC also believes that any additional elements that the Member States include on these cards could have also been dealt with and where appropriate, standardised, with regard to both their inclusion and their use by the parties concerned or by third-parties.

1.8. The EESC considers it essential that the implementation of this proposal be monitored and supervised by the European Commission, thus ensuring full recognition of the documents that are the subject of the proposal under consideration not only as identity documents but as a tool that will enable the holder to carry out a range of activities in any Member State, including movement within the Schengen area, purchasing goods and services and, in particular, financial services and access to public and private services.

1.9. Given the need for and urgency of this regulation, the EESC recommends shortening all the deadlines for its entry into force and future monitoring.

1.10. It calls on the Commission, the European Parliament and the Member States to consider its proposals, with particular reference to the aspects which it considers essential, as well as the arrangements for use of the same cards by third-parties, which have proved essential in some Member States.

2. Brief summary of the content and grounds for the proposal

2.1. In its Communication to the European Parliament, the European Council and the Council — *Fourteenth progress report towards an effective and genuine Security Union* ⁽¹⁾ — and in other discussions on the evolution of the two main pillars of European defence: the fight against terrorism and organised crime and the resources to support it and the strengthening of our defences and resilience to threats, the Commission has mentioned, *inter alia* ⁽²⁾, a legislative proposal aimed at increasing the security of national identity cards and residency permits that would ‘*make it more difficult for terrorists and other criminals to misuse or falsify such documents to enter or move within the EU*’.

2.2. This Communication mentions specifically that, as demonstrated by the European Border and Coast Guard Agency’s statistics on fraudulent documents, ‘*national identity cards with weak security features are the most often fraudulently used travel documents within the EU*’. As part of the European response to travel document fraud set out in the December 2016 Action Plan, the Commission adopted, together with the Progress Report, a proposal for a regulation to strengthen the security of identity cards issued to Union citizens and of residence documents issued to Union citizens and their family members. ‘*Enhancing the security features of identity cards and residence documents will make it more difficult for criminals to misuse or falsify such documents to move within the EU or cross the EU external borders. More secure identity documents will contribute to strengthening EU external border management (including the challenge of returning foreign terrorist fighters and their family members), while at the same time, more secure and reliable documents will make it easier for EU citizens to exercise their free movement rights*’ — according to the proposal.

2.3. The Commission proposal, based on an impact assessment and public consultation, sets out minimum document security standards for national identity cards, including in particular a biometric photo and fingerprints to be stored in a chip on the identity card. The proposal also envisages the minimum information to be provided on the residence documents issued to mobile EU citizens, as well as full harmonisation of the residence cards of non-EU family members. The Commission invites the co-legislators to examine the legislative proposal without delay in order to reach swift agreement.

2.4. The proposal for a Proposal for a Regulation must be considered within this broad framework. Its objectives include:

a) improving and enhancing border management at the external borders;

⁽¹⁾ COM(2018) 211 final of 17.4.2018.

⁽²⁾ Of particular note are the new instruments for: collecting electronic evidence in criminal proceedings; facilitating the use of financial information for the purposes of prevention, detection, investigation or prosecuting serious criminal offences; strengthening checks against the import and export of firearms to impede the trafficking of illegal firearms; tackling online terrorist content, the interoperability of information systems and improving information sharing; protecting against chemical, biological, radiological and nuclear risks in public places; tackling cybercrime and strengthening cybersecurity.

- b) fighting terrorism and organised crime and building a genuine security union;
- c) facilitating the mobility of EU citizens in exercising their right to free movement and proving their identity to public and private bodies when they exercise their right to reside in another EU country;
- d) strengthening the European response to fraud in travel documents and reducing the risk of forgery and document fraud;
- e) preventing abuse and threats to internal security arising from failings in document security;
- f) preventing travel to third countries to engage in terrorist activities and impunity upon return to the EU.

2.5. To achieve these objectives the Commission has put forward the Proposal for a Regulation *sub judice*, which it considers to be the appropriate legal instrument pursuant to Article 21(2) of TFEU, and which it considers to respect the principle of subsidiarity and to comply with the principle of proportionality.

2.6. Of the three options assessed namely, maintaining the status quo, wider harmonisation or introducing a system for defining minimum security standards for ID cards and common minimum requirements for residence permits issued to EU citizens and, in the case of residence permits for family members of non-EU citizens, the use of a standard common format for residence permits for third country nationals, the last option has been chosen as it is considered to respect fundamental rights, particularly data protection and privacy.

2.7. The proposal under consideration will also be accompanied by non-binding measures (such as awareness-raising and training) aimed at ensuring its harmonised implementation. These will be tailored to the specific situation and needs of each Member State and include:

- a) a programme to monitor the achievements, results and impact of the regulation;
- b) reports by the Member States to the Commission one year after the launch of the implementation, and each year thereafter, of information regarded as essential to ensure effective support for this regulation;
- c) Commission assessment of the effectiveness, efficiency, relevance, coherence and EU added value of the legal framework that has now been approved, but only six years after the date of application, to ensure that there are sufficient data and stakeholder consultations to collect views on the effects of legislative changes and the non-binding measures applied.

3. General comments

3.1. The EESC warmly welcomes the initiative under consideration, the need for which it has already demonstrated in previous opinions, agrees with its legal basis, which is suitable for the context of the proposal and approves of the choice of legal instrument. It confirms that the proposal complies with the principles of subsidiarity and proportionality as well as being in line with the fundamental rights, and also calls for its urgent adoption.

3.2. The Committee also agrees with the mandatory inclusion of a facial image of the holder of the card and two fingerprints in interoperable formats — and the exemptions provided — and also with the need for the separability of biometric data from any other data stored on these cards by decision of the Member States.

3.3. The EESC notes the conclusions of the REFIT process and citizens consultations, which highlighted situations that clearly impeded free movement in the European area, namely due to identity cards that are not recognised by the authorities as travel documents, different validity periods that hinder recognition by Member States and difficulties in access to goods and services experienced by citizens.

3.4. However, the Committee believes the proposal falls short of these conclusions insofar as the introduction of identity cards on their national territory remains optional, as does the definition of the scope, minimum information and the type of identity cards.

3.5. The EESC highlights that identity cards are usually issued as the holder's main proof of identity, allowing citizens to access financial services — including opening accounts — social benefits, healthcare, education and exercising legal and political rights.

3.6. Moreover, in line with the European Parliament's study *The Legal and Political Context for setting a European Identity Document*, the EESC would also have liked the Commission to consider the possibility of introducing a European identity card that would give European citizens the right to vote exclusively through such a card, even if it were necessary to use another legal basis.

3.7. The EESC is also concerned that the compliance costs involved in the new cards may fall on citizens by an indeterminate amount, since the decision is left entirely to Member State public administrations. In this regard, the EESC considers it necessary to assess the costs of this proposal in advance, so as to ensure that they are suitable and proportionate.

3.8. The EESC wishes to stress that, according to the Impact Assessment of this proposal, many of the Member States that issue identity cards do not yet permit the production of biometric data (Italy, France, Romania, Croatia, Czech Republic, Finland, Malta, Slovakia and Slovenia); it is therefore important to quantify and assess the financial and technological impact this will have for citizens and their public administrations.

3.9. The EESC further emphasises the need for this proposal to provide clarity as regards the legitimacy of identity cards as a tool that enables the holder to carry out a range of activities in any Member State, including movement within the Schengen area and purchasing goods and services, in particular financial services.

3.10. Moreover, the Committee also cannot fail to highlight the problems that have been experienced with regard to residence documents, in particular, the number of documents and the refusal of entry in the Member States, as well as access to essential goods and services, as it fears that this proposal may not be enough to resolve these situations.

3.11. However, it stresses the need to ensure compliance with the principle of minimising data processing, thus guaranteeing that the purposes of biometric data collection are clear and transparent and have lawful, well-defined and transparent aims.

3.12. The EESC believes however, that the Commission has not fully justified its legislative choice, nor has it explained the reasons that prevented it from putting forward a proposal based on greater legislative harmonisation, creating a genuine single system of identification documents, which would have undeniable security advantages in terms of the simplicity and speed of checks and the uniformity of the procedures, offering irrefutable benefits to citizens. The Committee does not understand why this harmonisation was not put forward at least as a medium-term objective. This option, which was explicitly referred to in the Commission Staff Working Document (SWD(2018) 111 final ⁽³⁾) was preferred by 'A majority of EU citizens consulted [who] support the wider EU harmonisation of national ID cards (ID 2), and are in favour of overall harmonised residence documents (RES 3)'.

3.13. Indeed, it is not clear why the proposal did not include the mandatory aspects provided for in the Appendix to the Impact Assessment of the proposal under discussion — as was done for residence permits for EU citizens —, namely: document title, name, sex, nationality, date of birth, place of birth and place of issue, signature and expiry date of the document.

3.14. The EESC stresses the need to strengthen the fraud monitoring policy, with particular focus on transport: air, land and maritime transport. Border control services should be provided with human, logistical and technical resources in order to ensure not only the recognition of documents from all Member States, but also to enhance their inspection.

3.15. The EESC considers it essential that the implementation of this proposal be monitored and supervised by the European Commission, thus ensuring full recognition of the documents that are the subject of the proposal under discussion, both as travel documents and as providing access to public and private services.

3.16. The EESC also believes that any additional elements that the Member States include on these cards could, if necessary, have also been dealt with and where appropriate, standardised, with regard to both their inclusion and their use by the parties concerned or by third-parties.

⁽³⁾ Summary of the Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement.

4. Specific comments

4.1. Article 1 — With regard to the scope of the proposal under discussion, the EESC believes that it should refer to minimum information requirements.

The EESC emphasises the need to establish clearly that the regulation respects the principle of legality, as well as the principles of authenticity, veracity, lack of ambiguity and security of citizens' data identifiers.

4.2. Article 2 — In addition to the scope and without prejudice to Directive 2004/38/EC, the EESC draws attention to the need for the proposal to define 'identity cards issued by Member States to their nationals', so as to ensure that processing of documents is harmonised in all Member States.

4.3. Article 3(2) — The EESC questions the need to include 'one other official language', which it deems neither suitable nor appropriate for facilitating cross-border recognition of documents.

4.4. Article 3(10) — The EESC believes that the validity periods of these documents should be set uniformly in the regulation, in accordance with uniform age classifications.

4.5. Article 5 — The period for phasing out cards should be 3 instead of 5 years.

4.6. Article 6

4.6.1. Residence permits should include the following elements:

— parents' names

— nationality

— place of birth

— sex

— height

— eye colour

— signature.

4.6.2. As regards the name and surname of the holder, the name to be inscribed should be complete, consistent with the birth certificate and respect official spelling, in order to guarantee that citizens' individual identities can be distinguished.

4.7. Article 8(2) — The period for phasing out cards should be 3 instead of 5 years.

4.8. Article 10 — Without prejudice to the application of Regulation (EU) 2016/679, the EESC is of the view that this proposal should include specific rules on the purpose of the database, the methods for collection and updating, communication, consultation and access to data and the retention of personal data.

4.9. Article 12(1) — The deadline for submission of the implementation report should be 3 instead of 4 years, as set out in recital 21.

4.10. Article 12(2) — The deadline for the evaluation report should be 5 and not 6 years.

4.11. The EESC recommends that the regulation set a deadline for requesting identity cards after birth (e.g. 30 days).

4.12. The regulation should also stipulate that identity verification of valid identity cards by any public or private entity should restrict retention or preservation when the card is presented to the minimum necessary to preserve the security and defence of Member States. It should also be forbidden to reproduce cards via photocopying or any other means, without the express consent of the holder, except by decision of a judicial authority, for clear reasons of security, prevention of fraud or improper use and for reasons of data protection and privacy.

4.13. Moreover, the regulation should explicitly provide for the immediate deletion of data in case of loss, theft or replacement of the card, in order to prevent the fraudulent use of official documents.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA’

(COM(2018) 213 final — 2018/0105 (COD))

(2018/C 367/16)

Rapporteur-general: **Victor ALISTAR**

Referral	European Parliament, 28.5.2018
Legal basis	Article 87(2) of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Bureau decision	22.5.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote	176/0/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC notes that EU action here aims to generate added value by providing a harmonised approach that strengthens domestic and cross-border cooperation in financial investigations on serious crimes and terrorism. In addition, action at EU level will help to ensure harmonised provisions, including on data protection, in order to effectively guarantee a common area of security and justice.

1.2. In order to achieve this goal, the regulatory framework for the Financial Intelligence Units (FIUs), established under Article 114, must be supplemented by a legal instrument based on Article 87(2) of the Treaty on the Functioning of the European Union (TFEU). The option chosen is to correlate access to financial information in accordance with the Fifth Anti-Money Laundering Directive (AMLD) ⁽¹⁾, with mechanisms for judicial cooperation between Member States.

1.3. The proposal for a directive is an instrument aimed at bolstering the capacity to investigate and prosecute crime throughout the EU, ensuring that the relevant authorities in the Member States have more direct access to financial data, in order to track the proceeds of crime and identify patterns of crime.

1.4. According to the Commission, the scope of the proposal is the investigation and prosecution of crime by means of judicial cooperation; to define serious criminal offences, it refers in Article 2(l) of this proposal to Article 3(1) of Regulation (EU) 2016/794 on Europol ⁽²⁾. On this point, the EESC considers it necessary to demarcate more specifically and restrictively the list of crimes for which this mechanism can be used.

1.5. The proposal for a directive should strike a better balance between the fundamental rights of individuals, enshrined in the Treaty on the Functioning of the European Union, and the need for better law enforcement in combating and prosecuting crime, in order to ensure a climate of security and justice across the EU.

⁽¹⁾ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

⁽²⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

1.6. For the purposes of balance between access to the financial data of European citizens and the *need-to-know principle*, the directive needs to restrict itself solely to detecting and prosecuting offences, and not, in principle, extend to overly generic preventive purposes; the *well-founded case principle* should be applied here.

1.7. The centralised bank account registries could also include financial information relating to the investment accounts of capital market investment managers, given that modern forms of money laundering and concealment of the proceeds of crime also involve investments in capital markets. Furthermore, the EESC calls on the Commission to undertake an analysis exploring the possibility of interlinking the data collected under the Fifth AMLD ⁽³⁾, under the present Directive and under the Fourth DAC (Directive on administrative cooperation in the field of taxation) ⁽⁴⁾, regarding the latter for documentation of severe crimes only, and with the only objective of noting disparities in the data collected during the investigations and the information managed.

1.8. As regards the legislative technical aspects, the EESC recommends that Article 17 be supplemented with procedural provisions referring to other European legislation on judicial cooperation and the exchange of financial information with third countries.

1.9. The EESC calls on the Commission to amend the definitions in Article 2(f) 'law enforcement information' and (l) 'serious criminal offences', so as to ensure the clarity, predictability and proportionality of the rules establishing the mechanisms for access to the financial data of EU citizens.

1.10. Furthermore, the EESC calls on the Commission to regulate the purpose of access to the data contained in the national centralised bank account registries by limiting access for preventive purposes to crimes that affect the collective and individual security of European citizens (i.e.: terrorism, human trafficking and drug trafficking) and allowing access for the purposes of detecting, investigating or prosecuting or recovering the proceeds of offences for all serious crimes.

2. Background to the opinion

2.1. Criminal groups, including terrorists, operate across different Member States and their assets, including bank accounts, are usually located across the EU or even outside of it. They make use of modern technology that allows them to transfer money between several bank accounts and between different currencies in a matter of hours.

2.2. The EESC notes that EU action here aims to generate added value by providing a harmonised approach that strengthens domestic and cross-border cooperation in financial investigations on serious crimes and terrorism. In addition, action at Union level will help to ensure harmonised provisions, including on data protection, whereas if Member States are left to legislate independently, a harmonised level of safeguards will be difficult to achieve.

2.3. The Fifth Anti-Money Laundering Directive (AMLD) ⁽⁵⁾ establishes centralised bank account registries at national level, which increase the processing capacity and effectiveness of the Financial Intelligence Units (FIUs). To ensure more effective investigations and prosecutions of criminal offences, the relevant judicial authorities need faster access to the financial information. To this end, the legal framework for the FIUs, established under Article 114, needs to be completed by a legal instrument based on Article 87(2) TFEU.

2.4. Thus, the relevant authorities will have direct access to the national centralised bank account registries, and this will facilitate the work of the judicial authorities, tax authorities and anti-corruption authorities that have investigative powers established under national law. The relevant authorities here also include the Asset Recovery Offices which are responsible for the tracing and identification of criminal assets in view of their possible freezing and confiscation, in order to ensure that criminals are deprived of this income.

2.5. According to the Commission, the scope of the proposal is the investigation and prosecution of crime by means of judicial cooperation; to define serious criminal offences, it refers in Article 2(l) of this proposal to Article 3(1) of Regulation (EU) 2016/794 on Europol ⁽⁶⁾. On this point, the EESC considers it necessary to demarcate more specifically and restrictively the list of crimes for which this mechanism can be used.

⁽³⁾ See footnote 1.

⁽⁴⁾ Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

⁽⁵⁾ See footnote 1.

⁽⁶⁾ See footnote 2.

2.6. Furthermore, access to the national centralised bank account registries is also granted to European prosecutors under Regulation (EU) 2017/1939 ⁽⁷⁾, which will result in increased capacity to investigate fraud against the financial interests of the European Union.

3. General comments

3.1. The EESC recognises the importance of cooperation mechanisms between the Member States' law enforcement authorities and welcomes the Commission's initiative to create faster and more direct mechanisms enabling the relevant authorities in the Member States to access financial data held in other EU countries.

3.2. This proposal for a directive is an instrument aimed at bolstering the capacity to investigate and prosecute crime throughout the EU, ensuring that the relevant authorities in the Member States have more direct access to financial data, in order to trace the proceeds of criminal offences and identify patterns of crime.

3.3. The proposal for a directive should strike a better balance between the fundamental rights of individuals, enshrined in the Treaty on the Functioning of the European Union, and the need for better law enforcement in combating and prosecuting crime.

3.4. Thus, the right to privacy and the protection of privacy should be curtailed only where this is proportionate to the public interest of ensuring a climate of security and justice across the EU.

3.5. For the purposes of balance between access to the financial data of European citizens and the *need-to-know principle*, the directive should restrict itself to detecting and prosecuting offences, and not, in principle, extend to overly generic preventive purposes; the *well-founded case principle* should be applied here.

3.6. Access to the financial data should be granted only to authorities responsible for investigating and prosecuting criminal offences, as well as to Asset Recovery Offices, on the basis of a well-founded case, so as not to create sets of metadata held by national or European entities that do not have their own detection or investigative powers.

3.7. The centralised bank account registries could also include financial information relating to the investment accounts of capital market investment managers, given that modern forms of money laundering and concealment of the proceeds of crime also involve investments in capital markets.

3.8. The proposal for a directive should also include procedural provisions referring to other EU legislation on judicial cooperation and on the exchange of financial information with third countries, in order to comply with the following two imperatives: firstly, the definition of comprehensive legal rules relating to judicial procedures for the valid collection of evidence when complementary to other legislative instruments, and, secondly, the more extensive implementation of the public policy objectives set out in the explanatory memorandum of the proposal for a directive and in the *ex post* analysis carried out by the Commission.

3.9. The EESC notes and welcomes the fact that the Commission's proposal for a directive sets out very clear provisions for the protection of fundamental rights; it notes, however, that the scope of these provisions is limited to the protection of personal data transferred via the mechanism introduced by the directive and to access to the centralised bank account registries, but does not contain specific rules on the protection of fundamental rights with regard to the protection of privacy and the provision of procedural guarantees relating to the curtailment of these rights.

4. Specific comments and recommendations

4.1. To ensure that, in the course of implementing the cooperation instruments established by this proposal for a directive, the curtailment of fundamental rights to privacy does not go further than is duly proportionate, the preventive objective needs to be removed from the definition of financial information [set out in Article 2(e)], without affecting the definition in the Fifth AMLD ⁽⁸⁾, which remains unaltered under Article 1(2)(a) of this proposal for a directive. This will eliminate the risks of breaching the TFEU provisions on fundamental rights.

⁽⁷⁾ Council Regulation (EU) 2017/1939 of 12 October 2017, implementing enhanced cooperation on the establishment of the European Public Prosecution Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁽⁸⁾ See footnote 1.

4.2. Analysing the definition of serious offences, which is laid down in Article 2(l), which refers to Annex 1 of Regulation (EU) 2016/794 on Europol⁽⁹⁾, and supported by the spirit of the text of the proposal for a directive and by the provision allowing access in order to prevent serious crimes, the access is found to be disproportionate to the general objective pursued. For example, access to individuals' financial data could be granted in order to prevent fatal road accidents or offences relating to racism, xenophobia or blackmail.

4.3. The EESC recommends that the definition under Article 2(l) be amended as follows: '*serious criminal offences*' means the following forms of crime: terrorism; organised crime; drug trafficking; trafficking in human beings; corruption; money laundering activities; crime connected with nuclear and radioactive substances; immigrant smuggling; illegal trade in organs and tissues; kidnapping, illegal restraint and hostage-taking; robbery and aggravated theft; illicit trafficking in works of art, antiquities and cultural goods; crime against the financial interests of the Union; insider dealing and financial market manipulation; racketeering; counterfeiting and product piracy; forging of money and means of payment; trafficking in arms, ammunition and explosives; environmental crime, including ship-source pollution; sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes; genocide, crimes against humanity and war crimes.

4.4. In the same vein, in order to clarify the subject of the directive and to ensure its consistency with the stated public policy objectives, access to the national centralised bank account registries should be allowed for preventive purposes only for terrorism offences and drug trafficking or trafficking in human beings, and for the purposes of detecting, investigating, prosecuting, sanctioning, and recovering damages, both for the above crimes and for all other offences, as defined in the proposal for a directive.

4.5. Article 5 of the proposal for a directive should be supplemented by a new point (point (3)) establishing guarantees of proportionality and legitimacy regarding access by law enforcement authorities to private data (including financial data). In this respect, the new point 3 should provide for the obligation to examine requests for access on a case-by-case basis, under the *well-founded case principle*, so that — insofar as they later become judicial evidence — these retrievals of data comply with the conditions of legality governing the recovery and use of evidence, and uphold fundamental rights and freedoms, including the right to a fair trial, as established by the established practice of the European Court of Human Rights (ECHR) in Strasbourg, and can be used successfully by national courts in penalising offences.

4.6. In this respect, providing access to the financial information of natural persons subject to the national safeguards laid down in Articles 7 and 8 is not sufficient, given that this information can also be accessed by structures that do not have their own investigative powers such as Europol, as provided for in Article 10.

4.7. Article 7(1) needs to be brought into line with the observations made above in point 4.1 of this opinion with regard to Article 2(e) of the proposal for a directive. It is proposed, therefore, to amend the text as follows: '*(...) is necessary (...) for the prevention of terrorism offences, human trafficking and drug trafficking, and for the detection, investigation or prosecution of those crimes and of the other serious criminal offences*'. For consistency and symmetry, the same amendment is proposed for Article 7(2).

4.8. In Article 9(4), the EESC welcomes the fact that the proposal for a directive establishes that in the event that FIU.net suffers a technical malfunction, the alternative means used to transmit the data must comply with the same security conditions as the FIU.net network. Accordingly, the EESC believes that the alternative means of transmitting the financial data must also be capable of producing a written record under conditions that allow authenticity to be ascertained, as is the case with FIU.net.

4.9. With regard to Article 10, which establishes Europol's access to the data in parallel with the access of the competent authorities referred to in Article 3, the EESC calls for this right of access to be established in relation to Europol's own investigative powers and accompanied by the necessary safeguards for metadata analysis.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽⁹⁾ See footnote 2.

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on European Production and Preservation Orders for electronic evidence in criminal matters’

(COM(2018) 225 *final* — 2018/0108(COD))

‘Proposal for a Directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings’

(COM(2018) 226 *final* — 2018/0107(COD))

(2018/C 367/17)

Rapporteur-general: **Christian BÄUMLER**

Consultation	European Parliament, 31.5.2018
Legal basis	Article 82(1) of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Bureau decision	22.5.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote	157/2/0
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC considers the growing use of information services as a challenge for law enforcement. There is currently a lack of reliable cooperation with service providers and a lack of transparency; legal uncertainty also surrounds jurisdiction for investigative measures.

1.2. The EESC welcomes the fact that the proposal for a Regulation on European Production and Preservation Orders for electronic evidence introduces binding European instruments for securing and accessing data.

1.3. The EESC welcomes the fact that the European Production Order and the European Preservation Order are investigative measures that can be issued only in criminal investigations or criminal proceedings for concrete criminal offences.

1.4. The EESC welcomes the fact that the European Production Order will only be used for more serious crimes. The EESC notes that this objective would be better achieved by using a minimum three-month penalty as a guideline rather than a maximum three-year penalty.

1.5. The EESC underlines the fact that this Regulation must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the Member States' constitutions.

1.6. The EESC points out that there are often different answers at national level to questions relating to the conditions for access to data during criminal proceedings and who decides on this access. The EESC supports the development of Europe-wide uniform standards regarding the conditions for access to data.

1.7. The EESC welcomes the fact that both orders need to be issued or confirmed by a judicial authority of a Member State. However, the EESC finds it problematic that a Production Order for subscriber and access data can also be issued by a prosecutor, and advocates extending scrutiny by a judge to the gathering of all personal data.

1.8. Like the Commission, the EESC finds it problematic that third countries could introduce obligations on EU service providers which do not comply with EU fundamental rights. The EESC welcomes the fact that the proposal contains strong safeguards and explicit references to the conditions and safeguards already inherent in the EU *acquis*.

1.9. The EESC supports the possibility set out in the Commission's proposal that the legality, necessity or proportionality of a Production Order may be challenged by the addressee and that the immunities and privileges which protect the data sought in the Member State of the service provider must be respected by the issuing state.

1.10. The EESC welcomes the fact that the Commission proposal makes it mandatory for service providers to designate a legal representative in the Union to receive, comply with and enforce decisions aimed at gathering evidence.

1.11. The EESC considers that service providers should have the right to reimbursement of costs in all cases where this is provided for in the law of the issuing state.

2. Context of the proposal

2.1. More than half of all criminal investigations today include a cross-border request for access to electronic evidence such as text messages, emails or messaging apps. Therefore, the Commission is putting forward new rules intended to enable police and judicial authorities to gain easier and faster access to the electronic evidence they consider necessary for their investigations in order to arrest and convict criminals and terrorists.

2.2. In 2016, the Council ⁽¹⁾ called for concrete action based on a common EU approach to make mutual legal assistance more efficient; to improve cooperation between Member State authorities and service providers based in non-EU countries; and to propose solutions to determining jurisdiction for investigations in cyberspace, and the parallel issue of jurisdiction for enforcement.

2.3. The European Parliament ⁽²⁾ similarly highlighted the challenges that the currently fragmented legal framework can create for service providers seeking to comply with law enforcement requests. Parliament called for a European legal framework, including safeguards for the rights and freedoms of all concerned.

2.4. For situations where either the evidence or the service provider is located in another country, mechanisms for cooperation between countries were developed several decades ago. Despite regular reforms, these cooperation mechanisms are under increasing pressure from the growing need for timely cross-border access to electronic evidence. In response, a number of Member States and third countries have resorted to expanding their national tools. In the EESC's view, the resulting fragmentation generates legal uncertainty and conflicting obligations, and raises questions about the protection of fundamental rights and procedural safeguards for persons affected by such requests.

2.5. The EESC perceives the increased use of information services to be a challenge for law enforcement, as the relevant authorities are often ill equipped to deal with evidence online. The lengthy process to obtain evidence is also one of the main obstacles. There is currently a lack of reliable cooperation with service providers and a lack of transparency; legal uncertainty also surrounds jurisdiction for investigative measures. The EESC supports direct cross-border cooperation between law enforcement and digital service providers in criminal investigations.

2.6. The current EU legal framework consists of Union cooperation instruments in criminal matters, such as Directive 2014/41/EU regarding the European Investigation Order in criminal matters ⁽³⁾ (EIO Directive), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union ⁽⁴⁾, Council Decision 2002/187/JHA setting up Eurojust ⁽⁵⁾, Regulation (EU) 2016/794 on Europol ⁽⁶⁾, and Council Framework Decision 2002/465/JHA on joint investigation teams ⁽⁷⁾, as well as bilateral agreements between the Union and non-EU countries.

⁽¹⁾ Conclusions of the Council of the European Union of 9 June 2016 on improving criminal justice in cyberspace, ST9579/16.

⁽²⁾ P8_TA(2017)0366.

⁽³⁾ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁽⁴⁾ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

⁽⁵⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

⁽⁶⁾ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol).

⁽⁷⁾ Council Framework Decision 2002/465/JHA of 13 June 2002.

3. Preservation and Production Orders

3.1. The EESC welcomes the fact that the proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters (COM(2018) 225) introduces binding European instruments for securing and accessing data. Addressees are providers of electronic communication services, social networks, online marketplaces, other hosting service providers and providers of internet infrastructure such as IP address and domain name registries.

3.2. The EIO Directive covers any cross-border investigative measure in the EU. This includes access to electronic evidence, but the EIO Directive does not contain any specific provisions on the cross-border gathering of electronic evidence. The EESC therefore welcomes the fact that the Commission is putting forward new rules to enable police and judicial authorities to gain easier and faster access to electronic evidence.

3.3. The EESC welcomes the fact that the European Production Order and the European Preservation Order are investigative measures that can be issued only in criminal investigations or criminal proceedings for concrete criminal offences. The link to a concrete investigation distinguishes them from preventive measures or data retention obligations set out by law and ensures the application of the procedural rights applicable to criminal proceedings.

3.4. The EESC notes that orders to produce subscriber and access data are to be issued for any criminal offence whilst the order for producing transactional or content data is only to be issued for criminal offences punishable in the issuing state by a custodial sentence of a maximum of at least three years, or for specific crimes which are referred to in the proposal and where there is a specific link to electronic tools and offences covered by the Terrorism Directive (EU) 2017/541. This guideline of a maximum sentence of three years should ensure that the European Production Order for such data will only be used for more serious crimes. The EESC notes that this objective — which is shared by the EESC — would be better achieved by using a minimum three-month penalty as a guideline.

3.5. The legal basis to support action in the area of justice is Article 82(1) of the Treaty on the Functioning of the European Union. Article 82(1) provides that measures may be adopted in accordance with the ordinary legislative procedure to lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions.

3.6. The new instruments build on these principles of mutual recognition in order to facilitate the cross-border collection of electronic evidence. An authority in the country where the addressee of the order is located will not have to be involved in serving and executing the order directly. The EESC points out that this may mean EU citizens being subject to having their data accessed by an authority of another EU Member State according to that authority's rules.

3.7. The EESC underlines the fact that this Regulation must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union and the Member States' constitutions. These include the right to liberty and security, the respect for private and family life, the protection of personal data, the freedom to conduct a business, the right to property, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence. The EESC points out that protecting these rights also depends on the conditions under which these rights may be encroached upon, and who decides on this.

3.8. The EESC points out that there are often different answers at national level to questions relating to the conditions for access to data during criminal proceedings and who decides on this access. The police, the prosecutor or a court may be responsible for accessing data. Differences also arise as to the stage of an investigation procedure and the degree of suspicion that make it legally permissible to access data. The EESC is of the view that Europe-wide uniform standards for when data can be accessed need be developed.

3.9. The EESC welcomes the fact that both orders need to be issued or confirmed by a judicial authority of a Member State. When issuing a European Production or Preservation Order, a judicial authority always needs to be involved as either an issuing or a confirming authority. For orders to produce transactional and content data, a judge or court is required. The Commission proposal would increase the overall level of legal protection in Europe.

3.10. However, the EESC finds it problematic that a Production Order for subscriber and access data can also be issued by a prosecutor, as subscriber and access data is personal data as well, and retrospective legal protection is difficult in cases of data access from other Member States. The EESC advocates extending review by a judge to the collection of all personal data.

3.11. The EESC supports the possibility set out in the Commission's proposal that the legality, necessity or proportionality of a Production Order may be challenged by the addressee. According to the Commission proposal, the rights under the law of the enforcing state are fully respected by ensuring that the immunities and privileges which protect the data sought in the Member State of the service provider must be complied with by the issuing state. This is especially the case, according to the proposal, where they provide for stronger protection than the law of the issuing state.

3.12. The EESC points out that the order also affects the rights of service providers, in particular the freedom to conduct a business. The EESC welcomes the fact that the proposal includes a right for the service provider to raise certain claims in the issuing Member State, for example if the order has not been issued or confirmed by a judicial authority. If the order is transmitted for enforcement to the enforcing state, the enforcing authority may decide not to recognise or enforce the order if permissible grounds for opposition are apparent, and after consulting with the issuing authority.

3.13. The Commission's proposal contains a provision under which service providers may claim reimbursement of their costs from the issuing state in accordance with that state's national law, if this is provided for by the national law of the issuing state for domestic orders in similar domestic cases. The EESC considers that service providers should have the right to reimbursement of costs in all cases where this is provided for in the law of the issuing state.

4. Conflicting obligations

4.1. The EESC, like the Commission, sees a problem in the fact that third countries could introduce obligations on EU service providers which are not consistent with EU fundamental rights, including the high level of data protection ensured by the EU *acquis*.

4.2. The proposal deals with this issue by putting forward a measure that contains strong safeguards and explicit references to the conditions and safeguards already inherent in the EU *acquis*. The EESC shares the Commission's view that this could serve as a model for third countries' legislation.

4.3. The EESC also supports the proposal's suggested inclusion of a specific 'conflicts of obligations' clause that allows service providers to identify and raise conflicting obligations they face, triggering a judicial review. This clause should ensure respect for two types of law: general blocking statutes, such as for example the U.S. Electronic Communications Privacy Act (ECPA), which prohibits disclosure in relation to content data within its geographic scope except in limited circumstances, and laws that do not generally prohibit disclosure but may do so in individual cases.

4.4. The EESC, like the Commission, is of the view that international agreements with other key partners may further reduce conflicts-of-law situations. This would be the best way to avoid conflicts.

5. Directive on the appointment of legal representatives

5.1. The Commission proposal on European Production and Preservation Orders is to be completed by means of a Directive laying down uniform rules on the appointment of legal representatives in criminal proceedings (COM(2018) 226). There are currently varying approaches across Member States when it comes to obligations imposed on service providers. This fragmentation is particularly evident in relation to electronic evidence. This creates legal uncertainty for those involved and can put service providers under different and sometimes conflicting obligations and sanctioning regimes in this regard, depending on whether they provide their services nationally, cross-border within the Union, or from outside the Union.

5.2. The Commission's proposed Directive makes it mandatory for service providers to designate a legal representative in the Union to receive, comply with and enforce decisions aimed at gathering evidence by competent national authorities in criminal proceedings.

5.3. In the EESC's view, these rules would ensure a better functioning of the internal market in a way which is in line with the development of a common area of freedom, security and justice. The obligation for all service providers that are operating in the Union to designate a legal representative would ensure that there is always a clear addressee for investigative measures. This would in turn make it easier for service providers to comply with those orders, as the legal representative would be responsible for receiving, complying with and enforcing those orders on behalf of the service provider.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on Proposal for a Regulation of the European Parliament and the Council on persistent organic pollutants (recast)

[COM(2018) 144 final — 2018/0070 (COD)]

(2018/C 367/18)

Rapporteur: **Brian CURTIS**

Council referral	13.4.2018
Parliament referral	16.4.2018
Legal basis	Articles 192(1) and 304 of the Treaty on the Functioning of the European Union
Bureau decision	19/09/2017 (in anticipation of the referral)
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	26.6.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote	157/0/4
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission proposal which aims to recast the POPs (Persistent Organic Pollutants) regulation in order to ensure coherent and effective implementation of the EU's obligations under the Stockholm Convention.

1.2. The Committee points out that in the EU, the placing on the market and use of most POPs have already been eliminated. However, due to the extremely dangerous impact of POPs on human beings and the environment, the manufacturing of such substances must be banned and exemptions restricted to specific applications. For this reason, the EESC encourages the Commission to establish stricter control measures, in line with the precautionary approach and the Rio Declaration on Environment and Development.

1.3. The EESC endorses the proposal to transfer tasks from the Commission to ECHA in order to establish a more appropriate setting in which to provide administrative, scientific and technical support for implementation. Nevertheless, the Committee flags up the need to establish a solid working method involving the Commission, ECHA, Member States and stakeholders.

1.4. The EESC recommends proper and limited use of delegated acts in order to maintain open dialogue with all stakeholders, with a specific focus on public awareness and transparency.

1.5. The EESC encourages the EU to be a global leader in the fight against POPs. EU action should be focused on harmonisation of national strategies and legislation for POPs monitoring and control. In particular, the Committee believes that the EU should promote sustainability and the upholding of POPs provisions in bilateral and multilateral trade agreements.

1.6. The Committee supports the proposal to organise a broad awareness campaign on POPs at EU level in the framework of sustainable development. The EESC considers that an open data bank on POPs could be a useful tool for enterprises and consumers.

1.7. The EESC remarks that training courses on POPs should be compulsory and available for all European workers whose jobs are directly or indirectly related to these substances. In particular, the EESC recommends that education and training initiatives should be harmonised and considered part of the same strategy according to a life-long learning approach.

2. Introduction

2.1. **Persistent Organic Pollutants (POPs)** are organic compounds that are resistant to environmental degradation through chemical, biological and photolytic processes. Because of their persistence, POPs bioaccumulate with potential adverse impacts on human health and the environment. Many POPs are currently or were in the past used as pesticides, solvents, pharmaceuticals and industrial chemicals. Although some POPs occur naturally, for example volcanoes and various biosynthetic pathways, most are manmade through total synthesis.

2.2. The effect of POPs on human and environmental health was discussed by the international community at the Stockholm Convention on Persistent Organic Pollutants in 2001 ⁽¹⁾. The Stockholm Convention, ratified by 180 Parties and based on the *precautionary principle*, is a global treaty that provides a legal framework to eliminate the production, use, import and export of POPs. The Convention, which included a list of 12 elements (including DDT), was signed by the EU in 2005.

2.3. The European Union commitment consisted of introducing measures to reduce the release of POPs into the environment in order to lower human and wildlife exposure. The European Union has been very active in nominating new substances under the Convention ⁽²⁾. **Regulation (EC) No 850/2004 (or 'POPs Regulation')** is the legal instrument that implements the commitment of the EU and its members under the Convention.

2.4. A second convention, the Aarhus Protocol on Persistent Organic Pollutants (last amended in 2009), relates to the long-range transboundary transmission of air pollutants. It directly prohibits the production of some of these pollutants, while setting a time limit for the elimination of others. Currently, 22 substances are on the protocol's list.

3. Gist of the proposal

3.1. The Commission proposal aims to recast the POPs Regulation. This initiative does not alter current legislation in terms of principles (precautionary principle) and goals (protection of the environment and human health), but rather responds to the need for full legislative alignment and improved implementation.

3.2. In particular, the proposal faces the following challenges:

- Aligning the POPs Regulation, which refers to Directive 67/548/EEC and Directive 75/442/EEC, with Regulation (EC) No 1907/2006, Regulation (EC) No 1272/2008 and Directive 2008/98/EC. Specifically, the POPs Regulation refers to a regulatory committee which no longer exists ⁽³⁾ and needs to be aligned with the Lisbon Treaty (TFEU). Lastly, it should be specified which rules are subject to implementing acts and which conditions apply to the adoption of delegated acts.
- Transferring tasks from the Commission to the ECHA ⁽⁴⁾ in order to establish a more appropriate setting in which to provide administrative, scientific and technical support for implementation. It is also proposed that enforcement of the POPs Regulation by the Member States should be supported by including a coordination role for the Forum for Exchange of Information on Enforcement established by Regulation (EC) No 1907/2006 of the European Parliament and of the Council ('REACH') ⁽⁵⁾.
- Including technical amendments to the operative provisions, such as clarifying existing definitions and adding the definitions of 'manufacturing', 'use' and 'closed-system site-limited intermediate' in order to improve and simplify current procedures.

3.3. The proposal includes a specific focus on transparency and public access to information. Public awareness programmes on POPs should be promoted and facilitated, especially for vulnerable groups, as well as training of workers, scientists, educators, and technical and management personnel. Moreover, the public should have the opportunity to participate in drawing up, implementing and updating *implementation plans* at national level.

⁽¹⁾ <http://chm.pops.int/>

⁽²⁾ In recent years, 16 more elements have been added to the initial list. <http://chm.pops.int/TheConvention/ThePOPs/TheNewPOPs/tabid/2511/Default.aspx>

⁽³⁾ Since 1 June 2015.

⁽⁴⁾ Regulation (EC) No 1907/2006.

⁽⁵⁾ Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

4. General comments

4.1. The EESC welcomes the Commission proposal which aims to recast the POPs Regulation in order to ensure coherent and effective implementation of the EU's obligations under the Stockholm Convention. Such measures are fundamental to establish a common legal framework, within which measures can be taken to eliminate the manufacturing, placing on the market and use of intentionally manufactured POPs, as well as to introduce annual checks by individual countries and to develop comparative data for the EU.

4.2. The Committee points out that in the EU, the placing on the market and use of most POPs have already been eliminated. Nevertheless, in order to minimise the release of POPs, the manufacturing of such substances must be banned and exemptions restricted to those which fulfil an essential function in a specific application. For this reason, the EESC encourages the Commission to establish stricter control measures than those under the Stockholm Convention, in line with the *precautionary approach* to environmental protection as established in the Rio Declaration on Environment and Development ⁽⁶⁾.

4.3. The Committee is aware that the Commission decision to skip any formal consultation with stakeholders and Member States is motivated by a general consolidated agreement with all public and private stakeholders on the measures to take to recast the POPs Regulation. Nevertheless, the EESC recommends that the Commission undertake an effective and inclusive approach for the next implementing steps.

4.4. The EESC endorses the proposal to transfer tasks from the Commission to ECHA in order to establish a more appropriate setting in which to provide administrative, scientific and technical support for implementation. Nevertheless, the Committee flags up the need to establish a solid working method involving the Commission, ECHA and Member States to ensure effective cooperation and better results. One cornerstone of this new working framework should be consultation of stakeholders.

4.5. The EESC considers that some aspects of the recast are completely technical. In line with its previous opinions ⁽⁷⁾, the Committee considers POPs to be a serious threat to the environment and public health. The EESC therefore recommends proper and limited use of delegated acts (where strictly necessary) in order to maintain open dialogue with all stakeholders, with a specific focus on public awareness and transparency.

5. Specific comments

5.1. The Committee would encourage the Commission to define more accurately the proposal whereby Member States should provide opportunities for public participation when drawing up, implementing and updating national *implementation plans*. In particular, the EESC considers that participation methods should be clear and common for all Member States. The Committee is convinced that more than individual people, organised civil society itself could play an important role. Moreover, it is not clear whether and how these initiatives will receive financial support from the Commission and how this important opportunity will be communicated.

5.2. POPs are a global threat. At present, the main challenge at global level is to harmonise national strategies and legislation for POPs monitoring and control. For this reason, the EESC endorses the Commission proposal for a more proactive EU role towards third countries with a view to tackling POPs emissions.

⁽⁶⁾ Rio Declaration, 1992. Principle 15: 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.

⁽⁷⁾ EESC opinion on Persistent Organic Pollutants (OJ C 32 of 5.2.2004, p. 45).

5.3. Nevertheless, the Committee considers that ‘exchange of information’⁽⁸⁾ with third countries not party to the Stockholm Convention, or ‘timely technical assistance upon request and within available resources’⁽⁹⁾ to implement the Convention are still too vague to eradicate POPs. In particular, the EESC believes that the EU should promote sustainability and the upholding of POPs provisions in bilateral and multilateral trade agreements⁽¹⁰⁾. Even international facilitator bodies, such as the Implementation and Compliance Committee established by the Minamata Convention, could be an important reference point here⁽¹¹⁾. The EESC firmly believes that the EU can be a front runner in sustainable innovation.

5.4. The Committee supports the proposal to organise a broad awareness campaign on POPs at EU level. At the same time, Europe should be more active in promoting education about sustainability and spreading information about best practices in the field of sustainability⁽¹²⁾. In particular the EESC recommends the creation of an open data bank on POPs in order to provide a useful tool for enterprises and consumers.

5.5. The Committee considers that training courses on POPs should be compulsory and available for all European workers whose job is directly or indirectly related to these elements. The EESC would point out that these aspects are already part of ongoing legislation, but uncertain and weak implementation means that new tools need to be identified for more effective implementation. In particular, the EESC recommends that information, education and training initiatives should be harmonised and considered part of the same strategy according to a life-long learning approach.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽⁸⁾ COM(2018) 144 final, point 18.

⁽⁹⁾ COM(2018) 144 final, point 21.

⁽¹⁰⁾ EESC opinion on *Transition towards a more sustainable European future* (OJ C 81 of 2.3.2018, p. 44).

⁽¹¹⁾ The Minamata Convention on Mercury is a global treaty to protect human health and the environment from the adverse effects of mercury. It was agreed in Geneva (Switzerland) on 19 January 2013, adopted on 10 October 2013 at a Diplomatic Conference held in Kumamoto (Japan) and entered into force on 16 August 2017. It reflects an innovative and comprehensive approach, addressing mercury throughout its lifecycle from mining to waste management. <http://www.mercurycction.org/>. Article 15.

⁽¹²⁾ EESC opinion on *Rio+20: towards the green economy and better governance* (OJ C 376, 22.12.2011, p. 102). See point 4.13.

**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 on a monitoring framework for
the circular economy'**

(COM(2018) 29 final)

(2018/C 367/19)

Rapporteur: **Cillian LOHAN**

Co-rapporteur: **Tellervo KYLÄ-HARAKKA-RUONALA**

Consultation	European Commission, 12.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	19.9.2017
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	26.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	172/0/1
(for/against/abstentions)	

1. Conclusions and recommendations

1.1. The EESC welcomes the Communication on Monitoring the Implementation of the Circular Economy as an important follow up to the Circular Economy Action Plan and as recommended in NAT/676.

1.2. This Communication is a good starting point, but it is missing a number of relevant and essential indicators:

- Eco-design
- Development of (new) business models
- Collaborative economy
- Social indicators
- Emissions data

1.3. The EESC notes that, although it is a consultative body to the EU institutions, it was not consulted during the consultation process for the development of these indicators.

1.4. The circular economy is linked to the low-carbon economy and the Sustainable Development Goals, and as a result, the monitoring indicators should reflect this.

1.5. Monitoring needs to move away from being overly focused on waste.

1.6. The definition of 'circular economy sectors' is narrow and should be elaborated further, as it has implications for several indicators.

1.7. Lack of data in a specific area should not be a reason for exclusion. The data gaps should be made explicit, and strategies identified to ensure those gaps are filled. If we continue to limit ourselves to traditional old data then we will not be accurately measuring the transition to a new economic model.

1.8. There are inconsistencies in policies and regulations that amount to barriers to the transition towards a circular-economy model for the business sector. These inconsistencies should be mapped as part of the monitoring framework.

1.9. The use of public money should be monitored with its own indicator. Investments that were made specifically for circular-economy initiatives should have built-in data that could be used to develop this indicator. It is also important to monitor 'money spent' as well as 'money invested'.

1.10. The European Circular Economy Stakeholder Platform should be used as a vehicle for ensuring engagement with active stakeholders in the field, and a communication strategy with concrete goals to achieve this should be drawn up and implemented.

1.11. Awareness raising and education at the consumer and user levels should be measured to ensure an increased understanding of the role of the consumer in the circular economy and in the flow of materials. Infrastructural supports that enable consumers to improve their behaviour with regard to resource efficiency, and activities that support the transformation from 'consumer' to 'user' should be encouraged and measured.

2. General comments

2.1. The EESC welcomes the Communication from the Commission. Monitoring the progress being made towards achieving the aims and goals of the Circular Economy Action Plan is an essential part of the process.

2.2. The consultation for the development of the monitoring framework focused on stakeholders. This should have included the EESC, given that its role as a consultative body is enshrined in the Treaties, and its membership includes many of the relevant stakeholder groups.

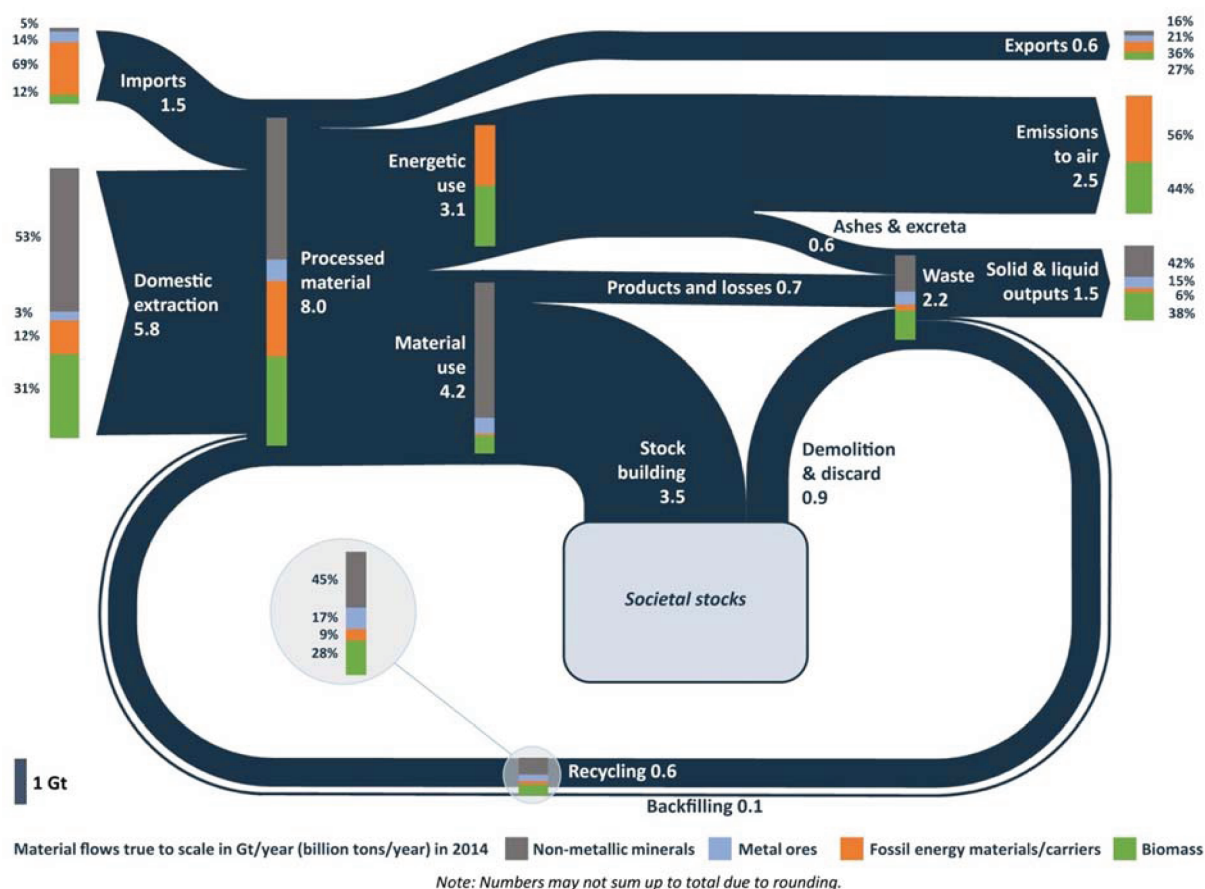
2.3. It is essential that metrics in any effective monitoring system are based on solid data that is comparable across different Member States.

2.4. Monitoring progress towards a circular economy is clearly a challenging task. It will be of critical importance to measure all elements of the circular transition, and to ensure that data gaps are clearly identified.

2.5. Resources should be allocated to ensure data gaps are filled with the urgent establishment of criteria and collection of data to establish baseline figures. Continuous research and monitoring of criteria, measurements and indicators is recommended.

2.6. The definition of 'circular economy sectors' is quite narrow and would benefit from further elaboration. This definition has a consequential limiting effect on the metrics used to assess economic activity, job creation, innovation and other indicators.

Figure 1 — material flows in the economy (EU-28, 2014)

Figure 1: Available from <http://ec.europa.eu/eurostat/web/circular-economy/material-flow-diagram>

2.7. The general figure for material flows shows 8 billion tonnes of materials are processed into energy and products annually in the EU. While 0,6 billion tonnes of these are subsequently exported, the vast majority remains under the control of actors within the EU. However, this analysis is selective in terms of the materials that are included, excluding important streams such as food and textiles, for example. The impact of production versus the impact of consumption should be taken in to account, looking at how and what we produce, export and import.

2.8. The Communication should take account of the fact that the authors of the research suggest that the figures for recycling are optimistic and are likely to be an over representation of what is actually occurring on the ground.

2.9. It is essential to link the circular economy to the low-carbon economy. A monitoring framework should include this link in order to strengthen action and prevent duplication of effort, improving the efficiency of the transition.

2.10. The communication is very waste-focused. This is partially explained by the fact that the data on waste is strong, consistent and comparable. However, any future monitoring needs to move beyond waste and recycling, and focus on design, production and consumption.

2.11. Awareness raising and education at the consumer and user levels should be measured to ensure that there is increased understanding of the role of the consumer in the circular economy and in the flow of materials. Fact-based and practical solutions should be introduced — the engagement of civil society plays a significant role and circular culture, based on the rethinking of values and change of existing patterns of consumption, is of great importance.

2.12. There is a need to create an EU-approved dictionary of definitions relating to the circular economy. The current monitoring of circular economy sectors is too narrow by definition to effectively capture the type of systemic change envisioned in the Circular Economy Action Plan and desired by society. There is also a need to redefine what we mean by waste.

3. The ten indicators

3.1. The ten indicators are listed under the headings of production and consumption, waste management, secondary raw materials, competitiveness and innovation.

3.2. There are no indicators to examine the emissions to air, including GHGs, associated with the existing linear model. This is critical to linking the circular economy with the low-carbon economy, the EU Climate and Energy Objectives, and the Paris Agreement.

3.3. The ten indicators are heavily focused on waste. There should be a broader analysis to incorporate the whole value chain of products and materials, including eco-design, new business models, changes to business systems and industrial symbiosis, as well as new kinds of consumption models.

3.4. By and large, the indicators should, on the one hand, measure the output and benefits of the circular economy and, on the other hand, examine the circularity of resources.

3.5. While shorter, smaller loops are preferable in a circular economy, a focus on self-sufficiency, in isolation from other indicators, is not an indicator of circularity. The rate of recovery of raw materials and use of secondary raw materials can increase self-sufficiency. The focus on self-sufficiency as an indicator creates a risk of it becoming a target, which is not the intention. It may inadvertently lead to a shift of focus away from the most efficient use of raw materials and products. Systemic thinking is needed.

3.6. It is understandable that data availability was taken into account when choosing the ten indicators. However, gaps in data should be clearly and explicitly identified. A plan for addressing these gaps should be urgently developed as part of the monitoring framework.

3.7. The current plan for improving the knowledge base is still very much focused on waste, and should be broadened to include the other aspects of the circular economy.

3.8. The European Circular Economy Stakeholder Platform, a joint initiative of the European Commission and the EESC, should be utilised as a resource to identify data gaps, understand trends amongst stakeholders, and help identify barriers to transition.

4. Initial findings

4.1. *Production and Consumption*

4.1.1. The indicators on production and consumption are too waste-focused.

4.1.2. In the absence of relevant data, self-sufficiency in the supply of raw materials is measured. Self-sufficiency in itself is not an indicator of a circular economy (see 3.4). The split between virgin raw materials and secondary or tertiary raw materials should be clarified. It would also be useful to monitor the developments in a more disaggregated way, for example by measuring the use of renewable vs. non-renewable resources, the recovery of critical resources, such as rare metals as well as the impacts of production, imports and exports (see 2.8).

4.1.3. Green Public Procurement is a good indicator of use of public money and can be a driver for circularity. Implementation of GPP plans in Member States could be facilitated by clear communications and resource allocation for training on the links between GPP and circularity, the SDGs, and the Paris Agreement goals for a low-carbon economy.

4.1.4. As regional and national GPP plans are assessed, education programmes for procurers should be monitored and information shared. A lack of understanding of the apparent contradictions between circular or green procurement and the rules of the single market needs to be addressed.

4.1.5. Food waste tools used to measure the complex matter of where along the supply chain food is being wasted are essential. It is not sufficient to only capture food waste at a consumer level when systemic change is needed to address this enormous problem.

4.1.6. However, food waste is only one aspect of introducing circularity to the agri-food sector. Clear definitions are required to identify agricultural practices that are circular. These need to be urgently developed in consultation with stakeholders (see 2.13). Food waste should be monitored as part of one system, to take in to account the interdependencies that exist between food production, food waste, and other sectors such as energy, mobility and water management.

4.1.7. There are key aspects of the transition to a circular economy that are not captured here, which should be part of production and consumption in the monitoring framework. These include eco-design, new ownership models, voluntary agreements, information for consumers, consumer behaviour, supporting infrastructure, mapping subsidies which may be supporting anti-circular activities, and links to low carbon economy and to the SDGs.

4.2. *Waste management*

4.2.1. Redefining waste management, redefining waste, promoting research and innovation in the area of recycling, new business models, new value chains and moving beyond recycling are fundamental to the circular economy. This should incorporate a move from waste management to resource management.

4.2.2. The most important question to ask when it comes to monitoring municipal waste, and its recycling percentages, is where along the chain the measurement is occurring — pre-sorting or post-sorting. This is referred to in the SWD but not explicitly in the Communication. The EESC has consistently taken the position that post-sorting is the most accurate measurement point.

4.2.3. Monitoring of municipal waste should also include sewage. Human waste is a viable source of energy when treated in anaerobic digesters. This can also contribute to a reduction in emissions from other energy sources.

4.3. *Secondary raw materials*

4.3.1. The role of a vibrant, functional secondary raw materials market as part of the circular economy is vital.

4.3.2. In a circular economy, material-flow concepts need to go beyond recycling, and include monitoring of material flows in the areas of repair and reuse, including remanufacturing activities. Definitions are again essential, as one sector's waste should be a potential resource for another sector.

4.3.3. The distinction between the end of life of a product (by which we mean the end of the functioning of the product) and the end of life of the component parts and materials used in its construction should be recognised.

4.3.4. The flow of materials within a circular economy should also track change of ownership in a service-based business model.

4.3.5. This section focuses on the management of the waste currently being produced, and highlights the opportunity to create secondary raw materials from this. This initiative is welcome; however, it is limited by the exclusion of large types of material flows, including food and textiles, from those assessed.

4.3.6. It is essential to monitor the design of societal stock, so as to ensure that raw materials used in this space are recoverable at the end of the functionality or desirability of that particular stock. This would more than double the potential for managing material flows. Digitalisation may be a useful enabler for this monitoring.

4.3.7. The Communication could improve the transparency and clarity around what materials are included in societal stock, and how this is measured and monitored.

4.4. *Competitiveness and Innovation*

4.4.1. Innovation, investment and trade are the main operations through which businesses contribute to progress towards the circular economy. As the circular economy is relevant to all business sectors and, crucially, requires cooperation across sectors, a broader approach towards circular economy sectors is needed.

4.4.2. Specific developments in eco-design should be monitored, as should the development of new service-based business models and flexible ownership options. For example, the development and adoption of eco-design related standards relevant to the circular economy should be monitored.

4.4.3. There are companies that are moving into the remanufacturing space and cornering significant parts of markets. These need to be part of a monitoring framework.

4.4.4. The use of public money should be monitored with its own indicators as well. Investments that were made specifically for circular-economy initiatives should have built-in data that could be used for the development of this indicator, so that not only money spent but also impact achieved is measured.

4.4.5. Private investment also plays a crucial role in the transition towards a low-carbon circular economy. The investment, insurance and banking sectors have already developed tools and evaluation models. As such, private investments as well as public finances should be quantified in the monitoring system.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

**Opinion of the European Economic and Social Committee on the
‘Proposal for a Regulation of the European Parliament and of the Council establishing a multi-annual
plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea’**

(COM(2018) 115 final — 2018/0050 (COD))

(2018/C 367/20)

Rapporteur: **Gabriel SARRÓ IPARRAGUIRRE**

Referral	European Parliament, 15.3.2018 Council, 20.3.2018
Legal Basis	Articles 43(2), 114(1) and 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	13.2.2018 (in anticipation of referral)
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	26.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	165/0/2

1. Conclusions and recommendations

1.1. The EESC agrees with the Commission that a multi-annual plan should be adopted for demersal fisheries in the Western Mediterranean that includes measures capable of reversing the overfishing of most populations of demersal species for which data is available. To this end, the Committee considers the use of a fishing effort regime based on fishing days and by management unit (GSA) for trawling to be appropriate and welcomes the possibility of introducing a catch limit (TACs) system in the event of failure of management by effort.

1.2. The EESC considers that the plan's objective should be to secure sustainable fisheries from the triple environmental, social and economic point of view. The measures adopted must therefore be proportionate, so that the socio-economic impact is manageable and viable for Mediterranean fishermen. Given the scheduled adoption and entry into force of the proposal (not before mid-2019), it will be difficult to achieve the maximum sustainable yield (MSY) for all populations in 2020. The Committee nevertheless supports the EU's international commitment to reach the MSY by 2020. Its importance as part of the multiannual plan is central, especially for the most over-exploited species at risk of biological collapse. MSY for all populations should therefore be achieved according to a more realistic and reasonable timetable.

1.3. While recognising the specific regional features of its fisheries, the EESC considers that the Mediterranean's 'particular' character requires that action now be taken on fisheries reform, and recommends that the co-legislators support an appropriate management regime that ensures fairness between European maritime regions and enables the Mediterranean region to fully achieve the objectives of the common fisheries policy.

1.4. The Committee acknowledges the considerable reduction in the number of fishing vessels in recent years, but nevertheless regrets that the fishing sector's efforts have not succeeded in reducing real fishing mortality for key stocks. This is due in particular to the structural overcapacity of some fleet segments, especially trawlers, and fishing efficiency gains from the modernisation of fisheries engines, gear and technology.

1.5. The EESC urges the Commission to take account of the other factors and human activities that affect the state of fish populations and ecosystems in the Mediterranean, as set out in point 3.5 of this opinion, and proposes that it adopt measures judged capable of reducing their impact on fish populations.

1.6. Since the Mediterranean is a semi-enclosed sea with 22 coastal countries, most of them non-EU, the Committee recommends that the Commission make every effort to coordinate measures for managing shared species with the other countries, especially within the framework of the General Fisheries Commission for the Mediterranean (GFCM).

1.7. Against a backdrop of serious overfishing in the region, the EESC recognises the need to adopt specific spatio-temporal restriction measures for trawls, the main gear used by the fisheries covered by the plan, in order to substantially reduce the impact — when necessary according to scientific reports — on unwanted catches of demersal species, especially juveniles, and on essential fish habitats (spawning and nursery grounds).

1.8. The EESC recommends that the co-legislators remove the prohibition on the use of trawls within the 100 m isobath from 1 May to 31 July each year, for the reasons set out in point 4.3 of this opinion.

1.9. The Committee recommends that the Commission propose including extraordinary flanking measures to offset the losses fishermen will suffer with the reduced effort and fishing mortality. It would be beneficial to broaden support for temporary cessation and to look again at support for permanent cessation.

1.10. Lastly, the Committee recommends that the Commission take account of all the observations made in the general and specific comments contained in this opinion.

2. Gist of the Commission proposal

2.1. The European Commission has presented a proposal for a regulation establishing a multi-annual plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea, covering fishing for blue and red shrimp, deep-water rose shrimp, giant red shrimp, hake, Norway lobster and red mullet by fleets — mostly trawlers — from Italy, France and Spain.

2.2. The overall objectives of the proposal are to achieve the MSY for the populations indicated, to take a precautionary and ecosystem-based approach, and to facilitate implementation of the landing obligation, all with the aim of ensuring that fishing activities are environmentally sustainable in the long term and managed in a way that secures economic, social and employment benefits.

2.3. The reason for presenting it is that the European Commission considers that neither Council Regulation (EC) No 1967/2006⁽¹⁾ nor the national management plans have worked well enough: according to the European and international scientific community, more than 80 % of the assessed stocks are overfished in this subregion, at levels far beyond fishing mortality ranges consistent with achieving the MSY target.

2.4. The proposal puts forward a series of measures, among them establishing fishing mortality objectives (F_{MSY}), conservation reference points, emergency measures and a maximum number of fishing days, with a substantial reduction of effort in the first year. In the event that these measures do not work, it proposes adopting TACs and, by means of delegated acts, a wide range of technical conservation measures. It also proposes a spatio-temporal closure, for the entire geographical scope of the proposal, prohibiting trawls from operating within the 100 m isobath from 1 May to 31 July each year.

3. General comments

3.1. In view of published scientific research on the matter, the EESC acknowledges the scale of the problem relating to overfishing and the ensuing major ecological crisis and agrees with the need to adopt additional management measures that can reduce fishing effort and mortality in order to restore the main stocks of overfished demersal species in the Western Mediterranean.

3.2. However, the Committee considers that this must be done in a proportionate way, without jeopardising the viability of Mediterranean fishermen who have, over recent years, already seen a substantial reduction in the number of fishing vessels and consequently of jobs.

⁽¹⁾ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94 (OJ L 409, 30.12.2006, p. 11).

3.3. Similarly, the EESC considers that given the situation of stocks and the planned date of adoption and entry into force of this proposal (not before mid-2019), it will be difficult to achieve the MSY for all populations in 2020. The EESC calls for special attention to be given to the most over-exploited species at risk of biological collapse (e.g. hake or red mullet) so that these objectives are not missed. MSY for all populations should therefore be achieved according to a more realistic and reasonable timetable.

3.4. The Committee also considers that, once again, when analysing the state of stocks and putting forward measures to improve them, the European Commission seems to overlook the other factors and human activities that have an impact on them: these include climate change, acidification, pollution, oil- and gas-related activities, maritime transport, marine waste, poor management of coastal activities, etc. In consequence, the Committee considers that the fisheries sector cannot be held solely responsible for the state of fish stocks, and a fully-fledged ecosystem approach should be applied, taking account of all the factors and activities mentioned above.

3.5. At the same time, the EESC is in favour of recognising the importance of trawl gear in the Mediterranean from the socio-economic point of view. Some 75 % of catches of demersal species are by trawls. They must therefore be properly regulated (spatio-temporal measures) and made more selective. Trawls are the only fishing gear allowing large quantities of species such as deep-water rose shrimp, blue and red shrimp, Norway lobster, mantis shrimp, blue whiting, *Phycis* spp, dogfish, shortfin squid, cuttlefish and baby squid, among others, to be caught in the Mediterranean. More selective, lower-impact techniques, however, exist for certain species, using pots, creels, gillnets and trammel nets for example.

3.6. The EESC recognises the importance of effectively protecting essential fish habitats and sensitive habitats in deep-water areas, in particular where scientific advice indicates concentrations of juveniles or spawning areas for demersal species such as hake, Norway lobster or shrimp. These zones, important for the recovery of stocks, must be permanently or temporarily closed to fishing, in line with Article 8 of the CFP, on the establishment of fish stock recovery areas. The Committee supports introducing several zones into the plan, such as the Ebro delta, the Gulf of Lion and the Carloforte depths.

3.7. The Committee considers that the European Commission is once again proposing excessive use of delegated acts. Many of the measures it is putting forward fall within the scope of co-decision (Articles 13, 16 and 18).

4. Specific comments

4.1. The Committee notes the advice of the STECF opinion (17-02) on the relative inefficiency of fishing effort management in effectively reducing fishing mortality, and that drastic reductions would be needed to reconstitute stocks at sustainable levels. The EESC also wishes to encourage a shift to a catch limit (TACs) management approach, reflecting scientific advice, which is the only approach allowing real control of fishing mortality.

4.2. The EESC considers that recital (5) concerning the objectives of the common fisheries policy (CFP) should mention social and economic, as well as environmental, sustainability.

4.3. Regarding recital (26), linked to Article 8, the Committee proposes that the reference to the adoption of management measures based on TACs be retained as a long-term aim in multi-species Mediterranean fisheries. It would be helpful for the STECF to be able to report on the main stocks that may be covered by precautionary TACs scientific advice for the MSY.

4.4. Recital (28) and Article 11(1) propose to prohibit trawls from operating within the 100 m isobath from 1 May to 31 July each year. The EESC considers this measure to be disproportionate and unjustified. EU and national legislation already contain sufficient guarantees to prevent trawls being used on vulnerable seabeds. There are also areas of the Mediterranean where the shelf is flatter and shallow, and the proposed closure would make it impossible for many trawlers to operate. The Committee advocates establishing specific closure areas which are duly justified on scientific grounds, such as those being proposed by the fisheries sector itself in several EU countries.

4.5. With regard to recital (37), linked to Article 19 which refers to the European Maritime and Fisheries Fund (EMFF) and proposes temporary cessation measures, the EESC urges the Commission to include permanent cessations that could be financed by the current EMFF and the one to come into force after 2021, as a reduction in the fishing effort and capacity will be demanded, in turn requiring compensation for vessel owners and workers.

4.6. As mentioned in point 3.3, the Committee considers that, realistically, it is difficult to achieve the F_{MSY} ranges for the stocks concerned by 2020 at the latest, as proposed by Article 4(1), without an unmanageable socio-economic impact on the fleet. The multi-annual plans have been presented with considerable delay with respect to the entry into force of Regulation (EU) No 1380/2013 on the common fisheries policy, for reasons that have nothing to do with the fisheries sector. For this reason, the Committee believes that unachievable objectives cannot now be expected to be met.

4.7. Turning to Article 7(1), the Committee considers the use of a fishing effort regime based on fishing days and by management unit (GSA) for trawling to be appropriate. On the other hand, the Committee does not support differentiation according to vessel length categories as set out in Annex I, or by effort groups according to catch species, whether blue and red shrimp and giant red shrimp in deep waters or red mullet, hake, deep-water rose shrimp and Norway lobster on the continental shelf and upper slope. The EESC thinks it would be better for management of all trawlers to be carried out by management units (GSA), with no differentiation by vessel length or sea depth: this would be artificial because for all practical purposes no such differentiation exists. Trawlers may catch species from both the continental shelf and deep water in the course of a single fishing trip. It is also important for each GSA to be managed independently, with specific measures to restore the stocks of each GSA regardless of the situation of species in other, different GSAs.

4.8. Concerning the baseline indicated in Article 7(4), the Committee is of the view that, in order to avoid reaching a point of no return for company profitability, consideration should be given to a minimum threshold of days beyond which no further reduction should be made.

4.9. The Committee agrees that, in general terms, only a working day of 12 hours per fishing day, five fishing days per week or equivalent should be allowed, as set out in Article 9(3). The EESC does, however, recommend that certain exceptions be allowed for distant fishing grounds or for Mediterranean high seas, in cases that are duly justified and with specific authorisation, so as to allow an increase in travelling time (but not in fishing hours), as already occurs in some countries.

4.10. The EESC considers that, in Article 9(5), the possibility should be left open of exchanging capacity in the different management areas in cases where this is made possible by an improvement in the state of the resources (in accordance with the criteria already established in the respective legislation in terms of overall capacity ceilings).

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

**Opinion of the European Economic and Social Committee on the
‘Proposal for a Directive of the European Parliament and of the Council on the quality of water
intended for human consumption (recast)’**

(COM(2017) 753 final — 2017/0332(COD))

(2018/C 367/21)

Rapporteur: **Gerardo LARGHI**

Referral	European Parliament, 8.2.2018 Council, 28.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	13.2.2018
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	26.6.2018
Adopted at plenary	12.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	161/1/2

1. Conclusions and Recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Commission’s proposal aimed at updating the Drinking Water Directive and largely endorses its structure, objectives and measures. The Committee is pleased to note that for the first time a legislative process that started with a European Citizens’ Initiative is being brought to completion, broadly in keeping with the aims of that initiative. The Committee also points out that more than 99 % of EU drinking water complies with the existing Directive 98/83/EC.

1.2. In line with its previous opinion ⁽¹⁾, the EESC regrets that the proposal for a directive stops short of explicitly recognising the universal right of access to safe drinking water and sanitation, as called for by the Right2Water ECI and included in the United Nations Sustainable Development Goals ⁽²⁾.

1.3. The EESC considers the model proposed by the World Health Organisation (WHO), based on minimum quantities of water per person per day, to be a viable option. It is important to maintain a holistic approach to this issue ⁽³⁾, integrating the legislation on sustainability and the circular economy, as well as the environmental, economic and social dimensions ⁽⁴⁾.

1.4. In the EESC’s view, the Commission should: endorse the parametric values suggested by the WHO, continue the derogations mechanism in its current form and reconsider the automatic mechanism provided for under Article 12 of the directive. This proposal aims to ensure the highest quality standards, as well as to outline protocols that can be used when there is a real risk to consumers.

1.5. The EESC is in favour of introducing measures requiring Member States to facilitate access to drinking water for vulnerable groups and people living in isolated locations, in disadvantaged or peripheral rural areas. In line with the subsidiarity principle, the detailed implementation of the measures should, however, be made in agreement with the Member States.

⁽¹⁾ EESC opinion, on Water and sanitation are a human right! (OJ C 12, 15.1.2015, p. 33). Point 1.8.

⁽²⁾ United Nations General Assembly Resolution of 25 September 2015: Transforming our world: the 2030 Agenda for Sustainable Development. Goal 6: Achieve universal and equitable access to safe and affordable drinking water for all.

⁽³⁾ EESC opinion on European Innovation Partnership on Water (OJ C 44, 15.2.2013, p. 147). Point 1.2.

⁽⁴⁾ EESC opinion on Integration of water policy into other EU policies (OJ C 248, 25.8.2011, p. 43). Point 1.1.

1.6. The EESC is pleased to see that the precautionary and polluter pays principles have been adopted ⁽⁵⁾ and supports the roll-out of communication campaigns to encourage wider, more informed use of public water; it recommends that all available instruments be used and not solely online tools.

1.7. The EESC recognises that the directive introduces significant new elements in terms of monitoring and the transparency of information. However, in order to increase consumer awareness of the importance of drinking tap water, it recommends that the information conveyed be clear and easily understandable. The EESC underlines the important role of SMEs in the water distribution. In order to avoid bureaucratic burden for SMEs, roles must be proportionate.

1.8. The EESC considers it important to monitor water supply sources in line with Directive 2000/60/EC while establishing — where necessary — water reserves for responding to emergencies, exploring new approaches to alternative sources, such as rainwater, making more rational use of groundwater in order to limit waste.

1.9. The EESC believes that water for domestic use should fall within the scope of the circular economy and that it is important that the Commission directive integrate it within that framework, laying down new rules for the production, recovery and reuse of waste water.

1.10. The EESC is concerned about the fact that the increased costs involved in stepping up monitoring and in modernising and upgrading the network may be passed on solely to the end consumer and will not also be shared between public administrations and supply companies.

1.11. The EESC calls on Member States to introduce adapted water charges for less well-off citizens, those living below the poverty line and those living in disadvantaged rural areas. At the same time, the Committee recommends measures to discourage the use disproportionate amounts of water, thereby promoting appropriate behaviour instead. This should also apply to industrial and agricultural usage of water. The EESC points out the necessity of efficient maintenance of the water supply network. This measure should reduce the gap between pumped volumes and billed volumes in order to combat waste. It is also fundamental, in order to ensure solidarity with lower income groups, to keep degressive tariffs for big users which could contribute to reducing fixed charges.

1.12. The EESC considers water to be a primary public good. For this reason groundwater, hydrogeological basins and large natural water reserves should no longer be privatised, or at least should remain publicly available. In order to ensure availability of drinking water for everybody, the Member State can involve private operators for the distribution of water for domestic and industrial uses. The private operators should, however, play a supporting rather than predominant role vis-à-vis public entities.

1.13. The EESC urges that, in future, a distinction be made between recognition of the right to water and the right to health protection.

2. Background

2.1. Drinking water is a primary good, essential for the health, well-being and dignity of every human being. The quality of life of every individual, as well economic and productive activity, are significantly influenced by the availability of water and disruptions to the hydrological cycle.

2.2. At present, around 40 % of the world's population depend on cross-border basins for their water supply, and by 2030 some two billion people may live in areas affected by water scarcity.

2.3. While the EU undoubtedly has one of the best records in the management of drinking water, there are still two million Europeans who do not enjoy safe, clean and cheap water, although more than 99 % of drinking water meets the requirements of Directive 98/83/EC.

2.4. The quality of water has an impact on the food chain and, in accordance with Regulation (EC) No 178/2002, there must therefore be access to clean water in all areas of the food chain.

⁽⁵⁾ EESC opinion on A blueprint to safeguard Europe's water resources (OJ C 327, 12.11.2013, p. 93). Point 1.5.

2.5. Many factors such as the growing world population, the increasing need for water for domestic, industrial and agricultural uses, as well as pollution and climate change are creating new challenges relating to water supply, access, management and recycling. This is prompting moves to update the current legislation, inter alia, Directive 98/83/EC.

2.6. In 2013 the European Citizens' Initiative known as Right2Water collected more than 1,8 million signatures with the specific aim of updating the existing legislation to meet the new challenges, and essentially calling for recognition of the universal right of access to drinking water and sanitation ⁽⁶⁾.

2.7. The European Parliament ⁽⁷⁾ and the EESC ⁽⁸⁾ strongly supported this initiative, which was based on the UN's Agenda 2030 ⁽⁹⁾.

2.8. As a result of the Right2Water initiative, the Commission launched a public consultation ⁽¹⁰⁾ followed by a formal consultation of all relevant stakeholders, which, inter alia, led to a review of Directive 98/83/EC as part of the REFIT programme. Access to high-quality drinking water and its efficient management constitutes one of the strands of the European social pillar, the system of preventive healthcare and of the supply of safe food and can, together with the reuse of water, form part of the action plan for the circular economy ⁽¹¹⁾.

3. Gist of the Commission proposal

3.1. The foundations that the directive sets out are: updating the list of parameters; the introduction of a risk-based approach; improving rules on transparency and consumer access to up-to-date information; better transparency and access to data; improving the free trade in materials in contact with drinking water; and access to drinking water for all.

3.2. The proposal seeks to tighten up the parameters applicable to water intended for human consumption, partly on the basis of the WHO's specific recommendations ⁽¹²⁾, so as to ensure that water is clean and to ensure greater controls against enteric pathogens and Legionella, add new chemical parameters and new parameters on endocrine disruptors, and introduce more restrictive limits for lead and chromium.

3.3. Member States are to ensure that the supply, treatment and distribution of water intended for human consumption are subject to a risk-based approach focusing on the hazards related to bodies of water used for the abstraction, supply and domestic distribution of water (for the latter the assessments will be every three years, while the supply risk assessments will be every six years).

3.3.1. Member States have the option of adopting additional monitoring for substances and micro-organisms for which no parameters have been set.

3.3.2. The new risk-based approach goes hand in hand with the polluter pays principle.

3.4. The proposal introduces provisions to reduce the existing differences and harmonise the standards on materials in contact with water, which currently represent a barrier to free trade.

3.5. The Member States are called on to ensure access to drinking water for all, with a particular focus on vulnerable and marginalised groups; to improve the quality of the service, where a service is already provided; to ensure that domestic water is affordable; and to launch campaigns encouraging the use of drinking water and informing the public about the quality of drinking water in their area, and about measures adopted to monitor, collect and dispose of waste water.

⁽⁶⁾ www.right2water.eu.

⁽⁷⁾ European Parliament resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water.

⁽⁸⁾ EESC opinion on Water and sanitation are a human right! (OJ C 12, 15.1.2015, p. 33).

⁽⁹⁾ United Nations General Assembly Resolution of 25 September 2015: Transforming our world: the 2030 Agenda for Sustainable Development. Goal 6: Achieve universal and equitable access to safe and affordable drinking water for all.

⁽¹⁰⁾ The Commission received over 5 900 responses and subsequently held formal meetings to discuss transparency and benchmarking.

⁽¹¹⁾ COM(2017) 614 final.

⁽¹²⁾ Drinking Water Parameter Cooperation Project of the WHO Regional Office for Europe: Support to the revision of Annex I Council Directive 98/83/EC on the quality of water intended for human consumption (Drinking Water Directive) Recommendation, 11 September 2017.

3.6. The additional costs will be borne mainly by water operators. Consumers should see a very marginal increase in their household costs. In any case, this does not risk making drinking water unaffordable. Expenditure per household could increase between 0,73 % and 0,76 %, i.e. between EUR 7,90 and EUR 10,40 per year, but the better quality of domestic water could convince people to abandon consumption of bottled water.

3.7. Potential job losses could be compensated for by an increase in employment in the water supply sector and by savings on packaging and on plastic recycling. Jobs must be created primarily where sources of supply are located.

3.8. SMEs, especially those involved with water analysis and treatment, are expected to benefit. Administrative costs to national authorities were assessed as negligible or diminishing.

4. General comments

4.1. The EESC has studied the Commission's proposal aimed at updating the Drinking Water Directive closely. In particular, the Committee welcomes the fact that for the first time a legislative process that started with a European Citizens' Initiative is being brought to completion, broadly in keeping with the aims of that initiative. However, it is pointed out that more than 99 % of EU drinking water complies with Directive 98/83/EC and is of the highest quality⁽¹³⁾.

4.2. However, the Committee regrets that the directive stops short of clearly recognising the universal right of access to drinking water and sanitation, as called for by the ECI Right2Water and included in the United Nations General Assembly Resolution of 25 September 2015: Transforming our world: the 2030 Agenda for Sustainable Development, as well as the Sustainable Development Goals (Goal 6: Achieve universal and equitable access to safe and affordable drinking water for all).

4.3. The EESC endorses the Commission's decision to opt for a directive, in line with subsidiarity, as this is the tool best suited to the specific needs and problems that exist at national and local levels; it does so with the proviso, however, that a holistic approach always be maintained, with due regard, in particular, to all of the other legislation on sustainable development and the circular economy, in order to ensure a high quality of drinking water supply.

4.4. The EESC proposes that, in line with subsidiarity, the Member States can adopt specific measures to facilitate access to drinking water for vulnerable and marginalised groups. However, the Committee has serious doubts concerning the combination of abolishing the current system of derogations at national level and introducing automatic mechanisms under Article 12 of the directive. These measures do not take sufficient account of territorial specificities and may give rise to sudden interruptions to supply, albeit without a real danger to human health. With this in mind, the Committee calls for trends in water composition to be considered more important than intermittent individual data.

4.5. The Committee is in favour of extensive communication campaigns to inform the public about the new health protection rules and to promote wider and more informed use of public water. These campaigns must involve non-digital channels so as to include all sectors of the population. The Commission should assess financial measures to encourage recycling campaigns and financing for those who purchase low water consumption domestic appliances.

4.6. The EESC supports the proposal to harmonise the existing standards on materials in contact with drinking water. In particular, the Committee considers that this measure may help to generate significant economies of scale in the internal market and lead to progress in the field of health.

5. Specific comments

5.1. The EESC considers the experience of the Right2Water initiative to be an important case study, which the Commission should consider with a view to strengthening the European Citizens' Initiative instrument. In particular, the Committee points out that this is the first and only ECI that has gone the full distance, which goes to prove the excessive complexity of the instrument both for the organising committee at the stage of submitting the ECI and gathering statements of support, and as regards the follow-up by the Commission⁽¹⁴⁾, as has been partly acknowledged by the recent proposal for a regulation COM(2017) 482.

⁽¹³⁾ COM 2016/666.

⁽¹⁴⁾ EESC opinion on The European Citizens' Initiative (OJ C 237, 6.7.2018, p. 74).

5.2. The Committee believes that the WHO model, based on minimum quantities of water per person per day, could be a viable option ⁽¹⁵⁾. The EESC considers it crucial that the EU be at the forefront of the fight against global water poverty.

5.3. In accordance with WHO guidelines, it is important to draw up policies that aim at improving access to drinking water for consumers, on the basis of the following indicators:

- safety: possible traces of pathogenic micro-organisms and chemicals should not exceed the tolerance threshold or generate radiological hazards;
- acceptable: water must have an acceptable colour, smell and taste;
- accessible: everyone has the right to water and sanitation facilities that are physically accessible within or in close proximity to the home, school, workplace or healthcare institution;
- affordable: the United Nations Development Programme (UNDP) suggests that water costs should not exceed 3 % of household income.

5.4. The EESC is concerned about the risk of higher costs for consumers and reiterates its call for the right to affordable drinking water to be recognised for all citizens. It therefore calls on the Member States and the Commission to monitor price developments, with a view to greater transparency.

5.5. The EESC considers that updating the directive could generate new opportunities and jobs in many SMEs, especially those involved with water analysis and monitoring, maintenance and new plants. However, the Committee notes that the Commission has given scant attention to whether there are enough suitably skilled workers available who are capable of taking on the new challenges in the sector. The EESC underlines the important role of SMEs in the water distribution. In order to avoid bureaucratic burden for SMEs, roles must be proportionate.

5.6. The EESC warns of the risks that the directive may also create for the mineral water production sector, with considerable repercussions on employment. That risk has not been adequately addressed by the Commission both as regards support to companies for possible industrial restructuring, and as regards support for workers who are out of work and reshaping their skills in order to get back into employment. The EESC considers that these issues need to be managed at European level using all of the tools available, including social dialogue.

5.7. The EESC considers it important to monitor water supply sources in line with Directive 2000/60/EC while establishing — where necessary — water reserves for responding to emergencies, exploring new approaches to alternative sources, such as rainwater, desalination, making more rational use of groundwater in order to limit waste.

Brussels, 12 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

⁽¹⁵⁾ <http://www.ohchr.org/Documents/Publications/FactSheet35en.pdf>.

Opinion of the European Economic and Social Committee on**Proposal for a Regulation of the European Parliament and of the Council on the implementation and functioning of the .eu top-level domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004***(COM(2018) 231 final — 2018/0110 (COD))**(2018/C 367/22)*Rapporteur: **Philippe DE BUCK**

Consultation	European Parliament, 28.5.2018 Council, 5.6.2018
Legal basis	Article 172, first paragraph, of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	28.6.2018
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	133/1/0

1. Conclusions and recommendations

1.1. The EESC supports the objectives contained in the proposed Regulation on the implementation and functioning of the .eu top-level domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004. The aim is, on the one hand, to deal with outdated provisions and, on the other hand, to be able to react more quickly to upcoming developments.

1.2. The EESC wishes to underline the fact that due to the importance of an internet identifier for EU citizens, companies and organisations, the .eu domain name has to be considered as a Service of General Interest (SGI). This is the reason why it should be considered that the registry has to be a non-profit organisation, dealing only with the operational management of the domain name, and that any surplus has to be passed to the EU budget.

1.3. The EESC takes note that the registry is appointed after an open tender procedure but wants to stress that everything should be undertaken to maintain .eu operations without any disruptions. An open tender procedure could have a negative effect on the stability of the staff involved, on stable relations with the multiple registrars and on the trust and reputation of the domain name. All the selection criteria should therefore be clearly defined well in advance. In particular if the registry could or could not be a commercial company. In any event, it requests that the entire process is made wholly transparent.

1.4. The Commission should define if the registry has to be a non-profit organisation or not.

1.5. The EESC supports the creation of a Multistakeholder Council and wishes to be represented in it.

1.6. The EESC endorses the widening of the eligibility conditions for physical persons to obtain a .eu domain name. Residence within a Member State of the European Union is no longer a prerequisite. Allowing any national of a Member State, whatever their country of residence, to obtain a .eu domain name will not only increase the profile of the EU, but will also explicitly demonstrate an affinity with the EU.

1.7. Brexit will have consequences for the eligibility criteria when, and if, the UK leaves the European Union, or when any potential transition period comes to an end. All the bodies dealing with the governance and the operational responsibilities of the .eu domain name should prepare for the new circumstances, and the .eu domain name owners concerned should be informed in good time about the withdrawal of their rights. Realistic deadlines should be fixed.

1.8. The EESC asks for a smooth transition period with the current incumbent operator. As the contract of the current registry, namely EURid, is coming to an end in October 2019, and it is likely that the new regulation and the implementing acts of the Commission will not be fully enforceable at that time, a transition period will be required, which means that the contract with EURid will either need to be extended or renegotiated. The EESC considers that, as the contract may need to be amended, those negotiations should start as early as possible in order to avoid any disruption to the operation of the .eu domain name.

2. Introduction

2.1. The .eu top-level domain (TLD) is the domain name of the European Union and its citizens. It is assigned to the EU and is managed by the European Commission. The .eu TLD was set up by Regulation (EC) No 733/2002 on the implementation and functions of the .eu top-level domain. It is further governed by the rules laid down in Regulation (EC) No 874/2004, and subsequent amendments, which sets out public policy rules concerning the implementation and functioning of the .eu TLD and the principles governing registration. The .eu TLD was delegated by ICANN (the Internet Corporation for Assigned Names and Numbers) in March 2005, and was launched in April 2006 after a so-called sunrise period in December 2005.

2.2. The .eu TLD was established with the aim of boosting the internet identity of the European Union and its citizens, promoting the EU's image on the global information networks and raising the profile of the EU's internal market on the virtual marketplace of the internet.

2.3. In line with the objectives of the Digital Single Market Strategy, the .eu TLD enables European businesses and citizens to participate in e-commerce and increases their participation in the online single market.

2.4. The .eu **TLD registry** is an organisation that is selected by the European Commission based on an open bid and for a five-year period. Since its inception, it has been managed by EURid, a non-profit organisation, which operates under contract for the European Commission. The current contract with EURid ends in October 2019. Until up now the .eu domain name has been well managed. EURid has received an award of best registry based on a satisfaction survey of registrars.

2.5. The .eu domain names can be registered via a network of '**accredited registrars**'. Currently, the .eu domain name can only be registered by a natural person, company or organisation ('**registrant**') residing or established in the European Union, Iceland, Liechtenstein or Norway ('residence restriction').

2.6. Some names relating to geographical concepts are reserved. These reservations can be put in place by the EU institutions, the Member States, EEA countries, and countries in the EU accession phase, as well as by EURid. Regulation (EC) No 1654/2005 sets out the list of reserved names (for example 'republicaportuguesa', 'hrvatska') and states that the list of names set out in the annex to the regulation shall only be reserved or registered as second-level domain names directly under the .eu TLD.

2.7. The .eu TLD ranks among the largest international TLDs. According to the Commission's data, there are over 3,8 million registrations. After .de, .uk and .nl it is the fourth-largest TLD at European level. There are over 700 accredited registrars worldwide. The growth in .eu registrations since its launch is significant; however, over the last two years growth has begun to flatten. The average renewal rate (80 %) is higher than the overall average rate (70-75 %). In addition, the use of mobile applications, search engines and social media to access online content reduces the visibility of domain names, putting pressure on traditional domain names.

2.8. Since the adoption of the .eu regulations, the online environment and the EU political and legislative context have experienced significant changes. With the rapid rise of new generic top-level domains (such as .top, .trade, .club or .xyz), competition in the field of domain names has increased considerably. This has had an impact on the registries-registrars dynamics. The latter are now more empowered to decide on which registries get the better visibility when offering domain names to their customers. At the same time, the governance of the internet and the dynamic TLD ecosystem have undergone substantial technical changes. The .eu TLD registry operator needs to respond to increasingly complex quality requirements.

2.8.1. Additionally, the advent and rise of social media platforms has changed the demand for unique online identifiers. Unique online identifiers are any type of strings (domains, usernames) that allow an online presence. Individuals and SMEs have cheap and convenient alternatives to establish their online presence. This has a significant impact on the domain name market.

2.9. According to the Commission, the key problems in the current framework to be addressed are:

2.9.1. The .eu TLD is governed by an outdated and rigid legal framework that cannot be easily updated. The regulations contain very detailed provisions that may not be relevant any more, impacting the day-to-day management of the .eu domain. It does not have the flexibility needed to efficiently cope with a rapidly changing Domain Name System (DNS) market.

2.9.2. The current structure does not provide for an optimum governance structure in terms of oversight and accountability vis-à-vis the registry operator; it does not take into account the multistakeholder nature of internet governance and does not provide sufficient supervisory powers to the Commission vis-à-vis the registry operator.

2.9.3. The current rules do not allow the .eu TLD registry to sell .eu domain names directly to customers itself. This may hamper its ability to market its services effectively.

3. Summary of the Commission proposal

3.1. The key aspects of the new proposal are:

3.1.1. *A legal framework that will encompass:*

- principle-based, flexible and future-proof **regulations**,
- comitology procedures restricted to key aspects of the management of the .eu TLD, such as selection criteria for the registry operator or reserved domain names,
- a contract between the Commission and the registry operator with all the relevant detailed principles and procedures. That includes the policies and procedures relating to the domain name management as annex. That would mean that any technical changes in the future will have to go through a contractual revision.

3.1.2. *Improvements with respect to the governance and management of the .eu TLD by means of:*

- an advisory body, the **Multistakeholder Council**, to assist and advise the Commission on the correct implementation of the regulation and the operation of the .eu domain.
- new supervisory powers for the Commission vis-à-vis the registry with the aim of better supervising the organisation, administration and operations of the .eu TLD and verifying the registry's compliance with the regulation. The registry will be audited every two years by an external auditor.

3.1.3. *Expanding the current eligibility criteria for registration of .eu domain names:*

- EU citizens residing in third countries will be entitled to register a .eu domain; natural persons and undertakings from third countries based in the European Union (with residency/establishment respectively) are also entitled to register a .eu domain.

3.1.4. *Lifting the strict prohibitions on vertical separation:*

- the Commission could extend the scope of the registry's services (selling domain names to end-users; direct registrations of domain names on the website of the registry) without prejudice to the application of the rules on fair competition.

3.2. The Commission will monitor the application of the regulation and submit a report on its evaluation no later than five years after the date of its application. Additionally, the progress of the .eu TLD will be regularly monitored via the submission of a report on the implementation, effectiveness and functioning of the domain name three years after the submission of the aforementioned evaluation report and every three years thereafter.

3.3. The proposal is consistent with the objectives of the Digital Single Market Strategy, which include promoting European entrepreneurship and start-ups while at the same time reinforcing security and trust in the online environment. The regulation should be implemented in compliance with the fundamental rights in the area of data protection, privacy, security and multilingualism. Personal data protection by design and data protection by default should be embedded in all data processing systems and databases developed and/or maintained.

4. General comments

4.1. The EESC supports the objectives contained in the proposed Regulation on the implementation and functioning of the .eu top-level domain name and repealing Regulation (EC) No 733/2002 and Commission Regulation (EC) No 874/2004. The aim is, on the one hand, to deal with outdated provisions and, on the other hand, to be able to react more quickly to upcoming developments.

4.2. The EESC wishes to underline the fact that due to the importance of an internet identifier for EU citizens, companies and organisations, the .eu domain name has to be considered as a Service of General Interest (SGI). This is the reason why it should be considered that the registry has to be a non-profit organisation, dealing only with the operational management of the domain name, and that any surplus has to be passed to the EU budget.

4.3. The EESC takes note that the registry is appointed after an open tender procedure but wants to stress that everything should be undertaken to maintain .eu operations without any disruptions. An open tender procedure could have a negative effect on the stability of the staff involved, on stable relations with the multiple registrars and on the trust and reputation of the domain name. All the selection criteria should therefore be clearly defined well in advance. In particular if the registry could or could not be a commercial company.

4.4. The domain name environment and market are indeed evolving due to new internet stakeholders, the multiplication of generic domain names and the rapid evolution of internet communication on the part of businesses and private users.

4.5. The EESC supports the fact that the new regulation is based on principles, which means that only the basic and broad principles are fixed in the proposed rules. This means that a number of specific regulatory elements, such as the reserved domain names and the criteria for the selection of the registry, will be set out in detail by the Commission via implementation acts and comitology. Other, more detailed specifications imposed upon the selected registry will be negotiated and fixed as part of the contract.

4.6. Although the EESC favours a more flexible approach in negotiations on the regulation and the contract, it requests that the entire process for publication of the call for tenders and the negotiation of the contract be made wholly transparent from the very beginning and throughout the process. Applicants should have a clear idea of the obligations, conditions and rights when they prepare their answers to the bid as well as when they prepare the contract negotiations.

4.6.1. Compared to the current regulation, the new regulation does not exclude vertical integration, which means that the appointed registry may also function as a registrar and offer the .eu domain name to the market. The EESC could accept this innovation, particularly in countries or regions where registrants have a limited choice of local registrars. This would encourage an increase in the market penetration of the .eu domain name, especially for its variants in other scripts.

4.6.2. Likewise, according to the new proposal, it will not be mandatory for the appointed registry to be a not-for-profit organisation. If the Commission confirms this approach it will, in the EESC's view, constitute a major change that will have significant consequences. This is because commercial entities will act differently, as they will need to make a profit on the .eu domain name, and the surpluses generated by the registry will no longer be transferred to the EU budget. The EESC wants the Commission to clarify this as soon as possible, so that the legislative process can be conducted with all relevant information made available.

4.6.3. As written in the Impact Assessment, it is worth highlighting the fact that the European Union has benefited from the current registry set-up because it has allowed the Commission to support a series of projects and initiatives such as the EuroDIG and ICANN meetings in Brussels.

4.7. An important new addition will be the creation of a Multistakeholder Council, which according to Recital 20 will be based on a coherent set of global and inclusive internet principles. The membership of the Council, according to Article 14 (2), will be made up of the following six groups: governments of Member States, the private sector, civil society, academics, international organisations and the technical community.

4.7.1. The EESC can fully support this approach as, with regard to the internet, these stakeholders will be able to advise the EU institutions about shared principles, norms, rules, decision-making procedures and programmes that shape the use and development of the internet. Nevertheless the EESC underlines the importance of better specifying that the role of the Multistakeholder Council will not be to intervene in the .eu operational management. The EESC therefore requests the Commission to clarify the role and scope of such a council. Sufficient financial means have to be provided for this council to be able to function properly.

4.7.2. It seems logical that the Committee, as a representative of organised civil society, and taking into account the important work that it has produced (including on relevant topics such as the digitalisation of the economy and the evolution of e-commerce), has the necessary credentials to be represented in the Council.

4.8. The EESC also welcomes the fact that supervision of compliance with the legal obligations of all the processes conducted by the registry will be reinforced by the imposition of an external audit to be performed every two years. In addition, the Multistakeholder Council will advise on how and to what extent an audit should be conducted.

4.9. The EESC endorses the widening of the eligibility conditions for physical persons to obtain a .eu domain name. Residence within a Member State of the European Union is no longer a prerequisite. Allowing any national of a Member State, whatever their country of residence, to obtain a .eu domain name will not only increase the profile of the EU, but will also explicitly demonstrate an affinity with the EU.

5. Specific comments

5.1. As the contract of the current registry, namely EURid, is coming to an end in October 2019, and it is likely that the new regulation and the implementing acts of the Commission will not be fully enforceable at that time, a transition period will be required, which means that the contract with EURid will either need to be extended or renegotiated. The EESC considers that, as the contract may need to be amended, those negotiations should start as early as possible in order to avoid any disruption to the operation of the .eu domain name.

5.2. The EESC is pleased to see that alternative dispute resolution (ADR) procedures are complemented with online dispute resolution (ODR) possibilities.

5.3. Recital 16, Article 11(f) allows competent authorities to have access to registry data for the purposes of prevention, detection and prosecution of crime. The current drafting suggests that law enforcement authorities may have unfettered, indiscriminate access to registration data. Any legal obligation for cooperation with competent authorities should also highlight checks and balances and limitations on such obligations.

5.4. Article 12.1 states that: 'The Registry shall set up and manage a WHOIS database facility for the purpose of providing *accurate and up-to-date registration information* under the .eu.' Achieving data accuracy in the WHOIS is challenging in the Domain Name System (DNS), where data is entered by multiple parties over which the registry has little effective control. E.g. it is typically the registrar who holds the contract with the end-user (registrant). While some registries implement after-the-fact checks for data accuracy, it is not feasible for any domain name registry to guarantee that data in the WHOIS is 100 % accurate or up-to-date. There is a risk that such a provision could set an unrealistic and unachievable level of accuracy.

5.5. The definition of the term 'Registry' (Article 2(a)) includes the wording '**...and dissemination of the TLD zone files**'. The language is ambiguous, and could be interpreted as compelling the Registry to publish its zone file. Most ccTLDs do not publish their zone files for privacy and cybersecurity reasons. The drafting of the definition should clarify that publication of the zone file is not required.

5.6. Brexit will have consequences for the eligibility criteria when, and if, the UK leaves the European Union, or when any potential transition period comes to an end. All the bodies dealing with the governance and the operational responsibilities of the .eu domain name should prepare for the new circumstances, and the .eu domain name owners concerned should be informed in good time about the withdrawal of their rights. Realistic deadlines should be fixed.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

Opinion of the European Economic and Social Committee on**Council directive amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC***(COM(2018) 261 final — 2018/0124 (CNS))**(2018/C 367/23)*

Consultation	Council of the European Union, 29.5.2018
Legal basis	Articles 113 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	174/0/2
(for/against/abstentions)	

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decides unanimously not to hold a general discussion and to put the opinion straight to the vote (Rule 50(4) and 56(3)).

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on

Proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud

(COM(2018) 298 *final* — 2018/0150(CNS))

(2018/C 367/24)

Consultation	Council of the European Union, 11.6.2018
Legal basis	Article 113 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	175/1/3
(for/against/abstentions)	

Since the Committee endorses the content of the proposal and has already set out its views on the subject in its earlier opinion on the 'VAT — derogation — reverse charge' ⁽¹⁾ adopted on 31 May 2017, it decided, at its 536th plenary session of 11 and 12 July 2018 (meeting of 11 July 2018), by 175 votes to one with three abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the abovementioned document.

Brussels, 11 July 2018.

*The President
of the European Economic and Social Committee*
Luca JAHIER

⁽¹⁾ OJ C 288, 31/08/2017, p.52

Opinion of the European Economic and Social Committee on**Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 110/2008 as regards nominal quantities for placing on the Union market of single distilled shochu produced by pot still and bottled in Japan***(COM(2018) 199 final — 2018/0097 COD)**(2018/C 367/25)*

Consultation	European Parliament, 2.5.2018 Council of the European Union, 30.4.2018
Legal basis	Article 114(1) of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote (for/against/abstentions)	170/0/5

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 536th plenary session of 11 and 12 July 2018 (meeting of 11 July), by 170 votes to none with five abstentions, to issue an opinion endorsing the proposed text.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

Opinion of the European Economic and Social Committee on

Proposal for a Decision of the European Parliament and of the Council amending Council Decision 2003/17/EC as regards the equivalence of field inspections carried out in Brazil on fodder plant seed-producing crops and cereal seed-producing crops and on the equivalence of fodder plant seed and cereal seed produced in Brazil, and as regards the equivalence of field inspections carried out in Moldova on cereal seed-producing crops, vegetable seed-producing crops and oil and fibre plant seed-producing crops and on the equivalence of cereal seed, vegetable seed and oil and fibre plant seed produced in Moldova

(COM(2017) 643 *final* — 2017/0297 (COD))

(2018/C 367/26)

Consultation	Council of the European Union, 18.6.2018
Legal basis	Article 43(2) of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted at plenary	11.7.2018
Plenary session No	536
Outcome of vote	166/0/4
(for/against/abstentions)	

On 18 June 2018, the Council decided to submit for consultation to the European Economic and Social Committee the compromise text 9299/18 approved by the Permanent Representatives Committee at its meeting of 27 April 2018, following the amendment of the legal basis to refer to Article 43(2) TFEU.

Since the Committee had already set out its views on the contents of the original proposal in opinion EESC 2018/00043 (NAT/726), adopted on 14 February 2018 (*), it decided at its 536th plenary session, held on 11 and 12 July 2018 (meeting of 11 July), by 166 votes to none with 4 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the abovementioned document.

Brussels, 11 July 2018.

The President
of the European Economic and Social Committee
Luca JAHIER

(*) OJ C 227, 28.6.2018, p. 76.

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