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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

559TH PLENARY SESSION OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE –
INTERACTIO, 24.3.2021-25.3.2021**Opinion of the European Economic and Social Committee on ‘Challenges of teleworking:
organisation of working time, work-life balance and the right to disconnect’****(Exploratory opinion at the request of the Portuguese Presidency)**

(2021/C 220/01)

Rapporteur: **Carlos Manuel TRINDADE**

Request from the Portuguese Presidency of the Council	26.10.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adoption in section	11.3.2021
Adoption in plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	221/15/20

1. Conclusions and recommendations

1.1. The EESC recognises that during the COVID-19 pandemic, teleworking has helped to ensure that the economy has continued to function and has saved jobs in the various Member States, limiting the loss of activity. Millions of European workers began working from home — around 40 % according to Eurofound estimates.

1.2. Before the pandemic, telework accounted for a much lower proportion of all work than in the US or Japan (less than half). The pandemic expedited the shift to teleworking, however, and it became essential in tackling the health crisis. Businesses, workers and society are consequently facing huge challenges. Obviously there will be numerous lessons to be learned from the pandemic, enabling us to make the most of opportunities and eliminate the risks associated with telework.

1.3. In this respect, the EESC acknowledges the far-sightedness of the European social partners in their 2002 Agreement on Telework. The EESC calls on the social partners in the Member States to continue social dialogue and collective bargaining, and to draw up rules tailored to each of their countries and to each sector-specific situation.

1.4. The EESC takes the view that any solutions must factor in the economy's transition towards digitalisation, towards more sustainable development and towards reducing existing inequalities.

1.5. The EESC urges the Commission and Member States to monitor the implementation of the 2002 Agreement on Telework and the 2020 Agreement on Digitalisation. In the light of the experience gained from the pandemic existing regulations in the EU and in the Member States could be amended and new regulations created so as to promote the positive aspects of telework and protect the fundamental rights of workers. The EESC notes that the organisation of working time, the risks to health and safety at work, work-life balance, the right to disconnect and the effectiveness of labour rights when teleworking must be given special attention. Developments in technology and in ways of working are gathering pace, meaning that rules and practices need to be adapted to new conditions in the future.

1.6. The EESC highlights the need for Member States, with the involvement of the social partners, to ensure that there is an appropriate national framework for teleworking, setting out the rules of play for companies and workers interested in adopting this form of work.

1.7. The EESC urges the Member States to transpose and implement the Work-Life Balance Directive.

1.8. The EESC emphasises that the 2002 and 2020 agreements concluded by the European social partners include the key principles making it possible to leverage the positive effects of teleworking, while minimising the negative effects.

1.9. The EESC is of the view that, in terms of regulation, the key issues are to ensure: that teleworking is voluntary and reversible and that teleworkers have the same individual and collective rights as comparable workers in the companies that they work for, including by organising work so as to ensure that workload is comparable; that the teleworking arrangements are set out in written form; and that specific measures are established, where necessary, to guarantee the effectiveness of teleworkers' rights, including health and safety conditions at work.

1.10. The EESC recognises that it is important for all issues relating to equipment, responsibilities and costs to be clearly defined before commencing telework. As a general rule, the EESC deems employers to be responsible for providing, installing and maintaining the equipment necessary for telework. The employer should cover directly the costs incurred in teleworking, in particular those in relation to communication (consumables, mobile phone, internet).

1.11. The EESC suggests that in relation to teleworking, and in accordance with European and national legislation on telework and collective bargaining agreements at national, regional, sectoral and company level, companies should use appropriate mechanisms to measure normal working hours and overtime.

1.12. The EESC believes that the methods of monitoring and recording working time should be strictly geared to this objective. They should be known to workers, be non-intrusive and avoid breaching workers' privacy, while taking into account the applicable data protection principles.

1.13. The EESC stresses that teleworkers must not be disadvantaged in their working life, in particular as regards the development of their professional career, continuing learning, access to the company's internal information, trade union participation and representation, specific labour rights (occupational medicine, insurance, etc.) and access to other specific rights within the company.

1.14. The EESC believes that, following studies on the impact of teleworking, a joint process by the European Commission, the ILO and the OECD should be initiated with a view to drawing up an ILO convention on teleworking. The EESC also considers that decent telework conditions should be part of the ILO Decent Work Agenda and the corresponding national programmes.

2. Conceptual aspects and background to teleworking

2.1. This opinion aims to respond to questions raised by the Portuguese Presidency on the challenges of teleworking with regard to the organisation of working time, work-life balance and the right to disconnect, with a view to promoting the European social model. These questions include the gender perspective, which will be explored in a separate opinion (SOC/662) to be read in conjunction with this one.

2.2. The EESC appreciates the work done by the International Labour Organization (ILO) and Eurofound on teleworking methodologies and related concepts, which has made it possible to compare European and international data ⁽¹⁾.

2.3. When referring to this type of work, the EESC uses the term 'teleworking' to mean professional activities carried out remotely, away from the company's premises and making use of ICT equipment. The place where the work is carried out and the use of ICT are therefore two of the defining aspects of teleworking. The EESC recognises that there are different ways to telework, depending on existing national laws and practices. This opinion will focus on teleworking by employees and will not consider the issue of self-employed workers, something that will have to be covered in an opinion of its own in the future.

2.4. Teleworking has been subject to regulatory policies. Although there are no specific European or international directives or rules on teleworking, the EU does have applicable legislation, *inter alia* Directive 2003/88/EC of the European Parliament and of the Council on the organisation of working time ⁽²⁾, Council Directive 89/391/EEC on safety and health at work ⁽³⁾, Directive (EU) 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union ⁽⁴⁾ and Directive (EU) 2019/1158 of the European Parliament and of the Council on work-life balance ⁽⁵⁾. The EESC calls on the Member States to now effectively transpose these directives.

2.5. The European social partners have also focused their attention on this area. The Framework Agreement on Telework (an autonomous agreement) was signed in 2002, but implementation has been uneven across Europe. It highlights several aspects of telework such as: its voluntary nature; equal treatment with comparable workers at the organisation, with specific reference to workload, access to training and collective rights; reversibility; the fact that teleworking does not alter workers' employment status; respect for teleworkers' privacy; data protection and compliance with rules on health and safety at work. In order to verify that health and safety rules are correctly applied, employers, trade union or workers' representatives and other relevant authorities have access to the workplace within the limits specified in national laws and collective bargaining agreements. If teleworkers are working in their own homes, access is subject to prior notification and requires their agreement. Teleworkers have the right to request visits for inspection purposes.

2.6. In June 2020 the European social partners signed an autonomous framework agreement on digitalisation covering specific four areas in particular: digital skills and securing employment; the modalities of connecting and disconnecting; artificial intelligence and guaranteeing of human control principle; and respect of human dignity and surveillance. The EESC considers it necessary to carry out an assessment of the results of implementing the provisions set out in this agreement as soon as possible. The EESC calls on the Commission, the Member States, and the Social Partners to promote the swift and proper implementation of the agreement. A European legislative initiative could potentially be launched under the Treaty on the Functioning of the European Union (Articles 151 et seq. TFEU), and/or at Member State level, to protect and give effect to the right of workers to disconnect.

2.7. Important work has also been, and will continue to be, done by the European social partners in a significant number of sectors. A non-exhaustive list of agreements in the areas of teleworking and digitalisation, which demonstrates the effort made through social dialogue, can be found in the annex.

2.8. At Member State level, labour law regulates areas relevant to teleworking, such as the duration and organisation of working time, employment relationships and health and safety at work, through specific provisions, including the requirement for a written contract of employment. The Framework Agreement on Telework has had an influence on the content of the rules adopted.

⁽¹⁾ Alex Soojung-Kim Pang (2017) *Rest — Why you get more done when you work less* (Penguin Life, 2018).

⁽²⁾ OJ L 299, 18.11.2003, p. 9.

⁽³⁾ OJ L 183, 29.6.1989, p. 1.

⁽⁴⁾ OJ L 186, 11.7.2019, p. 105.

⁽⁵⁾ OJ L 188, 12.7.2019, p. 79.

2.9. Teleworking has been, and will continue to be, the focus of collective bargaining and of national, sectoral and company-level agreements (agreements that in some cases are tripartite), which were also influenced by the 2002 European agreement. Collective bargaining often takes place at company level, meaning that not as much is known about the content of the agreement ⁽⁶⁾.

2.10. The situation in Member States in eastern Europe is an exception in this respect. The EESC calls on the social partners in these Member States to negotiate or update agreements on teleworking.

2.11. According to data from the 2015 European Working Conditions Survey, the overall proportion of people teleworking was high in the Nordic countries — Denmark (37 %), Sweden (33 %) — and the Netherlands (30 %); it was average in countries such as Luxembourg (26 %), France (25 %), Estonia (24 %), Belgium (24 %) and Finland (24 %); and it was low in half of EU countries, ranging from 12-13 % (Germany, Spain, Bulgaria, Lithuania and Romania) to 7-11 % (Italy, Czechia, Poland, Slovakia, Portugal and Hungary). It should be noted that, in general, half of teleworkers are 'occasional' teleworkers and just under a quarter are 'regular' teleworkers (home-based telework) ⁽⁷⁾.

2.12. Recent findings from research include ⁽⁸⁾:

2.12.1. In 2019, only 5,4 % of those employed in the EU-27 usually worked from home — a proportion that has remained virtually unchanged over the last decade; however, between 2009 and 2019, the proportion of those who sometimes worked from home increased from 5,2 % in 2009 to 9 % in 2019; ILO studies report that the rate of teleworking (including 'mobile' teleworking) among the EU workforce as a whole is 8 %, compared with 20 % in the US and 16 % in Japan ⁽⁹⁾.

2.12.2. The prevalence of teleworking varies greatly between sectors and occupations, and is particularly high in the information and technology sectors and in knowledge-intensive sectors, as well as among highly-qualified professionals. The industrial structure in the Member States, the distribution of employment by firm size, the self-employment rate and workers' digital skills are some of the factors which explain the differences and variations in the prevalence of teleworking across Member States.

2.12.3. Disparities in access to telework and to the forms of protection enjoyed by workers may exacerbate inequalities between workers, including the question of gender, which is being addressed in SOC/662. A solution must be found to this problem.

2.12.4. Building up workers' digital skills is key to addressing the challenges arising as a result of technological change and new ways of working (in 2019, less than 25 % of businesses in the EU had training in digital skills, ranging from 6 % in Romania to 37 % in Finland).

2.13. Due to the COVID-19 outbreak, many millions of workers in Europe began working from home, with Eurofound estimating that around 40 % started teleworking full-time as a result of the pandemic. In most cases this has been made compulsory following decisions taken by the public authorities for health control reasons.

2.14. The EESC reaffirms its various opinions ⁽¹⁰⁾ on topics relating to the future of work, digitalisation, the organisation of working time and work-life balance.

⁽⁶⁾ Eurofound and ILO, *Working anytime, anywhere: The effects on the world of work* (2017), pp. 51-54 (hereinafter 'Eurofound and ILO 2017').

⁽⁷⁾ European Commission, *Telework in the EU before and after the COVID-19: where we were, where we head to, Science for Policy Briefs*, 2020.

⁽⁸⁾ *Idem*.

⁽⁹⁾ ILO, *Telework in the 21st century*, 2019, p. 294.

⁽¹⁰⁾ OJ C 129, 11.4.2018, p. 44, OJ C 197, 8.6.2018, p. 45, OJ C 237, 6.7.2018, p. 8, OJ C 367, 10.10.2018, p. 15, OJ C 440, 6.12.2018, p. 37, OJ C 232, 14.7.2020, p. 18.

3. The opportunities and risks of teleworking

3.1. For companies, teleworking can lead to productivity gains, though it may pose difficulties in terms of organisational culture and the organisation of work. From a business perspective, the use of teleworking has multiple objectives, including ⁽¹¹⁾:

- i. organising work on the basis of results, giving workers more autonomy and responsibility for results;
- ii. working with increased productivity and efficiency (with fewer interruptions);
- iii. saving space in premises/offices and making savings on associated costs;
- iv. facilitating access to work for certain categories of workers (those with care responsibilities or with physical disabilities).

3.2. For workers, teleworking can make it easier to balance their work and private life and reduce the costs of commuting. In general, teleworking can offer greater autonomy and can result in better concentration and increased productivity ⁽¹²⁾. However, autonomy does not always compensate for the negative effects on health and well-being and it may even increase the intensity of work when combined with excessive workloads and competitive organisational cultures that insist on high performance, resulting in excessive (and unpaid) workloads and insufficient rest periods ⁽¹³⁾.

3.3. The EESC highlights the fact that teleworking makes a positive contribution to sustainable development and decarbonisation of the economy, in addition to facilitating urban mobility.

3.4. The EESC notes that the negative impact of the COVID-19 pandemic has been substantially reduced due to telework. The significant increase in telework has enabled many areas of the economy to survive.

3.5. The EESC notes that the blurring of the boundaries between working and non-working hours can lead to an increase in the number of hours actually worked and in the intensity of work, along with difficulties in disconnecting from work and detrimental effects on family time. Measuring and monitoring working time represents a major challenge for labour inspectorates in the Member States, one that needs to be properly addressed.

3.6. Research highlights the risks to workers. These not only include risks related to the various kinds of isolation, such as stress, depression and anxiety, but also musculoskeletal risks, headaches, fatigue and sleeping disorders, not to mention the new digital issues such as 'virtual presenteeism'. The effect of presenteeism on working life varies. According to Eurofound, the experience is negative for some workers, while others are satisfied that they can work from home rather than go into their employer's premises when they are feeling unwell. However, this should not encroach upon the right to sick leave. Teleworking also poses major difficulties such as organising and participating in trade union activities, invisibility, invasion of privacy and the dispersal of teleworkers.

3.7. The EESC notes that teleworking entails other risks, such as those connected with cybersecurity, which need to be properly addressed in order to protect businesses and the privacy of teleworkers. A further risk associated with teleworking is the potentially negative impact on the existing working culture in units producing goods and services or in associations and/or voluntary organisations.

3.8. Teleworking requires ICT skills and access to equipment and services, along with living and other conditions conducive to teleworking. This raises the issue of economic and social inequalities.

3.9. The EESC acknowledges that telework could make the labour market more inclusive with respect to some groups at risk of discrimination: people with disabilities, pregnant women and single-parent families in particular often come up against structural barriers to finding jobs.

⁽¹¹⁾ Eurofound and ILO 2017, p. 51.

⁽¹²⁾ Eurofound, *Telework and ICT-based mobile work: flexible working in the digital age*, 2020, p. 53 (hereinafter 'Eurofound 2020').

⁽¹³⁾ Eurofound and ILO 2017, p. 40.

3.10. The EESC is of the view that, in terms of regulation, the key issues are to ensure: that teleworking is voluntary and reversible — apart from in exceptional cases such as the pandemic, when the public authorities make it obligatory — and that teleworkers have the same individual and collective rights as comparable workers in the companies that they work for; that teleworking arrangements are set out in written form; and that specific measures are established, where necessary, to guarantee the effectiveness of teleworkers' rights and their equal treatment with other workers.

3.11. In the EESC's view, regulating telework could ensure decent working conditions and help reduce inequalities and in-work poverty⁽¹⁴⁾.

3.12. The EESC deems employers to be responsible for training and for providing, installing and maintaining the equipment necessary for telework. The employer should cover directly the costs incurred in teleworking, in particular those in relation to communication (consumables, mobile phone, internet).

3.13. All necessary measures should be taken to protect data relating to teleworking, in particular teleworkers' personal data.

3.14. The EESC points to the significant increase in surveillance, control and monitoring systems applied to the activity of teleworkers in most companies. The EESC recommends that such monitoring tools take account of the principles underpinning data protection and, if necessary, that they be covered in future European legislation and/or collective bargaining at national, regional, sectoral and company level between the social partners in the Member States.

4. The challenges of teleworking

4.1. Organisation of working time

4.1.1. The EESC notes that research into the effects of teleworking on working time has unequivocally identified the pattern of long working hours as the main disadvantage of this form of work⁽¹⁵⁾. Employees are able to structure their working day and to avoid commuting, but the downside is that they work longer hours at night and at the weekend.

4.1.2. The EESC is pleased to see that the European social partners recently agreed that regular exchange of views between managers and workers and/or their representatives on workload and work processes⁽¹⁶⁾ are amongst the measures to be considered as part of the joint partnership process which is the basis of the accord.

4.1.3. In fact, a Eurofound⁽¹⁷⁾ study found that:

4.1.3.1. While carrying out 'regular' telework, around 30 % of workers work in their free time on a daily basis or several times a week; around 50 % of workers are interrupted to take on unscheduled tasks and around 20 % work more than 48 hours a week (around 30 % if they are 'mobile' and 10 % if they are 'occasional' teleworkers).

4.1.3.2. Around 40 % of 'regular' teleworkers rest for fewer than 11 hours (the figure is around 25 % for 'occasional' and 60 % for 'mobile' teleworkers).

4.1.4. Eurofound surveys show that the intensity of work is a common problem in European countries (for example 37 % of workers report being subject to tight deadlines) and that this is more common among teleworkers, particularly mobile teleworkers⁽¹⁸⁾.

⁽¹⁴⁾ See the resolution recently adopted by the European Parliament.

⁽¹⁵⁾ *Telework in the 21st century*, ILO, 2019, p. 298.

⁽¹⁶⁾ European Social Partners Framework Agreement on Digitalisation, June 2020, p. 10.

⁽¹⁷⁾ *Further exploring the working conditions of ICT-based mobile workers and home-based teleworkers*, Working paper, 2020, pp. 23-33.

⁽¹⁸⁾ Eurofound *6th European Working Conditions Survey, Overview report*, 2016, pp. 47-51. See also previous footnote.

4.1.5. The impact on health and well-being of the intensive use of ICT equipment such as working on computer screens or smartphones should be assessed. Negative effects which can be aggravated by teleworking include: psychological stress, eye strain, anxiety, headaches, fatigue, sleep disorders and musculoskeletal problems ⁽¹⁹⁾.

4.1.6. Although there are European laws that can be applied to teleworking, it is necessary to assess whether the Working Time Directive and the other directives referred to in point 2.4, and the Agreements on Teleworking (2002) and on Digitalisation (2020), are sufficient to protect these workers ⁽²⁰⁾. In this regard, the EESC notes the importance of European case-law, which states that '(...) Member-States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured' ⁽²¹⁾. The EESC notes that it is for the Member States to determine the specific arrangements for implementing such a system, taking into account, inter alia, differences between sectors and activities ⁽²²⁾.

4.1.7. Bearing this in mind, the EESC suggests that in relation to teleworking, and in accordance with European and national legislation on telework and collective bargaining agreements at regional, sectoral and company level, companies should use appropriate mechanisms to measure normal working hours and overtime.

4.1.8. The EESC takes the view that the concept of equal treatment among comparable workers in the same company applies to conditions for health and safety at work, to organising work in such a way as to ensure that the workload is comparable and to the right for trade unions/workers' representatives to access the place where telework is carried out within the limits set by national laws and collective bargaining agreements.

4.1.9. Teleworkers must not be disadvantaged in their working life, in particular as regards the development of their professional career, continuing learning, access to the company's internal information, trade union participation and representation, specific labour rights (occupational medicine, insurance, etc.) and access to other specific rights within the company.

4.2. *Work-life balance*

4.2.1. One of the driving forces behind the expansion of teleworking is that this form of work appears to allow for better work-life balance and higher productivity, more loyalty and less staff turnover. However, as it is difficult to reach definitive conclusions regarding the effects of telework on the world of work based on the current state of research on this topic, the reality could be much more complex and ambiguous than, and perhaps even contradictory to, this potential win-win scenario for workers and employers ⁽²³⁾.

4.2.2. The EESC points out that there is a discrepancy between the increasing flexibility of working hours and the objective of decent work, as advocated by the ILO.

4.2.3. The EESC draws attention to the fact that, with regard to work-life balance, negative effects are amplified in the case of teleworkers. They also vary according to the individual characteristics of the worker, the working culture and the way in which work is organised ⁽²⁴⁾. The EESC believes that effectively transposing the directive regulating this issue will undoubtedly lead to an improvement in the working conditions of teleworkers ⁽²⁵⁾. The EESC therefore urges the Member States to properly transpose and implement this directive.

4.2.4. The EESC notes that the effects of teleworking on work-life balance are extremely ambiguous, if not contradictory, and further research into the balance between paid work and personal life is needed ⁽²⁶⁾.

⁽¹⁹⁾ For more information on the implications of teleworking for health and well-being, see: Eurofound 2020, pp. 27-35.

⁽²⁰⁾ Eurofound 2020, p. 54.

⁽²¹⁾ Judgment of the European Court of Justice, case C-55/18, ECLI:EU:C:2019:402, paragraph 60. See other case law on the subject of teleworking: C-518/15; C-344/19; C-580/19; C-214/20; C-84/94.

⁽²²⁾ Idem case C-55/18, ECLI:EU:C:2019:402, paragraph 63.

⁽²³⁾ *Telework in the 21st century*, ILO, 2019, p. 302.

⁽²⁴⁾ Main source: Eurofound 2020, pp. 13-26.

⁽²⁵⁾ Eurofound 2020, p. 54.

⁽²⁶⁾ Eurofound and ILO 2017, p. 33 and p. 40.

4.2.5. The EESC stresses the need for sufficient training for workers and line managers on good practices in the management of teleworking and compliance with legal and contractual standards, particularly in relation to promoting work-life balance.

4.2.6. The EESC calls on Member States to invest appropriately in creating and/or developing high-quality, universally accessible social services for the care of the elderly and children, as this will help to ensure work-life balance.

4.3. *The right to disconnect*

4.3.1. The EESC is aware that an 'always on' culture, being continually connected and a lack of rest create significant physical and psychosocial risks for teleworkers⁽²⁷⁾. Being connected means that it becomes difficult to respect the boundaries between paid work and private life.

4.3.2. With regard to the right to disconnect, despite following different approaches Member States have developed policies and/or the social partners and businesses have taken action to limit detrimental effects, the aim being to protect workers' leisure time.

4.3.3. Being constantly connected has negative consequences. Women are the most disadvantaged as they bear the burden of carrying out unpaid domestic work and caring for children, the elderly and the sick⁽²⁸⁾.

4.3.4. The legislation covers most of the topics associated with teleworking, so it is still very important that it be implemented effectively. At European level, the Framework Agreement on Digitalisation signed in June 2020 includes, *inter alia*, the arrangements for exercising the right to disconnect, compliance with the working time arrangements in the legislation and collective agreements, as well as other contractual arrangements, and ensures the worker is not required to be reachable by their employer outside working hours. The EESC notes that this agreement is now being implemented by the social partners in the Member States. However a legislative initiative under the Treaty on The Functioning of the European Union (articles 151 et seq. TFEU) to protect and give effect to the right of workers to disconnect, thus preventing their working conditions from deteriorating, remains possible.

4.3.5. There are different views on establishing a right to disconnect in the Member States⁽²⁹⁾. Four countries (Belgium, Spain, France and Italy) have adopted specific legislation. Two further countries either discussed draft legislation (Portugal) or held a consultation process (the Netherlands) but no specific legislation was adopted. In other Member States, views are divergent: in some cases, trade unions call for specific legislation because existing laws are not deemed sufficient; in others collective bargaining is considered to be the best form of regulation and in yet others it is argued that the legislation governing working time is sufficient.

4.3.6. In view of this situation, the EESC welcomes the resolution adopted by the European Parliament on 21 January 2021 as taken into account by the European Commission in the European Pillar of Social Rights Action Plan of 4 March under the chapter concerning telework and the right to disconnect⁽³⁰⁾. In this framework the EESC considers that the right to disconnect should be properly addressed in the European Pillar of Social Rights Action Plan.

4.3.7. The EESC emphasises that, with regard to the right to disconnect, overtime is not a problem in itself provided it complies with the rules laid down, particularly the maximum number of hours, and that there are guarantees that all work performed is paid for in keeping with the laws of each country.

5. **Actions by the European Commission, the Member States and the social partners**

5.1. The EESC stresses the need for more and better statistical information and for more research on teleworking to identify best practices and to examine its impact on the lives of workers, businesses and society. The EESC calls on the Commission to improve research into teleworking and its effects, to promote the exchange between Member States of good

⁽²⁷⁾ Eurofound and ILO 2017, p. 37.

⁽²⁸⁾ See EESC opinion SOC/662 (see page 13 of this Official Journal).

⁽²⁹⁾ Main source: Eurofound 2020, pp. 13-26.

⁽³⁰⁾ See the resolution recently adopted by the European Parliament.

practices in relation to the organisation working time, work-life balance and the right to disconnect, and finally to support the required skills transition and its progress, while respecting social dialogue and collective bargaining between social partners at different levels.

5.2. The EESC emphasises that the 2002 and 2020 agreements include the key principles making it possible to leverage the positive effects of teleworking, while minimising the negative effects.

5.3. The EESC urges the Commission and Member States to monitor the implementation of the 2002 and 2020 agreements, if necessary adjusting the existing rules — and drawing up new ones — in the light of the experience gained from the pandemic so as to promote the positive aspects of telework and protect the fundamental rights of workers. Developments in technology and in ways of working are gathering pace, meaning that rules and practices may need to be adapted to new conditions in the future.

5.4. The EESC highlights the need for Member States, with the involvement of the social partners, to ensure an appropriate national framework for teleworking, setting out the rules of play for companies and workers interested in adopting this form of work, taking into account the above-mentioned agreements.

5.5. In particular, the organisation of working time, the risks to health and safety at work, work-life balance, the right to disconnect and the effectiveness of labour rights when teleworking must be given special attention.

5.6. The EESC is convinced that teleworking issues should be addressed in line with the principles of the European Pillar of Social Rights and the United Nations Sustainable Development Goals.

5.7. The EESC considers the participation and involvement of the social partners at all levels, including through collective bargaining, to be key to finding balanced, decent and fair solutions.

5.8. The EESC believes that, following studies on the impact of teleworking, a joint process by the European Commission, the ILO and the OECD should be initiated with a view to drawing up an ILO convention on teleworking. The EESC also considers that decent telework conditions should be part of the ILO Decent Work Agenda and the corresponding national programmes.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

ANNEX I

EUROPEAN SECTORAL SOCIAL DIALOGUE JOINT TEXTS ON TELEWORK AND DIGITALISATION ⁽¹⁾**Telework**

Eurocommerce and UNI, Europa, European agreement on guidelines on Telework and ICT-mobile work in commerce, 25 May 2018 (commerce)

EACB, EBF-FBE, ESGB and UNI Global Union, Declaration on Telework in the European Banking Sector, 17 November 2017 (banking)

ETNO and UNI Europa, Joint Declaration on ICT-based mobile work, 2 February 2017 (telecommunications)

ETNO and UNI Europa, Joint declaration on telework, 9 June 2016 (telecommunications)

ACME, BIPAR, CEA and UNI-Europa, Joint declaration on telework by the European social partners in the insurance sector, 10 February 2015 (insurance)

CEMR-CCRE and EPSU, CEMR-EP/EPSU joint statement on telework, 13 January 2004 (local and regional government)

Eurelectric and EPSU, EMCEF, Joint declaration on telework, 13 November 2002 (electricity)

Eurocommerce and UNI Europa, European Agreement on Guidelines on Telework in Commerce, 26 April 2001 (Commerce)

ETNO and UNI Europa, Guidelines for Telework in Europe, 7 February 2001 (telecommunications)

Joint Committee, Opinion on telework, 23 November 1998 (telecommunications)

Digitalisation

ETNO and UNI-Europa, Joint Declaration on Artificial Intelligence, 30 November 2020 (telecommunications)

CEEMET and IndustriAll, Joint opinion on the impact of digitalisation on the world of work in the met industries, 9 November 2020 (metal industry)

EFIC and EFBWW, European Social Partners joint statement on Digital Transformation in workplaces of the European Furniture Industry, 6 July 2020 (Furniture)

Federation of European Social Employers and EPSU, Joint Position Paper on Digitalisation in the Social Services Sector — Assessment of Opportunities and Challenges, 6 June 2020 (social services)

Eurelectric and EPSU, IndustriAll, Digitalisation at the heart of social partners' commitment to keep the lights on, 9 April 2020 (electricity)

Eurelectric and EPSU, IndustriAll, A Social Partners' Framework of Actions — Challenges and opportunities of the digitalisation for the workforce in the European Electricity Sector, 9 April 2020 (electricity)

PostEurop and UNI Europa, Joint Declaration on Training in the Digital Era, 6 December 2019 (postal services)

ECEG and IndustriAll, Joint recommendations on digital transformations in the workplace for the European chemicals, pharmaceuticals, rubber and plastics sectors, 8 November 2019 (chemical industry)

EFCI/FENI and UNI Europa, Joint Statement on the Impact of Digitalization on Employment in the Cleaning and Facility Services Industry, 29 October 2019 (industrial cleaning)

⁽¹⁾ Based on the European Commission EU social dialogue texts database, the European Trade Union Institute (ETUI) EU Social Dialogue texts database (not yet publicly available) and own research.

INTERGRAF and UNI-Europa, Print is vital for the future of reading — INTERGRAF and UNI Europa Graphical & Packaging joint statement, 21 October 2021 (graphical industry)

FEPOR, ESPO and ETF, Joint statement 'Market based and technological developments in the shipping sector and technological innovation represent major challenges for the port sector', 24 June 2019 (ports)

AMICE, BIPAR, Insurance Europe and UNI Europa, Follow-up statement on the social effects of digitalization, 15 February 2019 (insurance)

IRU and ETF, Joint statement from Social partners for better regulation and digital enforcement, 7 December 2018 (road transport)

EBF-FBE and UNI Europa, Joint Declaration on the Impact of Digitalisation on Employment, 30 November 2018 (banking)

CEPI and IndustriAll, A social partner resolution addressing the ongoing digitalisation in the European pulp and paper sector and its potential impact on industry and employment, 6 July 2018 (paper industry)

CEEMET and IndustriAll, The impact of digitalisation on the world of work in the metal, engineering and technology-based industries, 8 December 2016 (metal industry)

AMICE, BIPAR, Insurance Europe and UNI Europa, Joint declaration on the social effects of digitalisation by the European social partners in the insurance sector, 12 October 2016 (Insurance)

EPSU and CEMR, Joint Declaration on the opportunities and challenges of digitalisation in local and regional administration, 11 December 2015 (local and regional administration)

ANNEX II

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 43(2) of the Rules of Procedure):

Point 1.14 (linked to 5.8)

Amend text as follows:

1.14. *The EESC believes that, following studies on the impact of teleworking, it is important that good teleworking conditions become part of the Decent Work Agenda in general and the Decent Work Country Programmes in particular. A joint process by the European Commission, the ILO and the OECD should be initiated with a view to exploring whether drawing up an ILO convention on teleworking is needed.*

Outcome of the vote:

In favour: 109

Against: 130

Abstention: 14

Point 4.1.1

Amend text as follows:

4.1.1. *The EESC notes that it is difficult to reach definitive conclusions regarding the effects of telework on the world of work based on the current state of research into the effects of teleworking on working time has unequivocally identified the pattern of long working hours as the main disadvantage of this form of work⁽¹⁵⁾. Employees are able to structure their working day and to avoid commuting, but the downside is that they work longer hours at night and at the weekend.*

Outcome of the vote:

In favour: 111

Against: 120

Abstention: 18

Point 5.8 (linked to 1.14)

Amend text as follows:

5.8. *The EESC believes that, following studies on the impact of teleworking, it is important that good teleworking conditions become part of the Decent Work Agenda in general and the Decent Work Country Programmes in particular. A joint process by the European Commission, the ILO and the OECD should be initiated with a view to exploring whether drawing up an ILO convention on teleworking is needed.*

Outcome of the vote:

In favour: 109

Against: 130

Abstention: 14

⁽¹⁵⁾ *Telework in the 21st century, ILO, 2019, p. 298.*

Opinion of the European Economic and Social Committee on ‘Teleworking and gender equality — conditions so that teleworking does not exacerbate the unequal distribution of unpaid care and domestic work between women and men and for it to be an engine for promoting gender equality’

(Exploratory opinion at the request of the Portuguese Presidency)

(2021/C 220/02)

Rapporteur: **Milena ANGELOVA**

Co-rapporteur: **Erika KOLLER**

Request by the Portuguese Presidency of the Council	Letter, 26.10.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	11.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	219/10/18

1. Conclusions and recommendations

1.1. While teleworking is a well-known form of work, its uptake was boosted substantially by the COVID-19 pandemic, resulting in more than 1/3 of employed people working from home, with a greater share of women than men⁽¹⁾. As women usually take on most of the caring and household work, teleworking was seen by them as the only possibility to combine this unpaid work and paid employment. The European Economic and Social Committee (EESC) wants to call attention to the risk of using teleworking as a possibility of taking up the double burden of paid and unpaid work. Therefore, the EESC welcomes the European Commission (EC) campaign on combating gender stereotypes⁽²⁾, reiterates the need for a cultural change and for removing any structural barriers in order to achieve more equal distribution of the unpaid domestic work and urges the Member States (MS) to promptly and efficiently implement the Work-Life Balance (WLB) Directive.

1.2. As the pandemic conditions are exceptional, it is necessary to evaluate the links between teleworking and gender equality by taking a more general and longer-term perspective. During the pandemic, where possible, teleworking has been mandatory as a health protection measure and accompanied by many exceptional and restrictive features. Under normal conditions, teleworking is usually done voluntarily, with a view to allowing the work to be arranged in a way that best meets the overall objectives and needs of the companies and organisations, covering both employers' and workers' needs and respecting the EU and national legal and normative framework⁽³⁾, as well as the social dialogue achievements, with all practical arrangements established as a part of labour and collective agreements.

1.3. Teleworking provides many opportunities to contribute to gender equality such as: improved participation in the labour market; increased flexibility in the organisation of working time and in combining unpaid care responsibilities with paid employment, which can improve labour market participation; productivity gains through higher performance; a better

⁽¹⁾ Eurofound report 'Living, working and COVID-19'. Compared to 2018, when less than 5 % of employees worked remotely regularly and less than 10 % occasionally, as reported by the EC 2020.

⁽²⁾ https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_357

⁽³⁾ EU SP Framework Agreement on Digitalisation from 2020, and on Telework from 2002, and the EC Report on the implementation of the EU SP Framework Agreement on Telework, COM(2008) 412 final — <http://erc-online.eu/european-social-dialogue/database-european-social-dialogue-texts/>

spatial match between demand and supply of labour without the need for moving to another place; time and cost savings due to the elimination of or decrease in commuting, etc. At the same time, teleworking carries some risks, such as possible challenges related to: the worker becoming invisible in the work community; missing out on formal and informal support structures, personal contacts with colleagues and access to information, promotion and training opportunities; possible worsening of gender inequalities and increased risk of violence and harassment. For women, this can exacerbate existing gender inequalities. Mitigating such risks successfully calls for a proper gender analysis — as even policies that might look gender neutral may, in reality, be gender blind and affect women negatively — so every effort must be taken to strive for a positive impact.

1.4. The EESC notes the existing legal and additional framework relevant to telework. This includes the Working Time Directive, the Occupational Safety and Health Directive, the WLB Directive, and the European social partners' Autonomous Framework Agreements on Telework 2002 and on Digitalisation 2020 (AFAD). It also notes that there is no consolidated European framework on telework. The European Parliament has indicated that 'a legislative framework with a view to regulating telework conditions across the EU is necessary to ensure decent working and employment conditions in the digital economy, thereby contributing to reducing inequalities and addressing the issue of in-work poverty.' The EESC therefore recommends an assessment of the existing rules to determine their effectiveness in the light of the rapid expansion of telework, awareness of new risks, and the lessons learnt. In particular, it encourages the social partners to review the 2002 Framework Agreement on Telework and give it new impetus.

1.5. Social partners can play a significant role in advancing teleworking in a way that contributes to gender equality, promoting well-being at work and productivity, e.g., through collective bargaining. Considering the wide variety of workplaces, the best results can be achieved with tailored measures at enterprise and workplace level. While it is up to employers to decide on the organisation of work, social dialogue is a vital means in workplaces for dealing with issues such as wages, working-time, modalities of connectivity, health and safety, and training and skills development in the context of teleworking.

1.6. The basic prerequisites of gender-neutral teleworking include the accessibility of the necessary technologies, facilities and skills. The EESC reiterates its call for investing in digital infrastructure and connections for all, including local shared spaces that facilitate teleworking outside the home, as well as enhancing digital skills, with special attention to women, in order to enable them to fully participate in labour markets and address any form of digital divide ⁽⁴⁾.

1.7. The availability, accessibility and affordability of care infrastructure and services for children, people with special needs and seniors are another crucial prerequisite of gender-equal teleworking and working in general. The EESC calls for a 'Care Deal for Europe', ensuring the provision of greater quality services for all throughout the life-cycle. It urges the MS to ensure and invest in the availability of high quality, affordable, accessible and diverse care services to respond to various demands and situations.

1.8. Teleworking carries the risk of the worker becoming invisible in the work community, missing out on formal and informal support structures, personal contacts with colleagues and access to information. This can result in them being overlooked for promotion and training opportunities and lacking important information relating to pay and existing workers' rights. For women, this can risk exacerbating existing gender inequalities such as the gender pay gap. The proposed Directive on pay transparency, published by the European Commission on 4 March 2021, could be one important means of addressing the lack of information that is caused by invisibility.

1.9. In order to enable and encourage the private sector to innovate and invest in new methods, and to create new jobs for inclusive employment, it is essential for the EU to provide favourable conditions for entrepreneurship and doing business and to promote digitalisation — especially for micro and SMEs. Equally, the public sector is a significant employer and proper investment is needed to ensure decent working conditions and modernisation of infrastructure in order to meet the objectives of the digital transformation. Close and smooth cooperation between the public and private sector is also required at practical level, in the fields of digital infrastructure, education and training, health and social services, and research and innovation.

⁽⁴⁾ OJ C 237, 6.7.2018, p. 8.

1.10. The EESC calls for research into the gender implications and prerequisites of teleworking under conditions not dominated by the pandemic and taking into account long-term developments in different sectors of the economy and society, as well as collecting and disseminating existing good practices across the EU. This would allow for a gender-sensitive approach in achieving the necessary technological and social innovation to ensure that teleworking contributes to promoting gender equality ⁽⁵⁾.

1.11. As the societal traditions and attitudes of individuals determine the implications of teleworking on gender equality, the EESC calls for targeted actions and campaigns to reduce and break down stereotypical thinking. The EESC encourages social partners and civil society organisations (CSO) at EU and national level to take an active role in advocating non-stereotypical family roles and choices of women and men with respect to studies, professions and jobs.

1.12. The EESC calls on EU and national decision makers in dialogue and cooperation with the social partners to make every effort to combat any form of violence against women — including at work, at home and online; and invites the MS to swiftly ratify the Violence and Harassment Convention, 2019 (No 190) of the International Labour Organization (ILO) and the Istanbul Convention.

2. General comments

2.1. The EESC welcomes the initiative of the Portuguese Presidency to request two exploratory opinions, which will complement each other, aimed at a more in-depth analysis of teleworking, taking stock of the lessons learned during the pandemic. This could also better guide the implementation of the WLB Directive and encourage best practice conditions for the uptake of teleworking. These opinions will contribute to future draft Council Conclusions during the first half of 2021.

2.2. The rapid digitalisation of the economy and society, accelerated substantially by the COVID-19 pandemic, boosted the uptake of teleworking resulting in 34 % of employees working exclusively and 14 % partially from home in July 2020 ⁽⁶⁾. While the pandemic allows for an insight into the great spread of teleworking, attention needs to be given to normal working conditions of teleworking unaffected by the pandemic.

2.3. While gender equality depends on many factors, and teleworking has various economic and social impacts other than those regarding gender equality, this exploratory opinion specifically considers the links between teleworking and gender equality, as requested by the Portuguese Presidency. The objective is to find ways of making teleworking one of the engines for promoting gender equality and avoid exacerbating the unequal distribution of unpaid care and domestic work between women and men, as teleworking may involve both benefits and risks with respect to gender equality. The EESC emphasises the need for gender mainstreaming in policy making with the aim of helping to mitigate risks and grasp opportunities.

2.4. Making use of the potential of teleworking while mitigating related risks contributes to preserving the global gains in gender equality ⁽⁷⁾. Even though men are more likely to be engaged in mobile work outside the employer's premises than women, women carry out more regular home-based telework than men. This can be explained to a certain extent by country- and culture- specific gender roles and models of work and family life ⁽⁸⁾. Women usually take on most of the unpaid care work in households ⁽⁹⁾, and although this constitutes a vital part of socio-economic life, it is not recognised as such. While teleworking can contribute to a better work-life balance, it also risks increasing the burden for women to do an even bigger part of the unpaid domestic work, while being exposed to other risks such as domestic and online violence or missing out on career opportunities.

⁽⁵⁾ <http://erc-online.eu/european-social-dialogue/database-european-social-dialogue-texts/> and <http://resourcecentre.etuc.org/>

⁽⁶⁾ Eurofound report 'Living, working and COVID-19'.

⁽⁷⁾ EPRS: Gender equality: a review in progress — the UN is now warning that the COVID-19 pandemic could reverse global gains in gender equality, just when the international community was set to provide a new impetus in the area.

⁽⁸⁾ Gender Equality Index 2020: Digitalisation and the future of work, EIGE.

⁽⁹⁾ Gender Equality Index 2020: Digitalisation and the future of work, EIGE.

2.5. Both society as a whole and businesses must do everything possible to dispel these gender stereotypes and recognise women as full workers beyond their many other roles and qualities. The economic and social cost of these prejudices for society is very heavy. Social partners and CSOs in all sectors should be able to act as spearheads on this issue, which is essential for human rights and women's rights, but also for the European economy⁽¹⁰⁾.

2.6. When evaluating the impacts of teleworking, it is important to note that the implications under the pandemic may considerably differ from those in normal conditions. It is likely that both the benefits and drawbacks of teleworking are more pronounced during the pandemic when teleworking has been mandatory and when people's lives have been in many ways restricted, including using the home as a common working/studying/living space for all the family members. It is thus necessary to take not only a short-term view, but, above all, a long-term perspective in assessing the implications of teleworking for gender equality and the world of work, also with due care to providing normal working conditions while teleworking. In normal times, teleworking should be done based on mutual agreement and voluntarily, with all its practical arrangements established as a part of a contractual agreement and/or through collective agreements.

2.7. The EESC also takes the opportunity to link some elements of the opinion to helping deliver on the United Nations 2030 Agenda for Sustainable Development, in particular SDGs 5 (gender equality) and 8 (decent work and economic growth). The objectives of SDG 5 include ending all forms of discrimination and eliminating all forms of violence against women and girls; recognising and valuing unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family. Another target is enhancing the use of enabling technologies, in particular ICT, to promote women's empowerment. SDG 8 aims at sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all and includes a target of achieving higher productivity e.g., through technological upgrading and innovation.

3. Lessons Learned from the pandemic period: Gender perspective

3.1. In considering the gender dimension of teleworking, there are lessons to be drawn from the pandemic period. The pandemic highlights the importance of the role of women in the economy — as essential care workers, in most cases working 'on the frontlines'⁽¹¹⁾. Studies reveal⁽¹²⁾ that many existing structural gender inequalities in the labour market and society have been exacerbated by the pandemic and that women have been disproportionately impacted. This chapter focuses on some crucial findings concerning teleworking (mainly from home) during the pandemic as taking account of the gender perspective can be used to advance gender equality.

3.2. Although telework was made mandatory, where possible, in an attempt to deal with pandemic, not all workers were able to telework. Teleworking was more common in cities than in rural areas and among those with tertiary education. It also varies by sector, with a higher incidence of teleworking in education, financial services and public administration, and a lower incidence in health, transport, agriculture, commerce and hospitality⁽¹³⁾. Recent research provides data on which occupations are teleworkable, but further analysis is needed⁽¹⁴⁾. It is also obvious that some jobs cannot be done remotely, and others only to a very limited extent⁽¹⁵⁾.

3.3. More women than men have been teleworking during the pandemic. While weekly working hours have been reduced for men more than women over the period, employed women were more likely to have temporarily stopped working (furlough). A plausible explanation is that working women and mothers have borne the brunt of increased

⁽¹⁰⁾ UNAPL, FEPIME Catalunya and AFAEMME papers.

⁽¹¹⁾ <https://data.unwomen.org/features/covid-19-and-gender-what-do-we-know-what-do-we-need-know>

⁽¹²⁾ European Parliamentary Research Service 'Achieving gender equality in the face of the pandemic and existing challenges': [https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/659440/EPRS_ATA\(2021\)659440_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/659440/EPRS_ATA(2021)659440_EN.pdf); <https://eige.europa.eu/topics/health/covid-19-and-gender-equality>

⁽¹³⁾ Eurofound, 2020. Living, working and COVID-19.

⁽¹⁴⁾ E-Survey, COVID group, Structure of Earnings Survey. Eurofound (2020) Teleworkability and the COVID-19 crisis: a new digital divide?

⁽¹⁵⁾ In general around 37 % of jobs in the EU are estimated to be teleworkable (See Eurofound data).

domestic care responsibilities during COVID-19 due to work, school and childcare centre closures. In dual worker households, where there was a choice, women were more likely to take furlough opportunities than male partners⁽¹⁶⁾. In many Member States, the narrowed range of both childcare and other care available and the lack of flexibility in children's and other care institutions during the pandemic further exacerbated the situation of parents, most severely affecting women and mothers.

3.4. A quarter of all those working remotely were parents of children under 12, 22 % of whom struggled 'much more than other groups to concentrate on work and achieve an adequate work-life balance'⁽¹⁷⁾. Especially for women with care responsibilities, working from home was undermined by several factors, e.g. the lack of quiet space where work could be carried out without interruptions, but also a lack of available time to devote to work, on one hand, coupled with, on the other hand, the tendencies to work longer, and even be connected around the clock and not respecting the modalities of connecting and disconnecting. This calls for a better enforcement of the relevant existing legislation and closer monitoring by labour inspections, as well as an assessment of whether the existing framework is adequate. Single parents, 85 % of whom in the EU are women, were especially vulnerable as the pandemic worsened their already fragile work-life balance⁽¹⁸⁾.

3.5. There are also indications that women who worked in demanding and competitive high-skill sectors, such as academics, were hit worse than their male counterparts⁽¹⁹⁾ because unpaid care and domestic work reduced their ability to be productive and further undermined their professional prospects. Similarly, female entrepreneurs running SMEs experienced severe time constraints on top of serious financial problems in their efforts to sustain their businesses during the lockdowns⁽²⁰⁾.

3.6. The pandemic period has also led to an alarming increase in violence against women, both physically and online, where the victims of the latter are significantly more isolated from potential resources and opportunities for help⁽²¹⁾. Domestic violence has increased by a third during the pandemic, where the imperative was to stay and work from home, if possible, so as to reduce the spread of the pandemic⁽²²⁾. Evidence also shows that remote working has meant that work-related sexual harassment has become more prevalent online.

4. Opportunities, risks and prerequisites of teleworking

4.1. Making the best use of teleworking to promote gender equality and facilitate WLB requires a comprehensive look at its potential benefits and risks for women and men. Without a proper gender analysis, policies that appear to be gender 'neutral' may in fact be gender 'blind' and negatively impact women.

4.2. The opportunities of teleworking include:

- Increased flexibility in the organisation of working time in general, and to a certain degree providing individuals with increased possibilities to organise their time to achieve the expected output,
- Increased flexibility in combining unpaid care responsibilities with paid employment, which can improve labour market participation,
- Opportunity for sharing the care for children or dependent family members more equally when both parents are teleworking,

⁽¹⁶⁾ Eurofound (2021), COVID-19: Some implications for employment and working life, Publications Office of the EU, Luxembourg — forthcoming.

⁽¹⁷⁾ Eurofound, 2020. 'Living, Working and COVID-19'.

⁽¹⁸⁾ Gender Equality Index 2020: Digitalisation and the future of work, EIGE.

⁽¹⁹⁾ <https://www.nature.com/articles/d41586-020-01294-9>

⁽²⁰⁾ UNAPL, FEPIME Catalunya and AFAEMME papers.

⁽²¹⁾ <https://www.opendemocracy.net/en/5050/covid19-sexual-harassment-work-online/>

⁽²²⁾ <https://www.europarl.europa.eu/news/en/press-room/20200406IPR76610/covid-19-stopping-the-rise-in-domestic-violence-during-lockdown>

- Better inclusion in the labour market of those limited by barriers in society or in the workplace, e.g., persons experiencing limitations due to a disability,
- Productivity gains through higher performance,
- A better spatial match between demand and supply of labour without the need for moving to another place; this could result in reversal of the regional distribution of jobs between cities and rural areas ⁽²³⁾,
- Time and cost savings due to the elimination of or decrease in commuting.

4.3. Correspondingly, the following risks can be associated with teleworking, found mostly in challenges relating to:

- Organising the remote working space and concentrating on the job, especially when other family members work or study from home and when the home space is too small to allow for a separate work space,
- Access to proper office facilities, including ergonomic furniture and to specialised or adapted equipment and programmes, as well as to training,
- Lack of personal contact and spirit of collaboration between colleagues, and the risk of becoming 'invisible' in the work community,
- Reinforcing the unbalanced share of caring and house work based on stereotypical work and family roles,
- Increase in gender-based violence and harassment, including online harassment, lack of social support while being isolated,
- Lack of movement and interruption of daily routine and habits, as well as pressure of combining work with home duties and avoiding blurring the boundaries between work and private life, which may give rise to mental and physical health issues, including more burnout cases,
- Misusing the new possibilities of monitoring and abusing personal data,
- Challenges to monitor working conditions while working at home — both for employers and trade unions,
- Cyber security and GDPR issues,
- Increased social control,
- Risk of working longer, and having too short resting periods resulting from not respecting the modalities of connecting and disconnecting,
- The inability of or difficulties for trade unions to protect workers' rights,
- Uncertainty regarding the employer's responsibility for ensuring the health and safety of the workplace, working conditions and the implementation of collective agreements.

⁽²³⁾ https://ec.europa.eu/commission/commissioners/2019-2024/suica/announcements/speech-vice-president-suica-demographic-change-eu-epc_en, <https://horizon-magazine.eu/article/teleworking-here-stay-here-s-what-it-means-future-work.html>.

4.4. The most concrete prerequisites of teleworking relate to the accessibility of the necessary infrastructure and technologies. The expanding connectivity does not reach everyone — certain groups of women (e.g., older, from disadvantaged socio-economic groups, with lower education) have unequal access to connectivity and digital technologies, which contributes to the digital divide⁽²⁴⁾. Strong public policies are thus needed for enabling access to networks and to local shared spaces that facilitate teleworking outside the home. The EESC underlines the need to avoid situations where workers who work remotely would bear the burden of costs for equipment, as provided for in the Social Partners' Framework Agreement (SP FA) on Teleworking and the relevant national legislation, which is needed to perform the work remotely, namely ICT equipment, ergonomic furniture, health and safety measures and increased costs related to the space in which the work is performed.

4.5. Digital skills and training are another important prerequisite for enabling teleworking, according to which men are most often in a better position than women — only six MS show women scoring higher than men on internet skills (Finland, Slovenia, Lithuania, Latvia, Cyprus and Bulgaria)⁽²⁵⁾. The gender divide in digital skills widens with age. These differences also need to be considered when evaluating the gender dimensions of teleworking.

4.6. In addition to digital skills, teleworking calls for skills to adopt evolving management techniques and working orientation and thus implies challenges for both employees and employers, not least for SMEs. Managing business and personnel remotely requires specific management skills, flexibility, resilience and innovative ways of organising work as teleworking calls for result- rather than process-based management. Specific training should be provided to help managers/supervisors to effectively manage remote workers.

4.7. For workers, more flexibility and freedom to organise their work also calls for strong responsibility and commitment as well as for self-management skills and a relationship of trust between them and their managers. Several studies have shown that teleworking could be, in certain sectors, a source of productivity gains, which can be better grasped by providing special training to managers. It can increase the demands that employees design for their own work and generate more performance.

4.8. Workers engaged in telework should have equal access to training and continuing professional development and the same opportunities for promotion and professional advancement. This is particularly important for women who are remote workers who may have less time and opportunity to engage in career progression activities outside of work schedules.

4.9. Provided the necessary facilities and skills are available for everyone, teleworking as such would be a form of work that is available and accessible for both men and women. Available, high quality, affordable, accessible and diverse public care services are thus crucial for making the best use of teleworking. In some MS, financial aid and specific tax incentives exist to promote childcare, including at home, by qualified professionals — which is worth benchmarking.

4.10. While teleworking may increase demand for some services, it may cause deterioration of the situation for some SMEs where female entrepreneurship is predominant and which find clients mainly amongst women on their way to/from work. This applies to e.g., small food and other goods shops, markets, and service centres. Mitigating such a risk would require detaching from stereotypical choices of professions. The same applies to mitigating the differences in teleworking possibilities for women and men caused by sectoral segregation and the different teleworkability of sectors.

5. Ways to mainstream gender equality

5.1. While it is up to the employers to decide on the organisation of work, social partners, e.g., through collective bargaining, can play a significant role in advancing teleworking in a way that contributes to gender equality, together with increased productivity and wellbeing at work. The FA on Teleworking concluded by the EU Social Partners in 2002, and

⁽²⁴⁾ <https://www.oecd.org/going-digital/bridging-the-digital-gender-divide-key-messages.pdf>.

⁽²⁵⁾ Gender Equality Index 2020: Digitalisation and Future of Work, EIGE.

implemented by 2008 by all MS ⁽²⁶⁾, sets out the general *acquis* framework for the use of telework in such a way as to meet the needs of employers and workers in a balanced way. Social dialogue is a vital means for dealing with issues such as wages, working times, modalities of connectivity, health and safety, and skills development in the context of teleworking. The EESC also calls for disseminating best practices on enabling women and men to combine work and family in an equal way and promoting and funding joint actions of social partners.

5.2. As teleworking relies on the technological infrastructure and connections, the EESC underlines the utmost importance of investing in proper digital infrastructure, providing access to stable digital connections and proper hardware and software to enable efficient teleworking for all groups of society and avoid problems in any other fields of the digitalisation of the economy and society.

5.3. The EESC reiterates its call for enhancing digital skills for everyone to enable people to respond to and shape digital development, fully grasping the opportunities of e-learning. This is a matter of formal, informal and non-formal education and its validation, covering basic education, upskilling and re-skilling, in line with the approach of continuous and life-long learning. Special attention needs to be paid to the skills of women to equally enable them to fully participate in labour markets, as well as to manage practical everyday digital affairs.

5.4. The EESC emphasises the need for a 'Care Deal for Europe', as investing in the care sector would ensure the provision of greater quality services for all throughout the life-cycle and recognise women and men as both equal earners and equal carers. It encourages the MS to invest in care infrastructures of all types. The national Recovery and Resilience Plans under the Next Generation EU provide an opportunity to direct investments towards the care sector. The EESC also calls for disseminating best practices on enabling women and men to combine work and family in an equal way and promoting and funding joint actions of social partners. The EESC calls on the EC and the MS to revise the Barcelona targets ⁽²⁷⁾ to ensure the availability of high quality, flexible, diversified and affordable childcare ⁽²⁸⁾. It also underlines the importance of the transition from institutional care to community-based and person-centred services for vulnerable children and adults with specific needs, expressed in Common European Guidelines published by the EC ⁽²⁹⁾.

5.5. The EESC encourages MS to implement the WLB Directive in an efficient and timely manner to provide families with appropriate choices for more equal practices, while also taking into consideration the needs of businesses, in particular SMEs. Smaller companies, whose activity relies, by definition, on the work of a small team, need, even more than others, to benefit from continuity and stability in their production organisation. Building on the lessons learned so far, flexible schemes of combining physical-presence work with teleworking options can be considered.

5.6. Special attention should be paid to the conditions of vulnerable groups of women such as those with disabilities, single parents, the elderly, migrants and Roma women. Women's organisations and those representing families must be supported, including through targeted measures, financed from EU and national funds.

5.7. The full spectrum of support services should be introduced in the case of violent situations (as domestic violence increased considerably due to lockdown measures during the pandemic ⁽³⁰⁾) together with enforcing compliance of anti-violence legislation. The EESC urges MS to develop and implement measures to prevent any kind of violence against women, be it physical or online. Stronger action is needed to tackle violence and sexual harassment in the workplace, including in the context of teleworking. If a 'safe' workplace is not available (due to e.g., teleworking), survivors of domestic

⁽²⁶⁾ <http://erc-online.eu/european-social-dialogue/database-european-social-dialogue-texts/>.

⁽²⁷⁾ In line with the new 'EU gender strategy 2020 — 2025'.

⁽²⁸⁾ 24 November 2020, European SP joint statement on childcare provisions in the EU.

⁽²⁹⁾ <https://deinstitutionalisationdotcom.files.wordpress.com/2017/07/guidelines-final-english.pdf/>.

⁽³⁰⁾ <https://unric.org/en/who-warns-of-surge-of-domestic-violence-as-covid-19-cases-decrease-in-europe/>; <https://www.europarl.europa.eu/news/en/press-room/20200406IPR76610/covid-19-stopping-the-rise-in-domestic-violence-during-lockdown>

violence do not have any social control and limited or no access to relevant information and help ⁽³¹⁾. Social partners should be encouraged and supported to develop policies on preventing domestic violence, including by special joint actions and by offering adequate monitoring and reporting systems, also, and especially, when work is done remotely ⁽³²⁾. The EESC welcomes the EC's proposal for a Council Decision authorising MS to ratify, in the interest of the EU, the Violence and Harassment Convention, 2019 (No 190) of the ILO. It encourages MS to swiftly ratify the Convention ⁽³³⁾ and calls on the EU to engage countries outside the EU in doing the same. The EESC notes that the Council has invited those Member States that have not yet done so to ratify the Istanbul Convention and welcomes the Commission's intention, as set out in the European Pillar of Social Rights Action Plan, to propose legislation to combat gender-based violence against women, including workplace harassment on grounds of sex.

5.8. Although teleworking is not a new form of working, there are still many unknown implications that deserve extra research. For example, it would be useful to explore its impacts and prerequisites under conditions not dominated by the pandemic and taking into account longer-term developments in different sectors of the economy and society. As universally designed technological and social innovations are key to making the best use of teleworking and at the same time solving the problems related to gender equality, the EESC calls for integrating these topics into the R&D&I policies both at national and EU levels. Good examples of existing practices across the EU should also be collected and shared to give impetus to advanced solutions.

5.9. As investment in universally designed technical, social and innovation infrastructure are central parts of state budgets, the right allocation of finances can play a decisive role in advancing gender-equal teleworking. EU funds, including the structural funds and the Recovery and Resilience Facility, should also be used to support this objective.

5.10. Connectivity is a societal phenomenon. Practices need to be developed at workplace level, e.g., implementing such tools as the social partner agreement on digitalisation, also considering that EU-OSHA is currently preparing an EU Healthy Workplaces Campaign on Digitalisation starting in 2023.

5.11. The EESC also refers to the AFAD ⁽³⁴⁾ and calls on the EC to devote special financial support for targeted joint actions of social partners, as well as support to civil society organisations that are contributing to work-life balance. The AFAD elaborates on ways to handle issues related to the modalities of connection and disconnection in digitalised work environments, including the underlying causes of over-connecting and long working hours, and there is likely to be a wide spectrum of national examples on how to implement the AFAD, including sectoral or company agreements and guidance documents.

5.12. As for national approaches to connection and disconnection, France, Belgium, Italy and Spain adopted legislation on the right to disconnect to clarify entitlements, raise awareness of the need to change working time patterns or even to foster a cultural change towards a healthier organisation of work. In the Netherlands and Portugal legislative proposals have been made. In Germany, Finland, Ireland, Luxembourg, Lithuania, Malta, Sweden and Slovenia the debate is ongoing, while the remaining 13 MS have not started such a discussion. The EP recently voted on a Resolution on the right to disconnect, where it calls on the EC to propose a law that enables those who work digitally to disconnect outside their working hours,

⁽³¹⁾ In the publications 'Brief no 3 — Domestic violence and its impact on the world of work' in March, 2020, the ILO presents the high costs of domestic violence to national economies. https://www.ilo.org/wcmsp5/groups/public/—dgreports/—gender/documents/briefingnote/wcms_738117.pdf.

⁽³²⁾ For best practice example see: Vodafone Toolkit on domestic violence and abuse at work: Recognise, respond and refer https://www.vodafone.com/content/dam/vodcom/files/vodafone_domestic_violence_toolkit_2020.pdf

⁽³³⁾ <https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-24-F1-EN-MAIN-PART-1.PDF>

⁽³⁴⁾ https://www.ceep.eu/wp-content/uploads/2020/06/Final-22-06-20_Agreement-on-Digitalisation-2020.pdf

and to establish minimum requirements for remote working and clarify working conditions, hours and rest periods⁽³⁵⁾. There are different views as to whether legislation is needed, or whether existing provisions are sufficient and a solely collective bargaining-based approach should be adopted. Notwithstanding the different views, there is a relatively broad consensus among social partners that the 'modalities of connection and disconnection' have to be determined and agreed through social dialogue at company (and/or sectoral) level to ensure that they are adapted to the specific needs of the sectors, companies and other organisations, whilst also taking account of workers' needs, particularly their health and safety.

5.13. In addition, social partners need to be consulted by policymakers when work and employment-related policies are being shaped, including those influencing teleworking and its gender implications. The EESC stresses that gender issues should be mainstreamed throughout all policy areas. As teleworking is also related to the everyday life of citizens, as well as to environmental and climate policies, relevant civil society organisations in fields such as women, family, consumer and environmental affairs should have their say in the preparation of policies.

5.14. In order to enable and encourage the private sector to innovate and invest in new methods, and to create new jobs, in a way that promotes the prerequisites of gender-equal teleworking, it is essential for the EU to provide favourable conditions for entrepreneurship and doing business. Successful management of teleworking also requires close and smooth cooperation between the public and private sector at the practical level. This is relevant, for example, in the fields of digital infrastructure, education and training, health and social services, and research and innovation.

5.15. Moreover, a new kind of mindset is needed at the level of individuals and families. Reducing and breaking down stereotypical thinking requires higher awareness and commitment. Organisational culture which ensures gender awareness, such as equal pay principles, keeping everyone 'visible' etc. must also be actively promoted, together with supporting management in elaborating and implementing teleworking-friendly practices. This should be enhanced, for example, in the context of the implementation of the WLB Directive, through awareness-raising campaigns. The EESC encourages social partners and civil society organisations to take a central role here by advocating for both non-stereotypical family roles and for non-stereotypical choices regarding studies, professions and jobs. Gender equality also needs to be mainstreamed in education, from kindergarten and primary school to vocational training and university.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

⁽³⁵⁾ <https://www.europarl.europa.eu/news/en/press-room/20210114IPR95618/right-to-disconnect-should-be-an-eu-wide-fundamental-right-meps-say>, 472 votes in favour, 126 against and 83 abstentions.

ANNEX

The following amendments, which received at least a quarter of the votes cast, were rejected during discussions (Rule 59(3) of the Rules of Procedure):

Point 4.3 — 13th bullet point

Delete the bullet point:

4.3. Correspondingly, the following risks can be associated with teleworking, found mostly in challenges relating to:

[...]

— ~~Uncertainty regarding the employer's responsibility for ensuring the health and safety of the workplace, working conditions and the implementation of collective agreements.~~

Reason

There are extensive and comprehensive provisions enshrined in the *acquis communautaire* that ensure the health and safety of the workplace when teleworking, including explicit rights and obligations. No evidence or even hints of such uncertainties were found in the process of drafting the opinion.

Outcome of the vote:

In favour: 103

Against: 112

Abstentions: 25

Point 1.4

Amend as follows:

1.4. The EESC ~~notes~~finds the existing legal and additional framework on telework relevant ~~to telework~~ and sufficient. This includes the Working Time Directive, the Occupational Safety and Health Directive, the WLB Directive, and the European social partners' Autonomous Framework Agreements on Telework 2002, implemented in Member States using different instruments, and on Digitalisation 2020 (AFAD). The EESC calls for their swift and effective implementation, and for giving them new impetus, including by promoting collective bargaining at national level, targeted at producing a positive impact on gender equality. It also notes that there is no consolidated European framework on telework. The European Parliament has indicated that 'a legislative framework with a view to regulating telework conditions across the EU is necessary to ensure decent working and employment conditions in the digital economy, thereby contributing to reducing inequalities and addressing the issue of in-work poverty.' The EESC therefore recommends an assessment of the existing rules to determine their effectiveness in the light of the rapid expansion of telework, awareness of new risks, and the lessons learnt. In particular, it encourages the social partners to review the 2002 Framework Agreement on Telework and give it new impetus.

Reason

The proposed amendment makes the text more accurate and clearer, and brings it in line with the scope of the opinion.

Outcome of the vote:

In favour: 109

Against: 112

Abstentions: 18

Point 1.8

Delete point:

~~1.8. Teleworking carries the risk of the worker becoming invisible in the work community, missing out on formal and informal support structures, personal contacts with colleagues and access to information. This can result in them being overlooked for promotion and training opportunities and lacking important information relating to pay and existing workers' rights. For women, this can risk exacerbating existing gender inequalities such as the gender pay gap. The proposed Directive on pay transparency, published by the European Commission on 4 March 2021, could be one important means of addressing the lack of information that is caused by invisibility.~~

Reason

The proposed amendment makes the text more accurate and clearer, as the elements in this point are already included both in the conclusions and recommendations and in the body of the opinion.

Outcome of the vote:

In favour: 113

Against: 125

Abstentions: 13

The following paragraphs of the section opinion were amended to reflect the amendment adopted by the assembly but received more than one quarter of the votes cast (Rule 59(4) of the Rules of Procedure):

Point 3.4

Amend as follows:

3.4. A quarter of all those working remotely were parents of children under 12, 22 % of whom struggled 'much more than other groups to concentrate on work and achieve an adequate work-life balance'⁽¹⁷⁾ Especially for women with care responsibilities, working from home was undermined by several factors, e.g. the lack of quiet space where work could be carried out without interruptions, but also a lack of available time to devote to work, on one hand, coupled with, on the other hand, the tendencies to work longer, and even be connected around the clock and not respecting the modalities of connecting and disconnecting, which calls for a better enforcement of the relevant existing legislation and closer monitoring by labour inspections. Single parents, 85 % of whom in the EU are women, were especially vulnerable as the pandemic worsened their already fragile work-life balance⁽¹⁸⁾.

⁽¹⁷⁾ Eurofound, 2020. 'Living, Working and COVID-19'.

⁽¹⁸⁾ Gender Equality Index 2020: Digitalisation and the future of work, EIGE.

Outcome of the vote:

In favour: 120

Against: 111

Abstentions: 15

Point 4.3 — 12th bullet point

Amend as follows:

4.3. *Correspondingly, the following risks can be associated with teleworking, found mostly in challenges relating to:*

[...]

— *Having impediments to connect to trade union representatives;*

[...].

Outcome of the vote:

In favour: 124

Against: 113

Abstentions: 11

Opinion of the European Economic and Social Committee on ‘The Single European Railway Area’*(Exploratory opinion requested by the Portuguese Presidency)*

(2021/C 220/03)

Rapporteur: **Stefan BACK**

Referral	Portuguese Presidency of the Council of the EU, 26.10.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	9.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	149/68/10

1. Conclusions and recommendations*Regarding the questions raised by the Portuguese Presidency*

1.1. The EESC considers that while a lot has happened in respect of opening up markets and technical harmonisation in the course of thirty years of liberalisation, a lot remains to be done at political, regulatory and cultural level. Measures must include more attention to development, adaptation and efficient implementation of social legislation. They must seek to achieve the increased market share foreseen in the Commission Sustainable and Smart mobility Strategy and improve environmental and social sustainability.

1.2. Measures are needed to facilitate cross-border operations by reducing the need for border checks and eliminating administrative problems and delays at border crossings.

1.3. Traffic planning priorities, capacity planning and information need to be improved to enable both greater flexibility and optimised capacity planning both with regard to rail infrastructure but also regarding, for instance, terminals to optimise multimodal flows.

1.4. Investments are needed in infrastructure but also in digitalisation and updating of rolling stock, for instance digitalisation through deployment of ERTMS and automated couplings, including investment in just transition and skills development, to improve smooth traffic flows and optimise resource utilisation and ensure employment.

1.5. To improve rail freight traffic, the EESC recommends additional measures, e.g. cooperation among companies and transport modes to better achieve environmental and social sustainability and efficiency, relaunch of a European single wagon load system, link of strategic infrastructure (e.g. ports) to rail solutions, investments in industrial sidings, involvement of large logistics companies in a modal reorientation of their flows, ensuring environmentally and socially exemplary performance of all transport modes.

1.6. The EESC recommends with regard to public debt an exception from the Maastricht criteria for public investments in transport infrastructure also beyond the COVID-19 crisis. Efforts to encourage investments in the rail sector should be enhanced, to promote socially and environmentally sustainable transport.

1.7. Infrastructure development including timely implementation of the TEN-T Core Network Corridors and the freight network corridors are key and warrant high priority regarding financing and planning. In view of the post-2030 development of the EU rail network it is of particular importance to proceed towards the development of a high-speed network connecting all EU capitals and major cities.

1.8. The EESC underlines that skilled and motivated workers and good working conditions are of vital importance for the successful evolution of rail transport. It is therefore important that adequate social legislation is in place, including with respect to posting of railway staff. The EESC underlines the importance in this respect of a well-functioning social dialogue.

1.9. The experiences from the COVID-19 crisis must be used to develop a more resilient and effective rail system. Resilience planning needs to be adopted in close consultation with the social partners.

1.10. The status of the infrastructure manager initially provided for has as such undoubtedly contributed to ensuring that infrastructure capacity has been allotted in an independent, fair and non-discriminatory manner and has improved the confidence of operators in fair treatment. However, subsequent changes to the regulatory framework in Directive 2012/34/EU of the European Parliament and of the Council⁽¹⁾ provide for a wider choice as to the organisational model, focusing on the independence of the infrastructure manager in the so-called essential functions (slot allocation, charging and collection of charges) and the transparency granted by separated accounts. The current provisions are perfectly adequate to ensure the independence and transparency required for the good functioning of the internal market.

1.11. The EESC underlines that integrated railway systems can guarantee fair allocation as well as non-integrated systems. The EESC points to the fact that many of the big and the successful railway countries in Europe decided in favour of integrated railway companies to ensure synergies, better coordination, flexibility and an internal labour market for safeguarding employment.

1.12. The coordination mechanism between infrastructure managers and operators as well as the European Network of Infrastructure Managers are essential elements to help towards the achievement of optimised efficiency.

Further conclusions

1.13. Infrastructure managers need to focus more on bottlenecks, urban areas, cross-border links and cross-border traffic flows and cooperation.

1.14. The possibility of coordinated traffic and resource management at corridor or EU level is interesting and needs to be explored as an element of, for instance, rail freight corridor implementation, or as part of the TEN-T core network corridors.

1.15. The EESC questions whether rail is in need of a change of culture and an approach that is much more centred on placing the customers' needs in focus, both with respect to passenger and to freight transport. The European Year of Rail 2021 should be used as an opportunity to promote this behavioural change and develop smoother cooperation between operators and customers and to optimise use of the possibilities offered by digitalisation.

1.16. EESC notes that COVID-19 has delayed or blocked projects. It is now important that the time lost is recovered.

1.17. It seems clear that the current needs for policy measures and improvement of the rail system should be taken into account in order to realise the modal share goals and to allow it to play its full part in a sustainable European multimodal transport system. State aid and state intervention remain crucial to ensure essential services also beyond the COVID-19 crisis.

⁽¹⁾ OJ L 343, 14.12.2012, p. 32.

1.18. The impact of COVID-19 is detrimental to all kinds of rail passenger traffic, and especially to international routes. Taking into account the specifics of the railway sector, its revenue loss in 2020, which amounted to 26 billion euro, the losses of 2021 as well as the expected slow pace of the recovery, adequate and flexible financial support to railway undertakings and infrastructure managers is necessary and must be deployed in an effective manner, to support the development of the railway transport market and the competitiveness of the sector vis-à-vis other modes of transport.

1.19. Public service contracts are essential to ensure accessible, affordable and inclusive passenger services for all. The EESC sees the direct award of public service contracts as one of the most effective and efficient measures to promote railway passenger transport.

1.20. The European Year of the Rail 2021 provides an excellent opportunity to take stock of developments up till now and set objectives for the future. Therefore, the EESC calls for an unbiased analysis of the EU railway policy and its achievements in accordance with the remit outlined in point 7.2 and in line with the objectives of transport policy set out in TFEU Articles 90 and 91 with due regard to the right to adequate public service in case of market failure as provided in Regulation (EC) No 1370/2007 of the European Parliament and of the Council⁽²⁾ and Article 14, Protocol 26 TFEU and Article 36 of the EU Charter of Fundamental Rights.

2. General comments/The questions of the Portuguese Presidency

2.1. The Presidency has requested that the opinion should focus on the three following questions:

2.2. What lessons could be learned from three decades of attempts to liberalise the rail sector in EU countries (and the United Kingdom)?

2.3. Has the unbundling of the railway system improved or harmed its performance as a whole?

2.4. Should the unbundling of the infrastructure managers from rail operators follow a 'one model fits all' or should a plurality of models be promoted?

3. The Single European Railway Area

3.1. The Single European Railway Area was outlined in the 1996 White Paper 'A Strategy for revitalising the Community's railways'. It has been implemented through four legislative packages decided in 2001, 2004, 2007 and 2016. In 2001 the modal share of rail freight transport (land transport modes) was 17,5 %, in 2006 17,0 % and in 2018 17,9 %. The modal share of rail passenger transport developed as follows: 6,6 % in 2007, 6,6 % in 2010 and 6,9 % in 2018 (all passenger transport modes). Only land transport: 6,9 % in 2007, 7,0 % in 2011 and 7,9 % in 2018⁽³⁾. Despite the same legislation framework, developments were different in the Member States.

3.2. Summing up, the packages have opened up national and international passenger and freight transport markets, technical harmonisation including requirements with respect to infrastructure and rolling stock, including on the common European Rail Traffic Management System (ERTMS), to be used primarily on the TEN-T network.

3.3. The framework ensures the independence of infrastructure managers regarding essential functions such as the allocation of slots and provisions on separate accounts for the infrastructure manager.

3.4. The legislative framework also includes Directive 2007/59/EC of the European Parliament and of the Council⁽⁴⁾ on the certification of competences and medical aptitudes of train drivers including language qualifications in international transport and Council Directive 2005/47/EC⁽⁵⁾ on working conditions of mobile personnel in cross-border interoperable operations are both based on agreements of the European social partners in accordance with Article 155 TFEU.

⁽²⁾ OJ L 315, 3.12.2007, p. 1.

⁽³⁾ From various EU Statistical Pocketbooks.

⁽⁴⁾ OJ L 315, 3.12.2007, p. 51.

⁽⁵⁾ OJ L 195, 27.7.2005, p. 15.

3.5. The framework also provides for a national coordination mechanism between infrastructure managers and operators on infrastructure maintenance and capacity targets, intermodality and interoperability, access and use of infrastructure, as well as intramodality and service quality. A European Network of Infrastructure Managers ensures cooperation and exchange of views.

3.6. Rules on passenger transport include provisions on public service contracts and public procurement as well as a possibility to announce general rules on pricing and service levels. Public passenger transport is legislated by the PSO Regulation (EC) No 1370/2007 (amended by Regulation (EU) 2016/2338) which requires the awarding of public service contracts by competent authorities according to the rules that are laid down in the regulation. They include the competences of competent authorities and Member States to impose social criteria, social standards and the transfer of staff in the case of change of operator.

4. Current state of implementation — residual problems after 30 years

4.1. Almost three decades of efforts to open the EU international and national freight and passenger rail markets, and harmonising various technical and safety rules thus creating a Single European Railway Area, has not yielded the sought overall results.

4.2. It should also be reminded that regarding international rail passenger routes and developing the capacity of this market segment, the EU Strategy on Sustainable and Smart Mobility aims to achieve by 2050 a fully operational, multimodal Trans-European Transport Network (TEN-T) for sustainable and smart transport with high-speed connectivity. This kind of connectivity should be able to connect EU major cities with rail-based sustainable services, able to replace, gradually and at least partially, intra continental air connections.

4.3. Despite the full market opening, measures to ensure free and non-discriminatory access to infrastructure, harmonised technical rules and administrative simplification, rail still shows considerable shortcomings with respect to its capacity to increase its modal share in both passenger and freight transport. A number of issues are accounted for in the 2020 Staff Working Document accompanying the Commission Communication on a Sustainable and Smart Mobility Strategy (the 'Working Document'), with a number of suggestions⁽⁶⁾. Similar views appear, with respect to freight, in the 2016 Special Report of the European Court of Auditors 'Rail freight transport in the EU: still not on the right track'.

4.4. The EESC is of the opinion that an analysis limited to the implementation of the EU legal framework and a measuring of the degree of market opening is not sufficient for a full analysis and understanding of the shortcomings of the SERA. The EESC therefore requests a broad and comprehensive analysis of success factors and problems, with an assessment of the current framework, including its impact on working condition bearing in mind the obligation under the TFEU Articles 90 and 91 to establish an internal market with harmonised rules for international transport and defining conditions for cabotage as well as Article 14 TFEU on Services of General Economic Interest with due regard to the principles of the single market and competition law as provided for in rail transport by Regulation (EC) No 1370/2007 bearing in mind also the role of the Member States in this regard as addressed in Protocol 26 TFEU and Article 36 of the EU Charter of Fundamental Rights.

4.5. Market opening has achieved uneven success. Still, there are a number of success stories. For instance, Austria, Germany and Sweden have achieved improved results in modal shares and volumes of goods transported by rail, in spite of the global decline on an EU-wide basis⁽⁷⁾.

4.6. The Austrian state-owned railway company ÖBB has successfully developed a network of international night passenger train connections, while its domestic market share in 2018 declined from 88,4 to 86,5 %. Of the total 2019 turnover of EUR 2,2 billion relating to passenger transport, around EUR 1,4 billion seem to relate to PSO⁽⁸⁾.

⁽⁶⁾ SWD(2020) 331 final.

⁽⁷⁾ 2016 Special Report of European Auditors, 'Rail freight transport in the EU still not on the right track', points 23-27.

⁽⁸⁾ ÖBB Holding Geschäftsbericht 2019, pp. 61 and 65-66.

4.7. PSOs are essential to ensure accessible, affordable and inclusive passenger services for citizens. Market access is open for commercial passenger services, often long distance services. However, long distance traffic and regional traffic cannot be separated. Every long distance train fulfils regional tasks for the passengers, especially when stopping in suburban areas. Regional lines ensure the necessary number of passengers and feed the main lines. They also relieve the infrastructure of the 'grandes lignes' and ensure the distribution in the area.

Further initiatives are being taken by Member States to create key connections with new train services, including night trains, with incumbent railway operators in the lead of these developments. Such plans have in fact already been announced by, for instance, Germany (TEE 2.0), the Netherlands and Sweden. The EESC is of the opinion that these initiatives demonstrate the complexity of the railway system and that free market access — in place since 2010 for international passenger transport — is not the right instrument to stimulate the development of (international) long distance passenger transport. Political will, political decisions on prioritising environmentally friendly and inclusive solutions accompanied by the necessary investment and a good governance are necessary.

4.8. The EESC sees the direct award of public service contracts as one of the most effective and efficient measures to promote railway passenger transport. It is the backbone of the railway systems in e.g. Austria and Switzerland, the champions in terms of market share. Furthermore, the EESC notes that there is no correlation between the degree of market opening and the satisfaction of customers, or with ticket prices.

4.9. But, according to the abovementioned Commission Working Document, a number of problems remain with respect to opening up market access and the creation of attractive rail links. Essential elements mentioned are:

4.9.1. Availability of adequate information to enable operators to submit adequate offers in tendering procedures, in spite of amendments made in the 2016 fourth railway package to ensure availability of adequate information for tenderers.

4.9.2. Access to rolling stock remains a major problem for new entrants. The availability as such of rolling stock with certification valid all over EU remains comparatively scarce regarding rolling stock both for passenger and goods transport.

4.9.3. Regarding availability of rolling stock for the public service passenger transport obligation, provisions in Regulation (EC) No 1370/2007 on public passenger transport services by rail and by road give the competent authorities an option to take measures to facilitate such access if considered necessary.

4.9.4. Through or combined ticketing for rail remains problematic, in particular regarding up-to-date information on fares, reservations and traffic.

4.10. In spite of the provisions in the fourth rail package enabling operators to receive a single safety certificate from the European Rail Agency for operations all over the EU, a number of rules are not harmonised, which means added complexity and cost of cross-border operations and in particular causing delays at border crossings. Harmonising these rules may therefore be a major task for the future and a prerequisite for future common digital and automation solutions.

4.11. The EESC underlines that the technical harmonisation and the modernisation of the infrastructure are a key factor for achieving a well-functioning single European railway area. Investment in the modernisation of infrastructure and rolling stock is very expensive. In fact, innovations in rail like high-speed rail were developed by state-owned operators with public support. Dedicated state aid rules exist regarding research and innovation.

4.12. The EESC takes note that the Commission is working with the rail sector and Member States, apparently to facilitate border crossing along the Rail Freight Corridors. The EESC considers that it is important that the Commission makes a broad inventory of existing obstacles including various attitude problems, and suggests solutions. In this context, the EESC calls for the involvement of social partners in the Commission's preparatory work.

4.13. A number of specific issues appear regarding rail freight. They have raised the following observations and suggestions in the Working Document.

4.13.1. The nature of the freight market has changed. A higher proportion of goods that requires both flexibility and a higher degree of reliability in complex and high-value supply chains often puts rail at a competitive disadvantage due to its lack of punctuality, reliability, predictability and flexibility. For instance, in the first quarter of 2018 over 50 % of the trains in the Alpine freight corridor were delayed over 3 hours.

4.13.2. Traffic information is scarce regarding, for instance, location of trains and expected time of arrival. On top of that, capacity and traffic management are generally not coordinated between rail infrastructure and facilities such as terminals. This hinders optimisations of resource management.

4.13.3. Lack of modern automated coupling systems in the EU, widely in use in the rest of the world, hinders the performance of single wagons.

4.13.4. Freight is given low priority in capacity planning, cross-border and nationally.

4.13.5. Long-term capacity and timetable planning hinder market-driven business models and make it impossible for rail to respond to short-time requests from customers. Prevalence granted to domestic traffic and lack of cross-border planning coordination cause further problems for cross-border freight.

4.13.6. Low profitability reduces investments and infrastructure investments are not adequately coordinated across borders, or even along key corridors.

4.13.7. Hopefully, at least part of the coordination and planning problems regarding cross-border freight might be addressed in the course on the ongoing evaluation of the Regulation establishing the European Rail Freight Corridors⁽⁹⁾.

4.14. In general, it appears that there is a need to redesign the governance process for railway capacity to enable operators to provide service according to the needs of their clients, with adequate reliability, punctuality and flexibility. This requires inter alia a comprehensive view of capacity management, comprising both passenger and freight, which would facilitate optimised capacity utilisation.

4.15. With respect to rail freight, similar observations to those made by the Commission in the Working Paper are made by the Court of Auditors in the Special Report on rail freight already mentioned.

The Special Report makes a number of recommendations with respect to the improvement of the functioning of the rail freight market, including better supervision to combat anti-competitive behaviour by incumbents and infrastructure managers, improved traffic management in rail freight corridors, performance monitoring and better targeting of infrastructure needs.

4.16. The Special Report of the Court of Auditors also raises the issue of train drivers, including with respect to the language regime according to Directive 2007/59 on the certification of train drivers, suggesting that the language requirements set out in Annex VI point 8 should be replaced by requirements of knowledge of a single language to be used for international rail transport purposes.

4.17. The Special Report concludes that the strategic and regulatory issues identified are such that, if not addressed, extra funding will not resolve the problems.

4.18. Attention should also be drawn to the Ministerial Declaration on Rail Freight Corridors of 21 September 2020, highlighting the importance of digitalisation and the timely implementation of the TEN-T Core Network Corridors and the deployment of ERTMS.

⁽⁹⁾ OJ L 276, 20.10.2010, p. 22.

4.19. There seems to be general agreement about the importance of a skilled railway staff with good working conditions. This requires action to prevent social dumping in the railway sector that is developing with the ongoing market opening as in the other transport sectors in the EU. Existing regulations — such as the Directive on the posting of workers — do not always adequately address the situation of railway workers because they do not take into account the specific requirements of the highly mobile workers in e.g. railways. It also makes monitoring challenging. The EESC therefore takes the view that, as is the case with road transport, dedicated rules addressing rail transport workers may be needed.

4.20. The EESC in this context also takes note of shortcomings regarding social provisions and legislation in the railway sector and their implementation and enforcement as reported by the rail social partners such as the implementation of the social clauses of the PSO Regulation and on the implementation, monitoring and enforcement of Directive 2005/47/EC on working conditions of mobile personnel in cross-border operations.

4.21. The EESC fully supports the common understanding about the importance of a skilled rail staff with good working conditions and takes note of the 2004 agreement on driving and resting times of mobile workers engaged in interoperable cross-border services, concluded between the Social Partners in January 2004 in the framework of the Social Dialogue and implemented through Directive 2005/47/EC.

4.22. The EESC takes note that the social partners have agreed to continue working within the social dialogue to improve monitoring of the implementation of the agreement. Through a common declaration they have undertaken to promote cross-border operations, avoid competition based solely on differences in working conditions, and maintain a level playing field among companies carrying out cross-border operations ⁽¹⁰⁾.

With regard to Directive 2005/47/EC the social partners highlighted that ‘one of the project findings is that a proper monitoring and enforcement of the Agreement at Member State level is hindered by a lack of clarity about the national competent authorities. Even in situations where an authority is clearly defined — usually the national labour inspectorate — it seems to lack the necessary resources, capacity and/or awareness about the Agreement and the Directive implementing it to perform its duties in an effective way’. The EESC assumes that the EU has to act.

4.23. The EESC takes note of a declaration by the social partners with regard to the PSO Regulation (EC) No 1370/2007 that ‘the consequences of competition should not affect the working conditions of staff providing services by requiring on national, regional or local level binding social standards and/or the compulsory transfer of staff in case of change of operator’ ⁽¹¹⁾. This is not sufficiently implemented and ensured in practice and needs EU action. The EESC asks the Commission to closely monitor the implementation of these provisions and take action as required.

4.24. There seems to be general agreement among operators that the sector now needs time to digest and adapt to the fourth railway package.

5. COVID 19 pandemic crisis — a test of resilience

5.1. The COVID-19 crisis has meant a trial and a challenge for rail transport as for all other transport sectors as well as for all transport workers. The reliability, safety and central role of the railways for the transport of people and goods is a positive finding from the COVID-19 pandemic, also due to the efforts made by railway staff under very difficult circumstances. State aid has helped many rail companies through a difficult period with dwindling volumes.

5.2. According to data collected by the Community of European Railway and Infrastructure managers, the impact of COVID-19 is detrimental to all kinds of rail passenger traffic, and especially to international routes. Revenue losses amounted to 26 billion euro in 2020 and continue in the first months of 2021. As well it is the expected that recovery will proceed at slow pace.

⁽¹⁰⁾ Assessment of the implementation and application of the Agreement on certain aspects of working conditions of mobile workers engaged in interoperable cross-border services in the railway sector; Project ‘Rail mobile workers’ — Joint conclusions from the European Rail Social Partners CER and ETF.

⁽¹¹⁾ <https://www.etf-europe.org/resource/joint-cer-etf-opinion-protection-of-staff-september-2013>

5.3. The COVID-19 crisis has however also awakened understanding of the need to develop resilience measures and improve coherence and coordination on the network and give higher priority to the development of cross-border infrastructure⁽¹²⁾. However, the pandemic has also shown that the cities play the most important role in solving traffic problems; they should not be left alone, the EU must pay the utmost attention to cities.

5.4. During the pandemic state-owned operators were obliged to continue passenger and freight services while ensuring safe operations. State aid and state intervention have often ensured that the rail system did not collapse, a necessity to ensure essential services.

6. The unbundling issues raised by the Presidency

6.1. The two unbundling questions raised by the Presidency appear to be well answered by the provisions in Chapter II, Sections I and II of Directive 2012/34/EU, as amended, which aim to ensure the management independence of railway undertakings and infrastructure managers (Section I) and the separation of infrastructure management and transport operations and different types of transport operation (Section II).

6.2. The provisions in question provide for a wide choice of options regarding organisational form, as long as the independence of the entity ensuring infrastructure management is ensured with respect to allocation of train paths and charging. The same appears to be the case with respect to the obligation to keep separate accounts between infrastructure management and operational activities and between passenger and freight activities, and transparency on public funds that are paid for public service remits.

6.3. The guarantee with respect to neutrality regarding train path allocation and charging as well as the transparency provided by the provisions on accounting must be seen as beneficial since they ensure a level playing field and transparency.

6.4. It may be noted that large railway countries like Germany, Poland, Italy and Austria have maintained an integrated railway company while the independence of the infrastructure manager is ensured with respect to the essential functions of slot allocation, charging and collection of charges. France for example reintegrated infrastructure management and operations. They consider it beneficial for the railway system to exploit synergies, guarantee closer cooperation, higher flexibility etc. It should be taken into account as well the benefit for railway personnel in having a big internal labour market and in particular for those safety relevant professions with medical and psychological requirements.

6.5. However, the freedom to choose organisational form must be seen as beneficial and therefore no unbundling should be imposed on Member States.

7. Concluding remarks

7.1. It follows from the above that the European Railway Area is by no means perfect. A deeper analysis of the success factors as well as on the impact on working conditions is necessary. Available analyses have assessed problems regarding implementation of existing legislation including market access, interoperability and technical harmonisation including incomplete harmonisation of operational and technical rules. But they have also defined problems of cost, lacking punctuality, lack of rolling stock able to move within the entire EU and general problems in adapting to an open market context. There appears to have been no analysis of possible effects of market opening on working conditions. Many things could and should be improved for the system to work better, become more competitive and improve its market share over the entire EU, becoming a full player in an efficient environmentally and socially sustainable multimodal transport and mobility system that serves users and the environment.

7.2. The EESC is of the opinion that it is time for a general stocktaking of the EU railway system. The EESC therefore requests a broad and comprehensive analysis of success factors and problems, with an assessment of the current framework, including its impact on working conditions. The EESC asks for an unbiased assessment bearing in mind the obligation under the TFEU Articles 90 and 91 to establish an internal market with harmonised rules for international transport and define conditions for cabotage with due regard to the provisions regarding Service of General Economic

⁽¹²⁾ See for instance Bundesministerium für Verkehr und digitale Infrastruktur "Folgerungen für die zukünftige Verkehrspolitik nach den Erfahrungen und dem Umgang mit der COVID-19 Pandemie"; Wissenschaftlicher Beirat beim Bundesminister für Verkehr und digitale Infrastruktur, Nr 2/Jahr 2020.

Interest as provided in Article 14 TFEU taken together with Protocol 26 TFEU and Article 36 of the EU Charter of Fundamental Rights. The analysis should consider environmental aspects and the objectives set out in the European Green Deal, the role of rail as a Service of General Interest and for the social and economic cohesion, the competitiveness of rail and its functioning in a multimodal crossborder transport system, based on cooperation, resource efficiency, service levels and customer/consumer satisfaction, all with particular attention to effects on the working conditions of employees. The European Year of the Rail 2021 provides an excellent opportunity to take stock of developments up till now and set objectives for the future.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

ANNEX

The following amendments were rejected by the plenary session but received at least one quarter of the votes cast:

Point 1.17

Amend as follows:

It seems clear that the current needs for policy measures and improvement of the rail system should be taken into account in order to realise the modal share goals and to allow it to play its full part in a competitive sustainable European multimodal transport system. ~~State aid and state intervention~~ The sector will need State aid also during its recovery for the COVID-19 crisis and State aid for financing of public service obligations will remain crucial to ensure essential services also beyond the COVID-19 crisis.

Outcome of the vote on the amendment:

Votes in favour: 94

Votes against: 119

Abstentions: 7

Point 1.18

Amend as follows:

Public service contracts are essential to ensure accessible, affordable and inclusive passenger services for all. ~~The EESC sees the direct award of public service contracts as one of the most effective and efficient measures to promote railway passenger transport. The EESC takes note of the current predominance of direct awards and the development of the regulatory framework toward competitive tendering. The EESC expects that the Commission will provide an analysis of the outcome of this change of focus with respect to affordability and service levels as foreseen in Regulation (EC) 1370/2007, Article 11, as amended.~~

Outcome of the vote on the amendment:

Votes in favour: 97

Votes against: 114

Abstentions: 12

Point 4.6

Amend as follows:

There is a general tendency toward using PSO obligations, with exclusive traffic rights, on deficitary lines, usually regional lines, whereas market access is open on long distance lines. The EESC underscores the important role of PSO in providing affordable accessibility and ensuring the overall coherence of the rail system for passenger transport to ensure accessibility. ~~PSOs are essential to ensure accessible, affordable and inclusive passenger services for citizens. Market access is open for commercial passenger services, often long distance services. However, long distance traffic and regional traffic cannot be separated. Every long distance train fulfils regional tasks for the passengers, especially when stopping in suburban areas. Regional lines ensure the necessary number of passengers and feed the main lines. They also relieve the infrastructure of the 'grandes lignes' and ensure the distribution in the area.~~

~~Further initiatives are being taken by Member States to create key connections with new train services, including night trains, with incumbent railway operators in the lead of these developments. Such plans have in fact already been announced by, for instance, Germany (TEE 2.0), the Netherlands and Sweden. Competing of operators on the Italian high-speed network has resulted in improved service quality cheaper tickets and higher service frequency, resulting in a discernible modal shift from air to rail. Similar initiatives are planned in Spain. The EESC is of the opinion that these initiatives demonstrate both the possibilities of the current framework to create attractive and environmentally friendly transport alternatives and the need for measures to facilitate the establishment of cross-border links. The EESC is of the opinion that these initiatives demonstrate the complexity of the railway system and that free market access in place since 2010 for international passenger transport is not the right instrument to stimulate the development of (international) long distance passenger transport. Political will, political decisions on prioritising environmentally friendly and inclusive solutions accompanied by the necessary investment and a good governance are necessary.~~

Outcome of the vote on the amendment:

Votes in favour: 104

Votes against: 112

Abstentions: 15

Point 4.7

Amend as follows:

~~The EESC takes note of the current predominance of direct awards of public service contracts and the development of the regulatory framework toward competitive tendering. The EESC expects that the Commission will provide an unbiased analysis of the outcome of this change of focus with respect to affordability and service levels as foreseen in Regulation (EC) 1370/2007, Article 11, as amended and that the analysis will also provide recommendations on an award system that provides the best cost/benefit results for the users. The EESC sees the direct award of public service contracts as one of the most effective and efficient measures to promote railway passenger transport. It is the backbone of the railway systems in e.g. Austria and Switzerland, the champions in terms of market share. Furthermore, the EESC notes that there is no correlation between the degree of market opening and the satisfaction of customers, or with ticket prices.~~

Outcome of the vote on the amendment:

Votes in favour: 97

Votes against: 114

Abstentions: 12

Point 5.3

Amend as follows:

~~During the pandemic state-owned operators were able obliged to continue safe passenger and freight services while ensuring safe operations at the same time facing substantial losses due to dwindling freight and passenger volumes. State aid and action by the European Commission and Member States to support rail financially and in particular by facilitating continued essential services including cross border have enabled the continued functioning of necessary passenger transport and supply chains state intervention have often ensured that the rail system did not collapse, a necessity to ensure essential services.~~

Outcome of the vote on the amendment:

Votes in favour: 94

Votes against: 119

Abstentions: 7

Point 6.5

Amend as follows:

However, The EESC therefore considers that the freedom to choose organisational form is must be seen as beneficial and therefore no unbundling should be imposed on Member States. The EESC also considers that the open dialogue between infrastructure managers and operators which was introduced with the fourth railway package brings added value as it enables exchange of relevant information to improve the functioning of rail and intermodality.

Outcome of the vote on the amendment:

Votes in favour: 95

Votes against: 118

Abstentions: 12

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

559TH PLENARY SESSION OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE –
INTERACTIO, 24.3.2021-25.3.2021

Opinion of the European Economic and Social Committee on ‘Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — 2020 report on the State of the Energy Union pursuant to Regulation (EU) 2018/1999 on Governance of the Energy Union and Climate Action’

(COM(2020) 950 final)

and on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An EU-wide assessment of National Energy and Climate Plans: Driving forward the green transition and promoting economic recovery through integrated energy and climate planning’

*(COM(2020) 564 final)**(2021/C 220/04)*Rapporteur: **Lutz RIBBE**

Referrals	European Commission, 11.11.2020 and 27.11.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	9.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote	
(for/against/abstentions)	236/4/6

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) is impressed by how meticulously and accurately the Commission documents and evaluates the development of the Energy Union. The way in which the national energy and climate plans (NECPs) were drawn up and assessed shows that the governance of the Energy Union works.

1.2. The EESC is relieved to learn that — although some Member States are falling well below the targets — the energy and climate objectives for 2020 have largely been met. However, this must not lead to complacency. The objectives for the next 30 years, starting with the 2020s, are much more ambitious. The pace of transformation needs to be significantly increased, but the social and economic situation in the individual Member States should not be overlooked in the process, as this could jeopardise social acceptance of investment and reforms aimed at accelerating the energy transition. That transition is also at risk if politicians promise participation for broad swathes of society, but in reality do not take that promise seriously and do not put it into practice.

1.3. This makes it all the more important to consider not only the global (climate) objectives, but also the specific objectives that the Commission has set for itself with the Framework Strategy for a Resilient Energy Union and the Clean Energy for All Europeans package. In this regard, the findings are much worse.

1.4. The most important objective that the Commission set out in the framework strategy is that citizens should be at the core of the Energy Union. In its Communication on the State of the Energy Union, the Commission makes no mention of the extent to which this objective is being achieved or the strategies it will adopt to meet it in the future. This is completely unacceptable to the EESC.

1.5. In its assessment, the Commission believes that insufficient attention is paid to the development of community energy in the Member States' NECPs. This is worrying. It is disappointing that the Commission's only response to this is a very general appeal to Member States. If ambitious objectives, as set out in the Clean Energy for All Europeans package and the Energy Union Framework Strategy, are not seriously adhered to, this is not only detrimental to the Energy Union — the credibility of EU policy as a whole is at stake.

1.6. Therefore, the EESC thinks that, in future reports, the Commission should more carefully analyse the level and quality of implementation, compliance and enforcement with regard to the third energy package in the Member States, in particular in terms of how they intend to put 'citizens at the core'. In the past, the implementation of energy regulations has been delayed and has often not benefited citizens.

1.7. A critical view should also be taken with regard to three of the Energy Union's other objectives: reducing energy dependency by cutting down energy imports, eliminating subsidies for climate- and environmentally harmful energy sources, and taking a leading role in renewable energy, energy efficiency and electro-mobility. These three objectives have all been missed, as can be seen from the Commission Communications. However, the reasons for this are not discussed. Nor is any mention made of the lessons to be drawn from these failures and what the next steps are, e.g. with respect to the Recovery Fund.

1.8. In the EESC's opinion, the Member States' NECPs reveal a lack of coherence in European energy policy. The EESC also considers most of the NECPs to be too non-specific, particularly with regard to the key issues of energy security and just transition.

1.9. The EESC therefore calls on the Commission to pay more attention, when evaluating NECPs, to the adequacy of the just transition strategies and, in particular, to assess the extent to which the following objectives have been achieved:

- facilitating employment transitions;
- supporting workers who lose their jobs as a result of decarbonisation (at the very least, a lost job should be compensated for with another, equivalent job);
- combating energy poverty and offsetting degressive distributional effects; and
- developing the regional economic potential arising from renewable energy sources and new forms of participation in electricity production.

2. General comments on the Commission document

2.1. The Commission presented its Communication on a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy ⁽¹⁾ on 25 February 2015. The strategy addressed the following goals:

- energy security, including by reducing dependence on energy imports;

⁽¹⁾ COM(2015) 80 final.

- a fully integrated European energy market;
- a sustainable, low-carbon and climate-friendly economy;
- research, innovation and competitiveness to enable Europe to become a global leader in renewable energy;
- a European labour force with the skills for the energy system of tomorrow;
- investor confidence through price signals that reflect long- term needs and policy objectives.

2.2. Most importantly, as the Commission put it at the time, it was striving for ‘an Energy Union with citizens at its core, where citizens take ownership of the energy transition, benefit from new technologies to reduce their bills, participate actively in the market, and where vulnerable consumers are protected’. It also identified stakeholder involvement in shaping the Energy Union as a priority and a socially just transition as a fundamental principle in tackling the energy transition.

2.3. The Commission also explained that the Energy Union needed an integrated governance and monitoring process. The EU has adopted a legal basis for this with Regulation (EU) 2018/1999 of the European Parliament and of the Council ⁽²⁾ on the Governance of the Energy Union. This requires Member States to regularly submit national energy and climate plans (NECPs), which should include a description of their contributions to achieving the Energy Union.

2.4. In its 2020 report on the State of the Energy Union, the Commission now sets out the progress made under five headings:

- Decarbonisation (including development of renewable energy)
- Energy efficiency, with particular attention to the ‘Energy Efficiency First’ principle
- Energy security (including cutting EU energy imports, increased flexibility and greater resilience of national energy systems)
- Internal energy markets
- Research & innovation and competitiveness

It also addresses the topic of ‘The Energy Union in a broader Green Deal perspective’.

2.5. Proceeding from this, the Commission sets out ideas on ‘Pursuing green recovery and a sustainable economy’, examining firstly the existing strategies for the integration of the energy system and the development of hydrogen in Europe.

2.6. The Commission also justifies the need to increase the reduction target for carbon emissions to at least 55 % compared with 1990 and announces a strategy to reduce methane emissions and a ‘vision for offshore energy’. It criticises, in this connection, the strategies presented by the Member States in their NECPs for often being unclear and short on detail.

2.7. Overall, the Commission considers the situation still less than satisfactory, although it is noted that the 2020 targets for renewable energy development across the EU have largely been met. ‘Progress is still needed’ in some Member States.

⁽²⁾ OJ L 328, 21.12.2018, p. 1.

2.8. It calls for more efforts to be made on energy efficiency; significant shortcomings are noted particularly in building renovation.

2.9. The report is accompanied, for the first time, by a detailed analysis of energy subsidies ⁽³⁾, which clearly states that (a) there is still a need for better data on energy subsidies ⁽⁴⁾ and (b) 'there is a clear need to step up efforts' to reduce fossil fuel subsidies. The legal instruments currently in place at EU level are described as insufficient.

2.10. Also labelled 'not encouraging' is the fact that R & D investment in this sector in the EU-27 has been falling and that Europe is lagging behind enormously compared with other economic regions. The Commission announces efforts in areas such as battery storage facilities and hydrogen, for instance, to revitalise research and innovation and to counter the decline in investment observed at national level.

2.11. It is noted that the cost of energy imports has risen again in recent years (to more than EUR 330 billion a year), reversing the erstwhile downward trend.

2.12. The Commission concludes its report by confirming that, in the wake of the coronavirus outbreak, Europe has a unique opportunity to invest to support the recovery of the EU economy while at the same time hastening the green and digital transitions.

2.13. In its Communication on the EU-wide assessment of the NECPs, the Commission draws a positive conclusion at this stage, since progress in greenhouse gas reduction and renewable energy enabled a significant increase in the corresponding 2030 targets in 2021. On the other hand, the Commission sees a massive shortfall in energy efficiency, investment in research and innovation. To address these shortcomings, it concludes, the Member States must react to the new funding opportunities under the Multiannual Financial Framework and the Recovery and Resilience Facility.

3. The EESC's general comments

3.1. Firstly, the Commission deserves explicit praise: the degree of detail with which it is pushing forward the governance of the Energy Union, as reflected in the extensive documents (including annexes), shows a great degree of seriousness. And this is indeed essential, given that the climate change targets set so far, which are to be tightened, are only barely — if at all — being met. The goal of achieving climate neutrality in the European Union by 2050 at the latest is of epoch-making importance and requires a strategic planning and coordination — possibly unique in history — of very different policy approaches that must by far exceed what has been decided so far.

3.2. With this in mind, the EESC strongly agrees with the Commission when it underscores the need for Member States to develop and implement clearer strategies without delay. In this connection, greater account should be taken of the social, employment and skills implications and other distributional effects of the energy transition, and it must be explained how the attendant challenges will be addressed.

3.3. The Commission's main conclusions are understandable and merit support. This applies in particular to the finding that progress towards achieving the greenhouse gas emissions reduction targets, increasing energy efficiency and developing renewable energies are a springboard for greater ambitions.

3.4. The EESC also agrees with the Commission that further momentum is needed. However, it would have been desirable for the Commission to spell out what form this further momentum would take.

⁽³⁾ COM(2020) 950 final, Annex 2.

⁽⁴⁾ Which is surprising, given that there has been talk for more than thirty years about the need to phase out environmentally harmful subsidies in the EU.

3.5. It also seems logical that the Commission links the development of the Energy Union with the European Green Deal and the pandemic-related recovery policy, neither of which was in evidence when the Strategic Framework for the Energy Union and the Governance Regulation were framed. The EESC stresses that the European Energy Union provides an ideal basis for action in favour of the Green Deal. It would have been all the more important for the current review to better identify the emerging shortcomings and to devise counter-strategies. This has not happened in at least three cases, which will be addressed below.

Failure to implement the 'Energy Union with citizens at its core' goal

3.6. As cited in point 2.2, the Commission identified the importance of citizen-led and citizen-centred policies as the *most important(!)* goal in the strategic framework of the Energy Union. This goal should therefore also have rated particular attention in the State of the Energy Union report, in particular through specific suggestions for transparent and active participation and involvement from citizens, social partners and stakeholders in decision-making processes, e.g. NECPs, and active participation in the market. In fact, however, the participation aspect is not even mentioned in the report; nor is there any consideration of whether the measures proposed for the future explicitly serve this goal.

3.7. The problem also occurs in other areas, among them the energy system integration strategy presented by the Commission, where citizens figure only as consumers, and not as active market participants. Also with regard to the priorities outlined by the European Commission⁽⁵⁾, namely the hydrogen strategy and the announced 'offshore energy vision', it is difficult to imagine that the involvement of citizens is even possible or envisaged. That the Commission, in the Communication assessing the NECPs, says it intends to use the established EU renewable energy financing mechanism in particular to further offshore technologies must therefore attract strong criticism.

3.8. In doing this, the Commission is ignoring EU law, since Recital 43 of the Internal Market for Electricity Directive (EU) 2019/944 of the European Parliament and of the Council⁽⁶⁾ states: 'community energy [is] an effective and cost-efficient way to meet citizens' needs and expectations. [...] By directly engaging with consumers, community energy initiatives demonstrate their potential to facilitate the uptake of new technologies and consumption patterns, including smart distribution grids and demand response, in an integrated manner. Community energy can also advance energy efficiency at household level and help fight energy poverty through reduced consumption and lower supply tariffs. [...] Where they have been successfully operated such initiatives have delivered economic, social and environmental benefits to the community.' In the view of the European legislator, then, community energy has the capacity to remedy a number of the shortcomings complained of in the Commission documents, making it all the more incomprehensible that the Commission does not deign to address this in its own documents. There is a yawning chasm between ambition and reality and the EESC fails to detect any real Commission strategy to make citizens active partners.

3.9. However, the same criticism can also be levelled at most of the Member States, which are required by Article 20 of the Governance Regulation (EU) 2018/1999 to explore community energy in their NECPs. The Commission notes in its assessment that the Member States have failed in part or in whole to do so. The EESC calls on the European Commission to propose more specific provisions to promote community energy in the forthcoming revision of the Renewable Energy Directive.

Failure to implement the 'security of supply/reduction of energy imports' goal

3.10. One strategic objective of the Energy Union is to increase energy security, including by reducing energy imports. The Commission notes, more or less in passing, the lack of evident progress: on the contrary, spending on energy imports has again increased. The increasing importance of hydrogen could even help to increase imports even further in the future, as the Commission is consciously counting on imports in its hydrogen strategy! The EESC expects the Commission to give a clear explanation on this.

⁽⁵⁾ And the German Council presidency.

⁽⁶⁾ OJ L 158, 14.6.2019, p. 125.

3.11. The EESC also calls for the tenet of European solidarity to be followed when securing unavoidable energy imports. Independent national initiatives such as the Nord Stream 2 gas pipeline project may endanger not only the climate but also security of supply. Such actions, which undermine European solidarity, jeopardise public trust in the EU and the EU's image in non-Member States.

Failure to implement the 'innovation, global leadership' goal

3.12. The picture is also gloomy when it comes to innovation. Based on the State of the Energy Union report's depiction of investment in research and innovation and patent applications, the Energy Union's full-throated ambition to be a global leader is being hampered. In light of this concerning finding, there is a need for a rigorous and in-depth analysis that can help identify the source of the problem precisely and with nuance. Concrete countermeasures need to be developed on this basis.

3.13. Against the backdrop described in points 3.6 to 3.11, it has to be said quite clearly: it is not enough to churn out the same mantras again and again if no tangible measures follow. If this continues, the credibility of EU policies will be compromised. The fact is that in all available Commission documents, including the Energy System Integration and Hydrogen Strategy, no concrete measures are identified that could help to achieve the objectives referred to above.

Social and regional policy relevance of the Energy Union

3.14. In Chapters 2.6 and 3.3 of its State of the Energy Union report the Commission also sets out a number of social policy considerations. These are sound and the EESC endorses in particular the coupling of coronavirus recovery aid with climate and energy policy objectives. The just transition measures are also to the point and a basis for successfully bringing the public on board with meeting the climate and energy policy objectives. Whether this will actually help to meet the 'leaving no one behind' principle will depend specifically on the operationalisation and funding of individual instruments and their specific implementation at national level.

3.15. As expressed in earlier opinions ⁽⁷⁾, the EESC is convinced that not only must the resources for social and regional cohesion and recovery be deployed so as to support climate mitigation and the energy transition, but climate and energy policies must (and can) also be configured so as to further social and regional cohesion. Such strategies already exist; some of them are even mentioned in the Communication assessing the NECPs, such as projects for building solar farms on former lignite mining sites in Portugal and Greece, or the very strategic support for prosumers in Lithuania. But these examples are far from common practice or mainstream.

3.16. The risk exists, therefore, of the energy transition increasing social and regional disparities, for example if the Commission implements as planned the integration of the energy system, the development of hydrogen infrastructure and the promotion of offshore energy, in the process favouring centralist approaches to the detriment of decentralised ones.

3.17. In any event, expanding centralised and decentralised infrastructure in parallel is problematic and risks being a cause of misguided investment. For example, there is competition for use between a comprehensive hydrogen pipeline network and the development of low-temperature district heating systems, as called for in the Commission Communication assessing the NECPs. For this reason, and in the interests of investment certainty, the EESC has therefore called for the necessary fundamental decisions to be made ⁽⁸⁾. These are also of strategic importance for the success of the Energy Union, yet are not addressed in the documents discussed here.

3.18. As in almost all recent Commission energy policy documents, digitalisation plays no part in the State of the Energy Union report. And yet digitalisation opens up interesting concepts such as smart micro grids and smart markets, microtrading, virtual power plants, and so on. All of these can contribute to a higher efficiency and performance of the internal energy market, including by strengthening the role of active consumers. The Commission has addressed this, albeit

⁽⁷⁾ OJ C 47, 11.2.2020, p. 30, OJ C 62, 15.2.2019, p. 269.

⁽⁸⁾ OJ C 429, 11.12.2020, p. 85.

somewhat briefly, in the Energy Union Framework Strategy⁽⁹⁾. That it ignores this aspect in the State of the Energy Union report defies comprehension, especially since the use of digital technologies needs to be carefully examined in terms of their usefulness and potential ethical problems, particularly with regard to data sovereignty.

3.19. In any case, however, it should be ensured that digitalisation is designed in the interests of the end users. Citizens are still waiting for increasing digitalisation to lead to improved services, such as daily supplier switching, immediate feedback on faulty meters or suspicious usage patterns and seamless procedures for connecting their own generation to the grid.

4. Specific comments

The 'Decarbonisation' chapter of the State of the Energy Union report

4.1. The Commission rightly points out that there are many advantages to the use of renewable energy. However, who benefits from these depends crucially on whether the energy transition is in principle decentralised or centralised⁽¹⁰⁾. The Commission is mute on this in its report.

The 'Energy security' chapter of the State of the Energy Union report

4.2. The Commission quite rightly pays great attention to the issue of security of supply and, in this connection, to energy security. Its importance for the economy is, after all, immeasurable. In addition to the classic question of import dependence, thought must be given first and foremost to resilience to external attacks, such as cybercrime. The latest research findings⁽¹¹⁾ say on this that the best strategy for high resilience is to strengthen decentralised structures that have stand-alone capability. The Commission should take greater heed of these findings.

4.3. There is absolutely no doubt that green hydrogen will contribute in the future to a secure European energy system. The EESC refers to its opinions on the hydrogen strategy⁽¹²⁾ and the strategy for energy system integration⁽¹³⁾.

4.4. Here too, it is important not only to think in terms of large-scale technologies (including the development of hydrogen import infrastructure). There are a multitude of innovative, environmentally-friendly and, above all, local/regional solutions that can be implemented directly on the ground (including regional production of hydrogen or synthetic e-fuels). This will increase security of supply, reduce dependence on imports, and promote local employment in the form of green jobs and added value in the regions. Micro, small and medium-sized enterprises should also be given the opportunity to participate in and benefit from the Green Deal, which will also increase acceptance of the Green Deal and energy transition.

The 'Internal energy markets' chapter in the State of the Energy Union report and the progress report on the internal energy market

4.5. The Commission explains that the Clean Energy Package introduced more conducive arrangements for encouraging consumers to participate in energy markets and creating a level playing field for new entrants. In reality, however, the only provisions relevant here are those of the Directive on the internal electricity market. The extent to which the Member States have actually implemented these provisions cannot yet be ascertained. The Commission's conclusion is therefore premature. The EESC urges a serious evaluation of the important consumer participation goal, including with regard to the effects of distributive policy in terms of the participation of low-income households.

⁽⁹⁾ COM(2015) 80 final, p. 13.

⁽¹⁰⁾ OJ C 429, 11.12.2020, p. 85.

⁽¹¹⁾ See Hirschl, B., Aretz, A., Bost, M., Tapia, M., and Gößling-Reisemann, S. (2018): Vulnerabilität und Resilienz des digitalen Stromsystems. Schlussbericht. Berlin, Bremen, available for download at: www.strom-resilienz.de

⁽¹²⁾ OJ C 123, 9.4.2021, p. 30.

⁽¹³⁾ OJ C 123, 9.4.2021, p. 22.

4.6. The Commission underlines the importance of market price signals, not least for investors. This is without doubt an important aspect. Nevertheless, a more nuanced view is needed here. Most wholesale electricity markets indicate short-term prices. Whether these prices send any signals to investors is a contested issue in energy economics. The EESC has pointed this out in previous opinions ⁽¹⁴⁾. It is therefore not appropriate for the Commission to refer to an 'internal energy market' indiscriminately here. A new market design, at least in the electricity sector, is essential for the success of the Energy Union. Full balancing responsibility for renewable energy alone will not be enough. The EESC therefore calls on the Commission to set out its ideas for a new market design as soon as possible. Care should also be taken to ensure that the same conditions apply to all market participants on balancing markets. This is also essential for the success of energy system integration ⁽¹⁵⁾.

4.7. At the same time, it should be borne in mind that the objectives of security of supply and climate neutrality cannot be achieved by price signals alone.

4.8. In the progress report on the internal energy market, the Commission properly underscores the fact that enabling competition in generation and supply must remain a priority for national and EU energy policy. What exactly this means in practice remains, however, open to conjecture. To say that only market coupling can drive competition is erroneous and does not reflect European law as enshrined in the Clean Energy Package. When applying the principles of capacity allocation and congestion management set out in Article 16 of the Electricity Market Regulation, the geographical situation of the Member States should be taken into account, which could also justify a deadline extension for installing capacity. In any case, market access, especially for smaller players, is particularly important for active competition. Digitalisation, among other things, has a lot to offer here.

4.9. The Commission also states in the progress report on the internal energy market that, although thermal plants such as gas-fired power plants with combined heat and power can give the system important flexibility, poorly designed capacity mechanisms can seriously distort the internal market. In this regard, the EESC refers to the position it expressed in opinion TEN/625. It calls on the Commission to conduct a critical evaluation of the capacity mechanisms in place in the Member States, including in relation to compliance with the provisions of Article 22 of the Regulation on the internal market for electricity, which provide for a 550 g CO₂/kWh threshold, among other things.

4.10. The Commission states in the progress report on the internal energy market that transmission or distribution system operators were generally excluded from owning and operating electricity storage systems. The EESC has welcomed this decision in principle ⁽¹⁶⁾, which should allow distribution system operators to own and operate electricity storage systems in the interests of the grid. Moreover, it considers that this must go hand in hand with the strengthening of smart markets, so that storage operators have an incentive to follow network operators' signals and to configure their storage in a way that serves the system. Network operators need incentives to emit the signals.

4.11. Distribution networks play a fundamental role in the deployment of smart markets and overall in the success of the energy transition. Therefore, EU energy policy must in future be more focused on modernising them.

4.12. The EESC agrees with the Commission that the prime aim of the Council Energy Taxation Directive 2003/96/EC ⁽¹⁷⁾ is no longer being achieved. It therefore stands behind the Commission's intention and calls for an ambitious recast of this directive and other mechanisms to phase out fossil fuel subsidies and to internalise external costs.

4.13. The EESC again underscores the matter of energy poverty and calls on the Commission to enact specific measures that go beyond the abstract guidelines on definition and an observatory. The EESC has repeatedly stressed that widespread participation of citizens in the energy sector is one of a number of ways this situation can be remedied.

⁽¹⁴⁾ OJ C 82, 3.3.2016, p. 13.

⁽¹⁵⁾ OJ C 364, 28.10.2020, p. 158.

⁽¹⁶⁾ OJ C 288, 31.8.2017, p. 91.

⁽¹⁷⁾ OJ L 283, 31.10.2003, p. 51.

4.14. In this connection, the EESC reaffirms its position that a two-tier energy society is to be avoided at all costs. We cannot have a situation in which only affluent and technologically well-equipped households benefit from the energy transition and all the rest have to bear the costs. Citizens in energy poverty are not usually the strongest politically. The Commission therefore needs to do more to ensure that the Member States actively strive to effectively tackle energy poverty: both the energy Renovation Wave pursued in the building sector and the active involvement of citizens in the generation of renewable electricity can help to alleviate the problem. It should also be noted that the potential extension of emissions trading to the heating and transport sectors may have an impact on distributive justice.

The 'Research & innovation and competitiveness' chapter in the State of the Energy Union report

4.15. The EESC fears that one reason for the EU's backwardness in some domains such as solar and lithium-ion batteries is insufficient demand. The EESC therefore calls on the Commission to broaden its strategy: the EU needs active industrial policy initiatives to end China's market dominance. For example, the Commission's proposal for a regulation on batteries is a step in the right direction. Moreover, decentralised structures should be strengthened in the future energy system. This is because this stimulates demand for batteries, for example, generates economies of scale and thus makes batteries attractive on price.

The 'Energy Union in a broader Green Deal perspective' chapter in the State of the Energy Union report

4.16. The EESC supports the Commission's endeavours to promote ambitious climate agreements worldwide. This requires the introduction of a border countervailing duty in conjunction with ambitious and concrete incorporation of climate change (and other sustainability goals) in international trade agreements⁽¹⁸⁾.

The Communication on the assessment of NECPs

4.17. The EESC fails to grasp why the Commission confines its criticism of the insufficient appreciation of renewable energy potential to the offshore sector. It calls on the Commission to abandon its own one-sided preference for offshore technologies to the detriment of onshore photovoltaic and wind energy and to set out its own development strategies for the latter two.

4.18. The EESC welcomes the Commission's recognition of the potential of renewable energies for job creation. It stresses, however, that this potential will not be exploited to the full as a matter of course, but requires active policies, particularly on the quality of jobs. It is completely incomprehensible here that the Commission attaches so little attention to photovoltaics, especially when, as stated in the Communication, this is the most employment-intensive sector.

4.19. The EESC calls on the Commission, in the forthcoming revision of the Renewable Energy Directive, to draft tendering rules so as to make it easier for renewable energy communities and SMEs to bid.

4.20. The EESC agrees with the Commission that investment in low-temperature district heating systems is desirable as a matter of urgency. An initiative should be launched to this end.

4.21. Carbon reductions are an important instrument for climate change mitigation. However, concerns expressed in Member States' NECPs about increasing natural disturbances must be taken seriously. LULUCF credits should therefore only be seen as complementary to other mitigation options.

Brussels, 24 March 2021.

*The President
of the European Economic and Social Committee
Christa SCHWENG*

⁽¹⁸⁾ OJ C 81, 2.3.2018, p. 44.

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 an EU strategy to reduce methane emissions’

(COM(2020) 663 final)

(2021/C 220/05)

Rapporteur: **Udo HEMMERLING**

Referral	European Commission, 27.11.2020
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Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	9.3.2021
Date adopted in plenary	24.3.2021
Plenary session No	559
Outcome of vote	
(for/against/abstentions)	252/5/4

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) supports the goal and basic thrust of the EU Methane Strategy, aimed at further significant reductions in methane emissions for climate protection.

1.2. Focussing on those sectors which produce the main methane emissions, namely agriculture, energy and waste management, is reasonable.

1.3. The methane strategy should be tied in with the bioeconomy and circular economy strategies.

1.4. It strongly supports the focus on better measurement of methane emissions and on international mitigation initiatives. Methane emissions often come from decentralised, diffuse sources along international production and supply chains.

The EESC proposes incorporating the following in the EU Methane Strategy:

1.5. The largely diffuse sources of methane and the complex measurement of methane emissions often make it difficult to monitor emissions. Improved monitoring should be developed in a consistent, comparable way for the sectors concerned, such as agriculture, energy, waste and the chemicals industry.

The direct inclusion of or direct pricing arrangements for diffuse methane emissions in a greenhouse gas trading system is most difficult and often impossible. Where possible, however, measurement of point-source emissions should be pursued taking the same approach to all emitters.

1.6. Member States should in their climate change plans set out their progress with and the potential for using biogas from slurry and manure, bio-waste, waste water, landfills and mine gas and define measures to increase the use thereof.

1.7. There is still considerable potential in agriculture for cutting back methane emissions, above all through the digestion of slurry and manure in biogas plants, as well as progress in feeding and breeding farm animals and low-emission fertiliser use. This potential should be further defined as part of the implementation of the EU Methane Strategy.

1.8. In waste management, separate collection and recovery of bio-waste should gradually become the norm throughout the EU. This creates the right conditions for further avoidance of methane emissions in this sector.

2. Overview of the European Commission's Methane Strategy

2.1. Methane represents 10,5 % of the EU's total greenhouse gas emissions of 3,76 billion tonnes of CO₂ equivalent (2018). Methane emissions have been cut back by almost 34 % since 1990.

2.2. The methane strategy addresses the main anthropogenic methane emissions and the emitting sectors — agriculture, waste and energy (accounting for 53 %, 26 % and 19 % of methane emissions, respectively) — and proposes mitigation measures. Natural methane emissions, e.g. from wild ruminants or marshes, are not therefore covered by the strategy.

2.3. Reducing methane emissions worldwide can make a major contribution to mitigating climate change. Halving today's global methane emissions would have a global cooling effect of 0,18 degrees Celsius by 2050.

2.4. The EU is responsible for 5 % of global methane emissions. It significantly induces further methane emissions in third countries through the import of fossil gas, oil and coal. Therefore, the European Commission proposes undertaking action to reduce these emissions along international supply chains.

2.5. It is proposing to significantly improve the measurement and reporting of methane emissions.

2.6. The methane strategy does not specifically look into current scientific knowledge on the particular effects of methane as a short-lived GHG (see point (3)).

3. Knowledge on the climate impact of methane and implications for a policy of climate neutrality

3.1. One of the basic characteristics of methane (CH₄) as a GHG is that it has a relatively short lifetime and breaks down in the atmosphere into water (H₂O) and CO₂ over a period of about 12 years. This has decisive consequences for its climate impact and the comparison with CO₂, which is used as a point of reference in climate footprints.

3.2. CO₂ is stable in the atmosphere and, unlike methane, does not break down, so is also referred to as a long-lived GHG ('stock gas'). As a result, CO₂ emissions continue to accumulate in the atmosphere, for example through the burning of fossil fuels (all other things being equal), thus constantly increasing the concentration of CO₂.

3.3. By contrast, emissions of short-lived GHG ('flow gases') such as methane are offset by their natural decomposition process. Their short lifetime therefore results in emissions being offset by their removal, leading to stable atmospheric concentrations when emissions are stable.

3.4. In addition to the short lifetime of methane, its origin is also decisive for the impact on the climate, as its decomposition produces the GHG CO₂. The CO₂ resulting from the decomposition of biogenic methane (e.g. from ruminant digestion and wet rice cultivation) was previously removed from the atmosphere through plant growth by means of photosynthesis and is therefore basically in a loop, which does not change the concentration of CO₂ in the atmosphere.

3.5. By contrast, the decomposition of fossil methane (e.g. from natural gas, oil and coal) to form CO₂ and water constitutes an additional source of CO₂ for the atmosphere and thus increases the CO₂ concentration therein.

3.6. These characteristics of methane have a series of consequences for climate impact and for devising climate policy. This is particularly true for the goal of climate neutrality. Constant emissions of (biogenic) methane, as a short-lived GHG, lead in the medium term to a constant concentration of methane in the atmosphere, with a constant radiative effect on the climate system and consequently a constant effect on temperature. If methane emissions decrease, the concentration in the atmosphere decreases, leading to a decrease in the radiative effect and thus a decrease in temperature (cooling effect).

3.7. On the other hand, constant CO₂ emissions lead to an increase in the concentration of CO₂ in the atmosphere as long as CO₂ is being emitted. Even after CO₂ emissions have stopped, the previously deposited CO₂ remains in the atmosphere at the same concentration, resulting in a continued radiative effect and permanent warming effect.

3.8. So in order to achieve a climate-neutral outcome, different approaches to short- and long-lived GHG are needed. In order to bring temperature levels back down to those existing prior to CO₂ emissions, offsetting the permanent temperature increase caused by the continued radiative effect of CO₂, CO₂ concentration in the atmosphere needs to be actively reduced by means of CO₂ sinks. Also, in order to bring down temperature levels where CO₂ emissions continue (because they are unavoidable), the same amount of CO₂ needs to be continuously removed from the atmosphere as is being added (net-zero emissions). This is reflected in the net-zero greenhouse gas emissions goal. However, climate-neutral effects are already achieved with stable emissions from (biogenic) methane sources, while offsetting methane emissions converted into CO₂ equivalent by removing GHG from the atmosphere leads to a cooling effect.

3.9. Net zero expressed in CO₂ equivalent is therefore not an appropriate policy approach for methane as a short-lived GHG. The New Zealand Zero Carbon Act, for example, contains a separate assessment of methane emissions. The climate impact of short-lived GHG should be reflected in GHG balance sheets with more appropriate metrics. (See the University of Oxford's work on this matter: <https://iopscience.iop.org/article/10.1088/1748-9326/ab6d7e>).

4. Methane emission abatement — Additional comments

4.1. A change in consumer behaviour definitely has the potential to reduce greenhouse gas emissions. This also applies to nutrition — specifically the recommendation to reduce consumption of animal products. For climate policy, however, it should be borne in mind that in an open society these involve voluntary changes in people's lifestyles.

4.2. In agriculture, alongside ways of reducing methane emissions from livestock farming, connections with land use should also be taken into account. More specifically, ruminants constitute the key basis for using and preserving grassland. Its preservation is, in turn, very important from a climate policy point of view due to the CO₂ sequestered in soil humus.

4.3. As regards methane gases from landfills, sewage works or from disused coal mines, some EU countries do not yet have comprehensive arrangements for collection and energy use.

4.4. For waste collection, many Member States do not yet have comprehensive systems for the separate collection and recovery of biogenic waste. This hinders maximum avoidance of methane emissions from composting or digestion (biogas) in the treatment of bio-waste.

4.5. As far as imports of fossil fuels such as natural gas, oil and coal are concerned, the EU has not yet imposed any specific requirements in relation to nature conservation or environmental or climate protection. The announced development of methane emission abatement requirements should be part of a broader initiative to reduce the environmental footprint of these energy imports under the Green Deal.

4.6. Natural methane emissions should also be identified on an indicative basis as part of expanded monitoring of anthropogenic methane emissions to provide a comprehensive overview.

4.7. Research, development and further market penetration of methane abatement technologies should be fostered in European networks, with the involvement of the economic and social partners.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) No 347/2013’

(COM(2020) 824 *final* — 2020/0360 (COD))

(2021/C 220/06)

Rapporteur: **Philippe CHARRY**

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Plenary session No	559
Outcome of vote (for/against/abstentions)	252/3/5

1. Conclusions and recommendations

1.1. The EESC is in favour of adapting European rules on the trans-European energy networks (TEN-E) to the objectives of the Green Deal for a ‘clean, affordable and secure energy supply’, combining in particular the decarbonisation of the energy system, the transition to climate neutrality, the development of renewable energy sources, energy efficiency and the prevention of the risk of fuel poverty. It therefore acknowledges the fact that Europe needs an energy system that ensures security of energy supply for all EU countries, access for all to affordable energy, based on rapid electrification coupled with a doubling of the share of electricity production from renewable sources. The EESC calls for the proposed legal basis for the Regulation to be supplemented by an explicit reference to Article 194 TFEU.

1.2. The EESC reiterates the need to achieve all the objectives of the energy policy implemented through the TEN-E Regulation. As energy networks play a key role in ensuring the balance, resilience and development of the energy system, the Committee calls for the Regulation to fit more clearly into the process of integrating the energy system in order to promote all decarbonised forms of energy, and for any form of break-up to be made impossible.

1.3. The EESC calls on the Commission, the Council and the Parliament to promote carbon-free energy sources, while respecting technological neutrality. It also calls for support for efforts under the International Thermonuclear Experimental Reactor (ITER) project to achieve clean and affordable energy for all beyond 2050. The Committee would like to see projects set up to create the conditions needed to pave the way for an era of hydrogen and fusion.

1.4. The EESC calls for priority to be given to innovation and the design of energy networks aimed at reducing transport-related energy losses.

1.5. Where offshore wind is concerned, the EESC calls for priority to be given to radial connection projects and an overall environmental assessment to be made of this technology.

1.6. The EESC calls for projects concerning natural gas transmission infrastructure not to be excluded from the Regulation’s selection criteria for projects of common interest or projects of mutual interest.

1.7. The Committee would like the proposal for a regulation to use the wording 'renewable and/or decarbonised' instead of 'renewable' in the selection criteria for projects of common interest (PCIs) and projects of mutual interest (PMIs).

1.8. The EESC calls for an explicit reference in the Regulation to the Community objectives of providing energy supplies to all communities at an affordable price and ensuring a 'high level of quality, safety, equal treatment and the promotion of universal access and of user rights'.

1.9. In terms of governance, the EESC calls for the Commission's use of delegated acts to be kept to the absolute minimum and for multi-actor governance to be implemented, based on the representatives of civil society: professional associations, trade union organisations, users' associations, etc.

1.10. The EESC suggests that the Regulation establish Community responsibility for the financing of projects of common interest (PCI) by combining financing methods without ranking them in terms of priority.

1.11. In order to steer the overall balance of the system and the continuity of the provision of extra-high-voltage transmission networks at EU level, the EESC calls on the Commission to study the possibility of a trans-European operator of extra-high-voltage electricity transmission networks, which would be both integrated and decentralised.

2. General comments

2.1. The Commission is proposing a revision of the Trans-European Energy Networks (TEN-E) Regulation.

2.2. Regulation (EU) No 347/2013 of the European Parliament and of the Council ⁽¹⁾, adopted in 2013, laid down rules for the development and interoperability of trans-European energy networks. In its proposal, the Commission emphasises that this has allowed the European Union to meet its energy policy objectives of increasing energy interconnections throughout the European Union.

2.3. However, the Commission's evaluation concludes that 'the current framework has not been able to demonstrate sufficient flexibility to adapt to changing Union policy objectives over time', which has led the Commission to propose a revision of the Regulation.

2.4. This update changes in particular the conditions for selecting projects of common interest (PCIs) for EU funding, including the obligation to meet the sustainability criterion and to respect the 'do no harm' principle, as set out in the Green Deal.

2.5. The proposal modifies the categories of infrastructure eligible for financial support under the TEN-E policy, with the removal of support for oil and gas infrastructure.

2.6. The proposal places particular emphasis on offshore electricity grids and their integration with land-based infrastructure through the establishment of a one-stop shop.

2.7. It aims to take better account of infrastructure that uses hydrogen, including transport and certain types of electrolyzers.

2.8. The draft regulation promotes the development of smart electricity grids to facilitate rapid electrification and increase electricity production from renewable sources.

2.9. New provisions aim to encourage investment in smart grids to integrate clean gases (such as biogas and renewable hydrogen) into existing grids. Attention is paid to the modernisation of electricity grids and carbon storage and transport networks.

⁽¹⁾ OJ L 115, 25.4.2013, p. 39.

2.10. New provisions are put forward to better support interconnection projects with third countries — for example, the Western Balkans, projects of mutual interest (PMI) that demonstrate their contribution to the EU's overall energy and climate objectives of security of supply and decarbonisation.

2.11. The proposal reviews the governance framework, with the stated aim of improving infrastructure planning and ensuring that this is aligned with climate objectives and the principles of integrating the EU's energy system. It provides for greater stakeholder involvement for the entire process, in addition to a greater role for the Agency for the Cooperation of Energy Regulators (ACER), and strengthened oversight by the Commission.

2.12. Various measures are also proposed to simplify administrative procedures so as to speed up project implementation.

3. Specific comments

3.1. This proposal forms part of the European energy policy as defined by the Treaties⁽²⁾, the Regulation on the Governance of the Energy Union⁽³⁾, the development of trans-European networks⁽⁴⁾, and of a comprehensive package that sets out the new EU strategy: 'to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy'⁽⁵⁾. The EU thus aims to combine Community objectives — to ensure the functioning of the internal energy market, security of supply, to promote energy efficiency and energy saving and the development of renewable forms of energy, to combat climate change and promote the interconnection of energy networks — while not affecting 'a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply'. The EESC therefore calls for the proposed legal basis for the Regulation to be supplemented by an explicit reference to Article 194 TFEU.

3.2. The EESC is in favour of adapting European rules to the objectives of the Green Deal for a 'clean, affordable and secure energy supply', combining in particular the decarbonisation of the energy system, the transition to climate neutrality, the development of renewable energy sources, energy efficiency and the prevention of the risk of fuel poverty.

3.3. The EESC supports the objective of achieving climate neutrality by 2050 and higher levels of greenhouse gas emission reductions by 2030. It therefore acknowledges the fact that Europe needs an energy system that ensures security of energy supply for all EU countries, access for all to affordable energy, based on rapid electrification coupled with a doubling of the share of electricity production from renewable sources, also ensuring decarbonisation of the gas sector and making greater use of innovative solutions.

3.4. In its communication entitled *Powering a climate-neutral economy: An EU Strategy for Energy System Integration*⁽⁶⁾, the Commission emphasises that 'the coordinated planning and operation of the energy system "as a whole", across multiple energy carriers, infrastructures, and consumption sectors — is the pathway towards an effective, affordable and deep decarbonisation of the European economy'. Furthermore, the Commission also questions the fact that 'the current energy system is still built on several parallel, vertical energy value chains, which rigidly link specific energy resources with specific end-use sectors' and that 'This model of separate silos cannot deliver a climate neutral economy.'

3.5. From the 1950s to the 1970s, integrated energy systems (production-transport-distribution) existed at national or regional level, whether sector-specific or more generally, in all European countries. From the 1980s onwards, the construction of European internal markets, based on the four fundamental freedoms of movement, led to a series of 'break-ups' and of opening up to competition, with the aim of promoting quality and efficiency for the benefit of consumers.

⁽²⁾ OJ C 326, 26.10.2012, p. 134.

⁽³⁾ OJ L 328, 21.12.2018, p. 1.

⁽⁴⁾ OJ C 115, 9.5.2008, p. 124, OJ C 202, 7.6.2016, p. 125, OJ C 202, 7.6.2016, p. 125.

⁽⁵⁾ COM(2019) 640 final.

⁽⁶⁾ COM(2020) 299 final.

3.6. The EESC subscribes to the integration strategy, which must permeate all aspects of European energy policy. This means gradually rebuilding integration, and suspending any new break-up initiatives that would lead to the creation of more 'silos', when the aim is to ensure the coordinated planning and operation of the energy system. The Committee calls for the Regulation to adhere to an approach based on integrating the energy system and for all forms of break-up to be halted.

3.7. The EESC highlights the need to achieve all the objectives of the energy policy implemented through the TEN-E Regulation. Energy networks ensure links between producers and users. To some extent, they form the 'reactor core' of the energy system. The proposal for a regulation under consideration would benefit from more closely reflecting this integration-based approach, including the development of 'prosumers' and cooperatives and not simply making a timid reference to Recital 13 (although it refers to the 'integration of energy systems', the project fails to give trans-European energy infrastructure its proper place in this strategic dynamic of coordinated planning and operation), in order to achieve their essential purpose, which is to ensure the balance, resilience and development of the energy system. With this aim in mind, there is a need to clarify the extent of progress on interconnection capacity between each Member State, which should focus more on removing bottlenecks than on general averages (10 % in 2020, 15 % in 2030). The EESC believes that the proposal submitted to it is particularly lacking in ambition and resources.

3.8. The EESC calls on the Commission, the Council and the Parliament to promote carbon-free energy sources, while respecting technological neutrality. It also supports the efforts of the International Thermonuclear Experimental Reactor (ITER) project to achieve clean and affordable energy for all beyond 2050. The design of energy networks must prioritise innovation and infrastructure efficiency and reducing the high costs of transport-related energy losses.

3.9. The EESC understands the importance attached by the draft regulation to offshore wind power. It would like priority to be given to radial connection projects. The EESC would like a comprehensive environmental assessment to be drawn up for all offshore wind, taking into account the dismantling and recycling of wind turbines. Furthermore, the establishment of a one-stop-shop for offshore wind is likely to result in significant administrative burdens, without its benefits being proven, as the number of projects requiring authorisation applications from several Member States is very limited. Moreover, the laudable desire for offshore wind planning is reflected in an unnecessarily burdensome system for setting capacity targets, which contradict both those set out in the national energy and climate plans, and also the freedom of choice regarding energy mix that is enshrined in the Treaty.

3.10. The EESC questions the Commission's desire to totally exclude support for gas infrastructure, given that this is currently essential for the security of supply of certain EU regions and that natural gas appears to be a transitional energy ⁽⁷⁾, which is less harmful than coal or oil. The EESC has already argued, in previous opinions, that natural gas infrastructure will potentially be reusable for renewable gas, and that it therefore makes sense to continue to invest in it ⁽⁸⁾. The Committee hopes, therefore, that natural gas will not be excluded, unless it is properly replaced by other energy sources at comparable prices. The Committee calls for projects concerning natural gas transmission infrastructure to be eligible under the Regulation's criteria for selection as projects of common interest or projects of mutual interest.

3.11. The EESC notes that the recurrent reference to the 'renewable' nature in the project selection criteria ⁽⁹⁾ raises doubts about the inclusion of decarbonised energy transmission projects, which the EU desperately needs if it is to meet the climate dimension of its objectives. This is why the Committee would like to see the draft regulation opt for the wording 'renewable and/or decarbonised' instead.

3.12. The EESC does not agree with the 'three-step logic' governing the financing of PCI investments, as mentioned in Recital 46, meaning that 'the market should have the priority to invest', even though they are essential infrastructure for implementing EU objectives and should therefore be based on Community methods of solidarity or equalisation, combining methods of financing without ranking them in terms of priority. The Committee suggests that the Regulation establish Community responsibility for the financing of PCI by combining financing methods without ranking them in terms of priority.

3.13. As a representative of organised civil society, the EESC is particularly attached to the rights of users, especially communities, and to democratic governance.

⁽⁷⁾ European Council conclusions, 10-11 December 2020.

⁽⁸⁾ COM(2020) 301 final (OJ C 123, 9.4.2021, p. 30).

⁽⁹⁾ For example, in Article 4.3 or Annex IV of COM(2020) 824 final.

3.14. Conscious of the need to prevent the development of energy inequality in the EU and to improve the situation of the most vulnerable and low-income groups, the EESC reaffirms its many previous opinions ⁽¹⁰⁾ stating the need to supply energy to all communities at an affordable price, in other words, in line with the Community objectives of 'a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights' ⁽¹¹⁾, a priority criterion for the selection of PCIs. The Committee also calls for an explicit reference in the Regulation to the Community objectives of providing energy supplies to all communities at an affordable price and ensuring a 'high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights'.

3.15. In terms of governance, the proposal under consideration attaches too much importance to the role of the Commission — the use of delegated acts provided for in Article 3 should be kept to the absolute minimum — and of the ACER, but fails to look at ways of reducing existing asymmetries in terms of information and responsibilities in order to establish a multi-actor form of governance based more on the representatives of civil society: professional associations, trade union organisations, users' associations, etc. including in regional groups. The EESC calls for the use of delegated acts by the Commission to be kept to the absolute minimum and for genuine multi-stakeholder governance to be implemented.

3.16. In view of the specific features of electricity networks, the EESC suggests that the Commission study, with all stakeholders, and with broad consultation, a plan to create a trans-European operator that is both integrated and decentralised, based on multi-level governance:

- integrated to ensure the management of the system's overall balance and the continuity of supply of extra-high-voltage transmission networks at EU level; entrusted with missions and obligations of public service/services of general European interest, bearing in mind that a public operator of this nature would have to rely on national and sub-national operators, and would therefore have to be
- decentralised to the most relevant regional grid, taking into account the characteristics of each Member State.

The EESC calls on the Commission to study the possibility of a trans-European operator of extra-high-voltage electricity transmission networks.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

⁽¹⁰⁾ OJ C 429, 11.12.2020, p. 77, OJ C 47, 11.2.2020, p. 98, OJ C 14, 15.1.2020, p. 105, OJ C 353, 18.10.2019, p. 96, OJ C 353, 18.10.2019, p. 79, OJ C 282, 20.8.2019, p. 51, OJ C 262, 25.7.2018, p. 86, EESC Information report on Evaluating the European Energy Union — The social and societal dimension of the energy transition.

⁽¹¹⁾ OJ C 115, 9.5.2008, p. 308.

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — Taking the Customs Union to the Next Level: a Plan for Action’

(COM(2020) 581 final)

(2021/C 220/07)

Rapporteur: **Anastasis YIAPANIS**

Referral	European Commission, 11.11.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	259/0/6

1. Conclusions and recommendations

1.1. The EESC welcomes the very concrete Action Plan for the next five years to support national customs authorities. Once implemented, with regular impact assessments, it will lead to real modernisation of customs across the EU.

1.2. Although modernisation started in 2016 with the introduction of the Union Customs Code (UCC) ⁽¹⁾, recent developments such as growing trade flows, a flourishing e-commerce sector, customs duties and VAT avoidance, illicit trafficking and undervaluation of goods all require an immediate, coordinated response. The departure of the United Kingdom from the Customs Union (CU) is already creating a heavier workload and particular challenges for customs authorities.

1.3. Such an ambitious plan requires adequate shared financing. The EESC is not sure that all Member States are ready to embrace the proposed timetable and put their share of the money on the table.

1.4. Enhanced cooperation and interoperability between customs and other law enforcement authorities and administrations are rapidly needed. Sharing best practice could also enhance the productivity of customs services, while proper management of the large amount of data available could allow intelligent supervision of supply chains to be put in place and enhance foresight capabilities.

1.5. Customs authorities should be provided with adequate resources for all the non-financial responsibilities, while minimum standards for control and for the number of staff required should be introduced. The EESC considers it extremely important to adopt implementing acts for the market surveillance regulation ⁽²⁾ as soon as possible.

1.6. The extremely lengthy approval process for the next MFF and the difficulties for the EU 27 leaders of agreeing on very important actions are jeopardising both proper recovery of the EU economy and the immediate support needed by citizens and businesses alike.

1.7. The EESC recommends immediately exploring the introduction of blockchain technology in the proposed action plan. Furthermore, the technological progress and existing innovative solutions that robotics and artificial intelligence possess could be easily implemented with immediate, relevant results.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ OJ L 169, 25.6.2019, p. 1.

1.8. The EESC suggests that special attention be paid to the most vulnerable entry and exit points and appreciates that the strength of the Customs Union is determined by its weakest link. A compliant, more coordinated and integrated risk management system would narrow the gaps between authorities and strengthen the weakest links in the chain. Hence the new risk management strategy announced for Q2 2021 is to be welcomed.

1.9. Specific financial resources have to be provided for interconnecting ICS2 with other electronic systems. The EESC highlights the importance of proper management of such a complex network.

1.10. The EESC points to the need to ensure sufficient human resources, as well as proper training for these staff in implementing pre-loading and pre-arrival data analytics. It has already called for *common training frameworks to be developed based on the European Union Customs Competency Framework*^(?).

1.11. The creation of an EU hub for tax information within the Eurofisc tax anti-fraud services is a significant improvement, and the EESC is looking forward to the Commission's assessment in this regard.

1.12. E-commerce is a very important sector for SMEs. The EESC is worried that the communication makes no mention of creating a favourable framework for SMEs through this ambitious action plan.

1.13. The EESC considers that platforms have important data that customs could use, but would need to make specific investment in IT software such as automated robotic systems. They should be provided with financing for gathering data they would not otherwise need. However, the EESC welcomes the Commission's current revision of the role and obligations of online marketplaces.

1.14. A comprehensive analysis of the Union's international systems of cooperation and mutual administrative assistance in customs matters is needed fast. It would lead to better enforcement.

1.15. The EESC welcomes the proposal to deploy the EU Single Window environment and expresses its full support for this.

1.16. The EESC is worried that, in the event that the controversial proposal for an EU Customs Agency project is not endorsed by the Member States, the management of such a complex and interlinked system would place a further burden on Commission departments.

1.17. The EESC firmly believes that involving social partners and civil society organisations will help implement such an ambitious Action Plan, while ensuring broad distribution of the benefits it brings to the public and businesses alike.

2. Introduction

2.1. The EU Customs Union has been in existence since 1968 and deals with all trade in goods across the 27 Member States. Each year, the Customs Union facilitates trade in more than EUR 3,5 trillion worth of goods, while every second, EU customs authorities deal with 27 items declared.

2.2. On 28 September 2020, following the political guidelines announced by Commission President Ursula von der Leyen at the beginning of her term of office, the European Commission (EC) published an ambitious action plan to upgrade the Customs Union by making it smarter, simpler and more digitally effective by 2025. This would impact positively both on EU revenues and the security and safety of European citizens. Furthermore, businesses would benefit from simpler and faster reporting obligations.

(?) EESC opinion on Establishing, as part of the Integrated Border Management Fund, the instrument for financial support for customs control equipment (OJ C 62, 15.2.2019, p. 67).

2.3. The EESC has already underlined 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'* ⁽⁴⁾.

2.4. Therefore, the EESC welcomes the very concrete action plan for the next 5 years, with 30 planned and timetabled actions under four strategic policy headings to support the national customs authorities: risk management, e-commerce management, compliance promotion and customs authorities acting as one.

2.5. The current customs system has demonstrated shortcomings and weak links, while the large amount of data shared across customs in all Member States is not used efficiently. The European Parliament and the European Court of Auditors have already expressed their concern regarding the loss of revenue due to ineffective customs controls on imported goods.

2.6. Customs duties represent an important part of the EU budget, accounting for roughly 14 % of total revenue. The Commission's anti-fraud office (OLAF) has reported that customs fraud is widespread and has recommended the recovery of over EUR 2,7 billion in customs duties for the 2017-2019 period. Counterfeit imported goods from third countries are estimated at EUR 121 billion per year, while breaches of intellectual property generate more than EUR 83 billion in sales and cause EUR 15 billion of tax revenue to be lost.

2.7. On the positive side, almost 100 % of customs declarations are sent electronically.

3. General Comments

3.1. The Customs Union needs rapid investment for a coordinated update of both software and human capabilities. Although modernisation started in 2016 with the introduction of the Union Customs Code ⁽⁵⁾, growing trade flows, a flourishing e-commerce sector, customs duty and VAT avoidance, illicit trafficking and undervaluation of goods all require an immediate and coordinated response. Furthermore, customs are responsible for checking goods for many non-financial purposes. The EESC appreciates that the strength of the Customs Union is determined by its weakest link and therefore suggests special attention be paid to the most vulnerable entry and exit points. Member States should make full use of the new Customs Control Equipment Instrument, which is specially designed to help with the purchase, maintenance and replacement of state-of-the-art customs equipment.

3.2. The departure of the United Kingdom from the Customs Union (CU) is already creating a heavier workload and special challenges for customs authorities. The number of customs declarations is expected to grow significantly, together with the reintroduction of customs controls.

3.3. Enhanced cooperation and interoperability between customs and other law enforcement authorities and administrations is rapidly needed. The EESC has already warned that *'cooperation between the various authorities and institutions in the Member States — police, intelligence, judicial, customs and tax — is far from optimal'* ⁽⁶⁾.

3.4. Customs are very much involved in the fight against terrorism and organised crime. In 2019 alone, customs seized 400 tonnes of drugs, 3699 firearms and 3,5 billion items of tobacco and cigarettes. 11,5 % of all cash declarations have been incorrect, amounting roughly to EUR 331 million ⁽⁷⁾.

3.5. Data management is extremely important for a sector that benefits from large quantities of declarations, product information, taxes etc. Mastering the large amount of data available would represent an immediate and major improvement over the current customs system and would also facilitate a better and conclusive response to the growing challenges. It would also enable intelligent supervision of supply chains and enhanced foresight capabilities.

⁽⁴⁾ OJ C 367, 10.10.2018, p. 39.

⁽⁵⁾ OJ L 269, 10.10.2013, p. 1.

⁽⁶⁾ OJ C 246, 28.7.2017, p. 22.

⁽⁷⁾ 2nd Biennial Report on Progress in Developing the EU Customs Union and its Governance.

3.6. The EESC is rather disappointed that, in the very last sentence of the communication, the Commission has invited ONLY the European Parliament and the Council to support this action plan, not at all including the European Economic and Social Committee. It is our firm belief that the involvement of social partners and civil society organisations will help implement such an ambitious action plan, while ensuring broad dissemination of the benefits it brings to the public and businesses alike.

4. Specific comments

4.1. From the outset, the EESC appreciates the ambitious roadmap and concrete deadlines for implementing the actions. This is a clear step forward and, once implemented and together with regular impact assessments, will lead to the real modernisation of customs across the EU.

4.2. Such an ambitious plan requires adequate financing. While some of the proposed actions require shared funding, and with the EU ready to play its part in the game, the EESC questions whether all Member States are ready to embrace the proposed timetable and put their share of the money on the table. Only thoroughly coordinated funding and implementation would ensure the success of the proposal.

4.3. The EU has, however, shown that it has fragile structures and has demonstrated delayed and uncoordinated responses to critical situations, the COVID-19 pandemic included. The call by the French President Emmanuel Macron for the reorganisation of the Schengen Area and his request to reanalyse the free movement of people in the Union are as serious as they are worrying.

4.4. Furthermore, the incredibly lengthy approval process for the next MFF is jeopardising the proper recovery of the EU economy and the immediate support needed by the public and businesses alike. It seems more and more complicated for the EU 27 leaders to agree on very important actions, while the length and indecisive nature of the solutions demonstrate that the EU governance system is obsolete and inefficient.

4.5. Although already discussed and analysed in 2018, the current proposal does not include any use of blockchain technology. The EESC considers that the customs system has just the right structure for embracing such developments and recommends immediately exploring the introduction of blockchain technology in the proposed action plan.

4.6. The EESC further notes that there is absolutely no analysis of the possible use of robotics and artificial intelligence for updating customs operations. It believes that the technological progress and existing innovative solutions that robotics and artificial intelligence possess could be easily implemented in such a complex action plan, with immediate and relevant results.

4.7. Risk management

4.7.1. Since the introduction of the security amendments to the Community Customs Code in 2005, the EU has already been performing risk management activities based on two lines of defence: assessing in advance and controlling before and after goods enter the customs territory. The EESC considers that the biggest challenge arises from uncoordinated application of procedures across the Member States and the lack of information being shared between countries. Ensuring a compliant, more coordinated and integrated risk management system would narrow the gaps between authorities and strengthen the weakest links of the chain. Hence, the new Risk Management Strategy announced for Q2 2021 is very promising.

4.7.2. Digitalisation and the rise of e-commerce make it easier for consumers to shop online from all around the world. However, not all products comply with the European high standards for product safety and/or consumer protection. This comes often as a surprise to consumers. The EESC welcomes the aim of strengthening the risk management process in order to better protect the single market and especially its citizens from non-compliant and unsafe products.

4.7.3. The proposal to launch a Joint Analytics Capabilities Initiative is definitely a step forward. Sharing data with anti-fraud enforcement authorities is also to be welcomed. However, the EESC wonders if the required financing is going to be available for the interconnection of ICS2 with other electronic systems. The next immediate concern relates to the management of such a complex network and the specialised and properly-trained human resources needed.

4.7.4. Furthermore, the EESC is worried that, in the event of the new EU Customs Agency project not being endorsed by Member States, the management of such a complex and interlinked system would place a further burden on existing Commission departments.

4.7.5. The EC has proposed to implement pre-loading and pre-arrival data analytics for all products and all means of transportation up to 2024. It is however not clear what kind of human resources are going to be needed in each Member State or the level and length of training required for such personnel. The same goes for the additional risk management process that is planned for the 'after arrival' procedures. The EESC has already called for *common training frameworks to be developed based on the European Union Customs Competency Framework (EU customs CFW), which aims to harmonise and raise customs performance standards throughout the EU* ⁽⁸⁾.

4.8. Managing e-commerce

4.8.1. E-commerce has brought important benefits and opportunities for both the public and businesses. However, it adds significant challenges in terms of tax and customs compliance for traded goods and also regarding the large number of clearance requests for a wide range of controls for non-financial purposes, including safety, security and intellectual property. The EESC acknowledges the significant role played by customs authorities in preventing non-compliant and/or unsafe products from entering the single market, and concludes that these authorities need to be provided with adequate resources for all the non-financial responsibilities too.

4.8.2. Implementation of the VAT e-commerce package ⁽⁹⁾ as of 2021 is expected to bring significant revenues for Member States' budgets and generate a level playing field for the business environment. Creating an EU hub for tax information within the Eurofisc tax anti-fraud services is seen as a significant improvement for providing access to information for customs authorities. The EESC is looking forward to the Commission's assessment in this regard.

4.8.3. The EESC considers that the best way to regulate and manage e-commerce is through enhanced cooperation with other countries within the OECD and the G20. It has *already highlighted that both tax policies applicable to the digitalisation of the economy and the devising of instruments and working solutions must be coordinated at international level* ⁽¹⁰⁾.

4.8.4. E-commerce is a very important sector for SMEs. However, trans-border commerce is already fragmented due to various existing barriers and the EESC is worried that the communication does not make any reference to creating a favourable framework for SMEs through this ambitious action plan. According to the September Eurobarometer, only 4 % of SMEs sell their goods to consumers in other Member States ⁽¹¹⁾.

4.8.5. The proposal to impose customs reporting obligations on platforms is a potential burden for legitimate businesses. Platforms do have important data that customs could use, but would need to make specific investment in IT software that can gather and provide this data. The use of automated robotic systems should be immediately explored, as these could be invaluable in easing the reporting obligation process. Furthermore, the EESC considers that these companies should be provided with necessary funding if they are asked to gather data that they would not otherwise need. Managing this data is extremely important in tackling customs and VAT fraud, undervaluation, false origin declarations etc. The EESC has already called for *the development of a European standard for collecting data and information on their own users that platforms will have to communicate* ⁽¹²⁾.

4.8.6. However, the EESC welcomes the Commission's current revision of the role and obligations of online marketplaces, which should have more liability and responsibilities when it comes to checking that the goods sold on their platforms are compliant and safe.

⁽⁸⁾ OJ C 62, 15.2.2019, p. 67.

⁽⁹⁾ Modernising VAT for cross-border e-commerce.

⁽¹⁰⁾ OJ C 364, 28.10.2020, p. 62.

⁽¹¹⁾ Flash Eurobarometer 486.

⁽¹²⁾ OJ C 364, 28.10.2020, p. 62.

4.9. Promotion of compliance

4.9.1. Trusted traders are already rewarded with a benefit scheme for their compliance with EU customs legislation. The EESC supports the proposed monitoring of existing preferential agreements with third countries; a comprehensive analysis of the EU's international systems of cooperation and mutual administrative assistance in customs matters would lead to better enforcement.

4.9.2. The proposal to deploy the EU Single Window environment is a win-win project and the EESC expresses its full support. The private sector would benefit from a one-action reporting possibility, while different authorities would be able to select the data needed. This is a clear step forward for all parties involved and is expected to generate up to EUR 690 million in customs administration savings for businesses during the first seven years of implementation.

4.9.3. However, it is rather difficult to understand how the proposed analysis of the Union Customs Code could suggest that the electronic systems are obsolete, less than four years after adoption of the proposal.

4.9.4. The fragmented non-compliance sanctions applied across Member States create competitive distortions of the Single Market, while enabling the appearance of weaker links within the system. Creating a solid and uniform framework would enhance the strength of the Customs Union as a whole. Although excellent in theory, the EESC wonders how the EC plans to integrate this, since the 2013 proposal on the same subject was rejected.

4.9.5. Furthermore, it is difficult to have the same level of control if the number of customs officers varies from 7 to 70 per 100 000 inhabitants, depending on the Member State⁽¹³⁾. The EESC recommends adding minimum standards for control and for the number of staff required.

4.9.6. The COVID-19 crisis has brought to light the shortcomings of the customs system, with several cases of non-compliant and unsafe products reaching EU soil. The EESC considers it very important to adopt implementing acts for the market surveillance regulation⁽¹⁴⁾ as soon as possible.

4.9.7. Furthermore, the EESC supports the proposal to pay special attention to the application of preferential origin rules and procedures to the EU's 41 Free Trade Agreements. Regarding other trading partners, especially China, the exponential growth of e-commerce has added to the existing challenges for customs. Hence the perfectly normal concern to assess and legislate where needed.

4.10. Customs authorities acting as one

4.10.1. Analysis shows that trans-border cooperation can be significantly enhanced. The EESC appreciates that the only way forward is to ensure more and better cooperation between customs authorities from different Member States and between customs and other national authorities. Sharing of best practice could also enhance the productivity of customs services.

4.10.2. Significant investment is needed to purchase the customs control equipment necessary for putting this cooperation into practice. The EESC notes that, in the original proposal⁽¹⁵⁾, the Commission has agreed to cover only 80 % of the investment needed. The remaining 20 % should be borne by Member States; given the financial situation in which these countries find themselves due to the COVID-19 pandemic, the EESC does not expect all 27 Member States to be able to invest these amounts in 2021.

4.10.3. Finally, the Commission is bravely putting on the table the controversial proposal of preparing by 2023 an impact assessment on the creation of an EU Customs Agency. The EESC is doubtful that Member States would agree to this.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

⁽¹³⁾ Survey from the Union of Finance Personnel in Europe.

⁽¹⁴⁾ OJ L 169, 25.6.2019, p. 1.

⁽¹⁵⁾ COM(2018) 321 final.

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013’

(COM(2020) 673 final — 2020/306 (COD))

(2021/C 220/08)

Rapporteur: **Athanasios IOANNIDIS**

Referrals	European Parliament, 11.11.2020 Council, 13.11.2020
Legal basis	Articles 3, 114 and 207 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	268/0/3

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the European Commission’s proposal on establishing a European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013. The purpose of the proposal is to address the fragmented interoperability between customs and partner competent authorities in handling customs clearance procedures for goods.

1.2. The EESC believes that the proposal is in keeping with the Union’s vision and strategic objectives, both in relation to the Action Plan *Taking the Customs Union to the Next Level — an Agenda for Action for a strong and modern Customs Union* and to its communication on *Developing the EU Customs Union and Its Governance*.

1.3. In the EESC’s view, the proposal supports the strategic plan of the Directorate-General for Taxation and Customs Union (DG TAXUD) 2016-2020 and the European eGovernment Action Plan 2016-2020, provided for in the Commission communication of 19 April 2016 ⁽¹⁾, which is intended to strengthen the efficiency of public services by removing existing digital barriers, reducing red tape and enhancing the quality of interaction between national authorities.

1.4. The EESC points out that implementing the single window environment for customs will take trade in goods into the new digital age through simplification and automation. Trade generally in the EU will grow and the Union will become more competitive, customs will be modernised, and there will be multiple outcomes for the stakeholders involved — Member States’ customs authorities, partner competent authorities, economic operators and citizens.

1.5. The EESC believes that the European Single Window, along with the national windows, should not just be a digital gateway for data collection and information exchange processes. As information systems and processes are evolving, there must also be an option in the future — as agreed by the Member States and the Council — of progressing to more complex automated computational processes, as will be used for the quantities of goods. This will make it possible for the trader to have an overall picture of the transaction, which should therefore be described as ‘smart’.

⁽¹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU eGovernment Action Plan 2016-2020 — Accelerating the digital transformation of government*, COM(2016) 179 final, 19 April 2016.

1.6. The EESC believes that incorporating Union non-customs formalities into the EU Single Window Certificates Exchange System (CSW-CERTEX) will require new IT infrastructure to create links between the national single window environments for customs and the Union non-customs systems. The data to be exchanged must be precisely determined.

1.7. The EESC recommends that the Commission pay particular attention to the cybersecurity of systems and windows by establishing security systems with high standards that will protect against attacks that could shatter trade in goods in the EU and have devastating economic effects.

1.8. The EESC agrees that effective implementation of the single window programme for customs and avoiding delays will require a particular focus on Member States that did not take part in the 2015 *EU Customs Single Window — Common Veterinary Entry Document* (EU CSW-CVED) pilot project and which have not therefore developed national single window environments for customs that are aligned to the EU single window.

1.9. A similar issue arises with a number of Member States that have developed their own single window initiatives at national level, which remain isolated and are characterised by different modalities based on the level of existing customs IT architecture, priorities and cost structures.

1.10. For the above reasons the EESC would advocate a more detailed schedule, with targets and measures for the Member States, so that they bring their national single window customs environments into line with the European single window.

1.11. The EESC recognises the complexity of the system and the fact that coordination is needed both within the Member States and between them to implement it. It proposes drawing up a more detailed schedule for monitoring and submission of reports on the functioning and development of the single window, with targets and measures to be taken by the Member States and the national players to implement the system.

1.12. The EESC recommends that the programme help to strengthen respect for fundamental rights and data protection within its sphere of application.

1.13. The EESC deems it crucially important to prepare and train the staff who will be involved in operating the IT systems, the national single window environments and the European single customs window. The current project should therefore provide for workers' training and skills improvement programmes, which should receive national and/or EU funding.

2. Background/Introduction

2.1. In 2008, the Member States and the Commission made a commitment to promote an electronic customs environment in the EU by endeavouring to establish a framework of single window services. The 2014 Venice Declaration proposed a progressive action plan to implement an EU single window environment for customs and to develop its legal framework. This was reiterated in the 2016 Communication from the Commission on *Developing the EU Customs Union and its Governance*, which announced the Commission's plans to explore a workable solution for the development and creation of an EU single window environment for customs. The approach was supported by the ECOFIN Council Conclusions of 23 May 2017.

2.2. The Commission launched a pilot project in 2015, the *EU Customs Single Window — Common Veterinary Entry Document* (EU CSW-CVED). The project was jointly managed by DG TAXUD and DG SANTE to enable the automated verification by customs of three non-customs regulatory formalities submitted with the customs declaration as evidence of compliance. Five Member States' customs administrations initially participated in this pilot on a voluntary basis. Its successor, the EU Customs Single Window Certificates Exchange System (EU CSW-CERTEX), expanded the scope of regulatory requirements and introduced new functionalities, such as quantity management. The number of participating Member States has risen from five to nine, and more policy areas are being covered.

2.3. The COVID-19 pandemic has made it more important than ever to establish a stronger framework for the Customs Union and to further facilitate the fulfilment of customs and Union non-customs formalities to support the economic recovery. To this end, the increased digitalisation of customs and Union non-customs regulatory formalities applicable to international trade open up new opportunities for Member States to improve digital cooperation.

3. Gist of the Commission proposal

3.1. The Union's international trade is subject to both customs legislation and Union non-customs legislation. The authorities responsible for Union non-customs regulatory formalities ('partner competent authorities') and customs authorities often work in silos, creating complex and burdensome reporting obligations for traders and inefficient goods clearance processes conducive to error and fraud. To address the fragmented interoperability between customs and partner competent authorities in the management of goods clearance processes and to coordinate action in this area, the Commission and the Member States have made a number of commitments over the years to develop single window initiatives for the clearance of goods.

3.2. The Commission proposal envisages setting up a European Union single window environment for customs that provides an integrated set of interoperable electronic services at Union and national level through the European Union Customs Single Window Certificates Exchange System. This will support interaction and information exchange between the national single window environments for customs and the Union non-customs systems referred to in the Annex to the proposal.

4. General comments

4.1. The proposal for a Regulation is a first and essential step towards improving cooperation between customs authorities through a single electronic application. This is a comprehensive proposal that provides a broad analysis of the results, actions and measures implicated in the functioning of the European single window for customs.

4.2. Implementing the single window will enable businesses and traders to submit data electronically, whether supporting documents or Union non-customs formalities, to an electronic window (national window) in each Member State, thus reducing the risk of duplication and saving time and transaction costs. The single window will allow customs and other authorities to collect data submitted based on a harmonised system for goods clearance procedures. At the same time the EU is provided with an overview of products entering and exiting across its borders, as well as being able to check the quantities of goods in the context of quotas and fraud prevention.

4.3. As specified in the Commission proposal, implementation of the programme will be financed from EU and national sources. The costs relating to the development, integration and operation of the EU CSW-CERTEX Single Window will be borne by the Union, whereas the Member States will meet the costs arising from the development, integration and operation of their national single window environments and their connection with EU CSW-CERTEX. Given that the COVID-19 pandemic has led to a financial crisis in all the EU Member States, the EESC wishes to know how the Commission can ensure that the Member States comply with this requirement and provide the funding earmarked for implementing the programme from their national budgets.

4.4. If the single window initiative is to be harmonised and established, implementation by the Member States needs to be mandatory. Indeed, the success of the customs single window is dependent on simultaneous compliance, harmonisation and implementation by all countries. The EESC points to the risk that some Member States may not implement the single window within the estimated time frame due to budgetary constraints (resulting from the COVID-19 financial crisis) and other policy priorities. This will give rise to numerous problems for the Union's customs and trade policy, not to mention for the Member States. The EESC asks the Commission whether penalties are envisaged in the event of any Member State failing to implement the single window or exceeding the time frame set.

4.5. The single window measures must go hand in hand with modernisation of customs and customs authorities. It would be extremely useful for a study to be carried out first, describing the existing situation at the entry gates of the Member States, and for there to be an assessment of the need for investment in upgrading services, so that they can support the single window. At the same time an indicative date could be set for completing the national part of the single window.

4.6. The Commission states in its proposal for a Regulation that each Member State is to designate an authority to act as a national coordinator for implementing and coordinating single window measures. The EESC would like to know whether appointing the national coordinator is the exclusive responsibility of each Member State or whether the Commission will make recommendations.

4.7. In relation to ensuring data protection, the EESC believes that the complementary activity of protecting data collected, along with all customs declarations, must take the following into account:

- what public authority will be responsible for ensuring confidentiality and how the degree of tolerance will be set at each level;
- the assurance that will be given to traders with the single window and details of the guarantees given.

5. Specific comments

5.1. The EESC is of the view that the present proposal for a Regulation and the point where subsidiarity is referred to can be considered to be the contribution made by this measure, i.e. the creation of the single window, to European GDP and increased competitiveness.

5.2. In addition, the EESC considers it essential to carry out an impact assessment for each Member State, highlighting the benefits of implementing this policy, as a way of convincing them to do so promptly. At the same time, the EESC calls on the Commission to report on the impact of piloting the customs single window in each of the Member States taking part in the pilot project.

5.3. After the impact assessment report, which is analysed in the proposal for a Regulation, the EESC thinks that the package of options 1+6+8(ii) ⁽²⁾ is the right one.

5.4. The EESC emphasises that the European Commission should adopt uniform technical specifications for the functioning of the national single window environment, as set out in Article 2 of the proposal for a Regulation.

5.5. The EESC points out that the European Commission should adopt uniform technical specifications for the functioning of the national single window environment as set out in the provisions of Article 8, so as to avoid malfunctions with customs declarations. The EESC believes that it would be useful to create a single standard.

5.6. The EESC considers that for the customs single window to function successfully, the national environments need to operate smoothly, with properly trained staff. Given that the number of customs officers ⁽³⁾ per 100 000 inhabitants varies from 7 to 70, depending on the Member State, the EESC recommends adding minimum standards on operating the system and on the number of staff required.

5.7. The EESC recommends adding in Article 1 of the proposal for a Regulation the phrase 'without prejudice to the provisions of the General Data Protection Regulation (GDPR) and the provisions of Article 6 of the present Regulation'.

⁽²⁾ Option 1 makes EU CSW-CERTEX mandatory and covers EU regulatory requirements for which relevant customs-related information is available at EU level for all Member States, providing an automated quantity management functionality. Option 6 establishes single windows at national level to provide economic operators with harmonised single-entry points to fulfil customs and non-customs formalities. Option 8(ii) is based on expanded use of the existing Economic Operator Registration and Identification (EORI) system just for validation. COM(2020) 673 final.

⁽³⁾ <https://ufe-online.eu/wp-content/uploads/2020/04/2020-04-04.pdf>

5.8. The EESC notes that in both legal and substantive terms, Article 3 could refer to the contradiction that arises because of its reference to the European single window environment for customs while also including Union non-customs systems. A separate subparagraph could be introduced to cover these (as well as making the necessary adjustments to the references).

5.9. The EESC requests clarification as to whether the work programme of the European Commission will precede the Regulation or whether it will follow after the Regulation has entered into force. If the entry into force comes first, then what will the time frame be for adopting the action plan?

5.10. The EESC thinks that the reference to the possibility of revoking the power to adopt delegated acts referred to in the first sentence of Article 21(3) is far too vague, and seeks clarification as to whether revocation concerns one or all of the categories listed in Article 5(4), Article 10(3) and Article 13(4). It is also unclear whether this concerns one act in the above categories or the possibility generally of adopting acts for one of these categories. The EESC points out that there should be consultation between the co-legislators about the process of informing them.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee Communication on ‘from the Commission to the European Parliament and the Council — 2020 Strategic Foresight Report — Strategic foresight — Charting the course towards a more resilient Europe’

(COM(2020) 493 *final*)

(2021/C 220/09)

Rapporteur: **Sandra PARTHIE**

Referral	Letter from the Commission, 11.11.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote	
(for/against/abstentions)	270/0/5

1. Conclusions and recommendations

1.1. The EESC welcomes very much the planned inclusion of the foresight methodology into the EU's future policy-making process. The decision to explicitly include 'Foresight' in the areas of responsibility of the Commission Vice-President who is also in charge of Interinstitutional Relations is strongly welcomed by the Committee. It expects synergies as well as the structural involvement of all EU institutions, including the EESC, to prosper on this basis.

1.2. The European Commission's new approach of conducting strategic foresight as an annual, cyclical, and continuous process is very much welcomed by the EESC. The resilience of the EU has been selected as the first topic in the foresight exercise. It has become a new compass for EU policies with the COVID-19 crisis. Resilience is the ability not only to withstand and cope with challenges but also to undergo transitions in a sustainable, fair, and democratic manner.

1.3. The four dimensions of the resilience topic, i.e. 'social and economic', 'geopolitical', 'green' and 'digital' are, from our point of view, well chosen and developed. They represent central megatopics of our time, which will continue to be of outstanding importance for shaping European policy. The EESC very much supports the choice of this topic as it is indeed most relevant in our joint work of creating the right framework conditions to emerge from the pandemic crisis and deal with global challenges such as climate change. The Committee has provided a detailed analysis of the topic in its own-initiative opinion *Towards a more resilient and sustainable European economy* ⁽¹⁾, and through its resolution on the *Involvement of Organised Civil Society in the National Recovery and Resilience Plans — What works and what does not?* ⁽²⁾

1.4. Strategic foresight is characterised by an analysis and action perspective directed toward the future. With this in mind, such activities must meet three basic elements in order to deliver high quality results. Firstly, the analyses must provide results that are appropriate to the future situation under investigation. Secondly, they should be based on scientific methods and processes, mindful of the fact that the future is neither observable nor empirically measurable. Thirdly, they should be effective in the sense of providing helpful orientation for political practice.

⁽¹⁾ OJ C 353, 18.10.2019, p. 23 as well as the EESC public hearing *Towards a more resilient and sustainable European economy with a vision for completing EMU*, 12.4.2019.

⁽²⁾ See EESC Resolution *Involvement of Organised Civil Society in the National Recovery and Resilience Plans — What works and what does not?* (OJ C 155, 30.4.2021, p. 1).

1.5. The Commission's first strategic foresight report for 2020 still lacks the envisaged full foresight cycle and does not explain how it would link up with the Resilience and Recovery Facility and the European Semester process. It also falls short in explaining which of the megatrends it identifies are most probable and most relevant for the EU, and therefore does not enable policy makers to prioritise. This needs to improve in the upcoming reports. Foresight will only achieve its stated objectives if it is an open and pluralistic as well as diverse, cross-disciplinary exercise, involving organised social partners and civil society, in particular the EESC, at all stages of the foresight process and definition of reference scenarios and employing a set of methods and tools to direct different perspectives towards the future.

1.6. So, while the aspiration is fully welcomed, we do see some areas for improvement regarding the implementation of foresight in the decision-making process:

- the concrete modalities for the full integration of foresight into the multi-annual planning and the Better Regulation agenda as well as the European Impact Assessment Ecosystem⁽³⁾, or the Conference on the Future of Europe remain unclear,
- the 2020 report falls short of the necessary quantitative assessment of rating the identified megatrends and strategic topics in the spectrum of probability and relevance, thus rendering it harder to prioritise action,
- the foresight process should offer a permanent monitoring and control mechanism, which will allow for such things as for *ex-post* evaluations by civil society,
- the report already proposes the topics for the next foresight reports but does not explain how the foresight process was actually used in arriving at these topics, thereby seemingly contradicting its own purpose.

1.7. The level of commitment to use foresight to strengthen European resilience is rather limited. The Commission report mostly only states that it 'can' rather than 'will' make use of foresight at the EU level. Instead of outlining the concrete ways of using foresight in the political decision-making process, the foresight instruments are being reduced to options, which might or might not be used by the relevant stakeholders and in the concrete case of implementation.

1.8. Regarding the resilience dimensions, i.e. the topic of the 2020 report,

- the actual future aspect is in many cases not comprehensively developed but focuses too much on the description of the present situation,
- it lacks a future-oriented vision of what progress should be made and in what timeframe, including the development of new welfare indicators, such as those going 'beyond GDP',
- the method of tackling the identified vulnerabilities is not detailed and does not include targeted solutions to avoid deterioration of the conditions of people at risk of exclusion, such as people with disabilities and the elderly.

1.9. The four dimensions serve as a basis for agenda building for future foresight activities. We therefore advise that the four dimensions of resilience be given specific subgoals that can be operationalised and thus subjected to regular assessment in the future. The next topics on the foresight agenda are already proposed, i.e. open strategic autonomy, the future of jobs and skills, and deepening the twinning of the digital and green transitions. These topics originate from three of the four resilience dimensions. It remains unclear, however, how the Commission arrived at these topics and in what order and form they will be addressed. Thus, it is not sufficiently comprehensible why these instead of other topics, e.g. an internal vision towards the EU's development, the rise of nationalism, the future cooperation between the Member States, or security issues, were selected. Here, greater transparency can also be achieved with the help of strategic foresight.

⁽³⁾ OJ C 434, 15.12.2017, p. 11.

2. General comments

2.1. The instrument of strategic foresight, i.e. anticipating trends and developments is indispensable in formulating responsible policies. Strategic foresight will play a key role in helping future-proof EU policymaking by ensuring that short-term initiatives are grounded in a longer term perspective. This is vital, as we are entering a new era, where action-oriented foresight will stimulate strategic thinking and shape EU policies and initiatives, including future Commission work programmes.

2.2. While not everything can be foreseen and events will continue to surprise us, there is ample room to act. This includes mapping out probabilities and preparing those in decision-making positions to scan for, understand and recognise the signals, especially of disrupting events, as early as possible. It also means preparing action plans, setting up chains of command and communication channels, defining clear areas of responsibilities and tasks in case the event does come to pass. Forecasters often use the metaphors of a 'black swan' (a completely unexpected event from the 'unknown unknowns' category) and of a 'grey rhino' (a large scale, known event that would have a massive impact, but is neglected). The COVID-19 pandemic was a 'grey rhino', as there were warning signals of mounting global pandemic risks, due to a combination of environmental degradation, globalisation and increased connectivity. Forecasting and planning techniques with a clear separation of those two different types of shocks with massive impact need to be employed. In relation to this, cross-sectoral, non-linear scenario building techniques, identification of emerging major risks and recognition of early trends should be improved at EU research institutions.

2.3. Resilience is the ability not only to withstand and cope with challenges but also to undergo transitions in a sustainable, fair, inclusive and democratic manner. The four dimensions of the resilience topic, i.e. 'social and economic', 'geopolitical', 'green' and 'digital' are, from our point of view, well-chosen and developed. The Committee underlines, however, that the multiple interactions of the four dimensions cannot be seen as separate from each other but must indeed be addressed collectively in the analyses and the resulting measures.

2.4. The EESC welcomes the proposal for the creation of 'resilience dashboards' with relevant indicators to monitor the status quo and the social and economic, geopolitical, green, and digital dimensions of developments in the EU and the Member States. However, a dashboard that only charts the status quo and describes the present is, in itself, not foresight. It only becomes so once forward-looking targets are being included. We are ready to support the Commission in this challenging and complex process, e.g. by drawing on the expertise and work of the EESC.

2.5. The dashboards obviously need to be developed further. Currently, they chart the present and the status quo. To make them useful instruments in the foresight process, a link to a forward perspective must be introduced. Dashboards only become meaningful in the forecasting process if they include targets, preferably defined for each Member State. It is then possible to use these dashboards to assess progress in the light of a given objective and to make them a monitoring tool. Furthermore, the EESC strongly advises establishing a link between the dashboards with existing competitiveness indicators used in the European Semester process and for European economic governance as well as with the Scoreboard for the Recovery and Resilience Facility and National Recovery and Resilience Plans.

2.6. The EESC fully agrees with the Commission on the critical role played by social economy enterprises during the pandemic and their relevance in the construction of a resilient Europe moving forward. In this sense, the EESC looks forward to the forthcoming Action Plan to Promote Social Economy and calls on the Commission to be ambitious and bold in its proposals.

2.7. However, while the aspiration towards anticipatory governance with the instruments offered by strategic foresight is good and includes a lot of the right elements, i.e. participation, interdisciplinarity, and shaping it as a continuous process, it becomes much less excellent and even weak with regard to how specifically this networked or meshed approach will be operationalised and implemented. Currently, the report contains a number of statements of intent on the inclusion of foresight methods into the political decision making process. To assure stakeholders that insights from the foresight process

will indeed be implemented and used effectively, the EESC believes the foresight process should offer a checking and control mechanism which would allow, inter alia, for *ex-post* evaluations by civil society. This will help to build confidence, both in the process and in the intentions and limit the risks of blind spots.

2.8. This need for control and verification mechanisms also holds true with regard to quality control, i.e. whether the chosen approach is adequate for reaching the stated goals. Such a control mechanism needs to be comprehensible, provide criteria against which to measure whether the state of the art and high quality standards of forecasting are upheld.

2.9. Regarding the content within the selected topics, it would be desirable if a clear separation were made between the analysis of the current situation and the expected or preferred projection into the future. In this way, the diverse and highly complex issues could be rendered more transparent and comprehensible. The knowledge gained about future developments could then be integrated into policy-making processes in a targeted manner, especially with regard to existing uncertainties and risks that are always inherent in current analyses of the future.

2.10. Before the process is potentially translated into concrete demands or even legislative proposals, the Committee urges that a balanced assessment, using a multi-criteria qualitative approach, that respectively incorporates the expected benefits, potential additional burdens to, and effects on, businesses, workers and concerned stakeholders is made, realistically taking into account their respective capability levels⁽⁴⁾.

2.11. The European Commission's new approach to start conducting strategic foresight as an annual, cyclical, and continuous process is very much welcomed by the EESC. The EU, however, is not the first actor in the field and should therefore learn from existing examples and good and bad practices. It should not only focus on one method, i.e. horizon scanning, but employ several of the existing methodologies, such as the 'Delphi method', a trend impact analysis, normative or exploratory foresight, qualitative as well as quantitative foresight or the 'Wild Card' approach, individually or in combination. Big data and Artificial Intelligence (AI) capacities must also be used much more prominently in identifying patterns and in developing scenarios.

2.12. The approach currently outlined for conducting strategic foresight by the Commission, however, is too 'top-down'. It does not create the necessary sense of awareness and ownership among the actors concerned. This needs to be remedied, e.g. by structurally including social partners and other actors in the process, at the European as well as the national level, e.g. through building on the European Semester process. The participation of relevant stakeholders, diverse and cross-thematic fields of application and continuous engagement with relevant future issues are key criteria for successfully establishing an effective programme of strategic foresight.

2.13. Foresight programmes will only be successful if they include clear links between the foresight topics and today's policy agenda so that those providing input see that it is being used and that it does make a difference. On this basis, a joint view of risks and challenges can be developed, it becomes clear what is to be done and the necessary transfer of competences and responsibilities can be organised. A joint risk mapping by policy decision makers in the EU, with feedback loops and adjustments as events develop, will give the process meaning and impact. We thus call on the Commission to ensure transparency, comprehensibility and verifiability of the foresight results.

2.14. At present, not all Member States make use of foresight in developing their national policies. It is therefore essential for the European Commission to ensure that it makes the most of the resources at its disposal. Thus, the EESC can provide important input and information for the foresight process based on the knowledge of its members, representing a wide variety of views and voices from all Member States. Through its opinions, the EESC is capable of detecting and alerting systemic risks. Its members are also well placed to communicate foresight activities to their communities and to help communicate the results to citizens. As a result, the EESC can also make a significant contribution to the Better Regulation agenda.

⁽⁴⁾ OJ C 434, 15.12.2017, p.11.

2.15. We call on the Commission to follow through on its own proposals and insights and enable stakeholders to become users of the foresight approach and to make it a compulsory element in the formulation of the policies for a resilient Europe.

2.16. Within the EU institutional context the European Strategy and Policy Analysis System (ESPAS) has become a reference point and a building block for cooperation in the area of foresight. The EESC has already an observer status in ESPAS, which is a practice that should be continued, and complemented by ensuring active involvement of a high-level EESC representative(s) in the annual ESPAS conference.

2.17. In order for EESC members to be able to contribute more meaningfully to the foresight activities by the European Commission we call for the provision of timely information about — and involvement of EESC members in — the foresight process, its schedule and specific work plan.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

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 a Retail Payments Strategy for the EU’

(COM(2020) 592 final)

(2021/C 220/10)

Rapporteur: **Antonio GARCÍA DEL RIEGO**

Co-rapporteur: **Kęstutis KUPŠYS**

Referral	European Commission, 11.11.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote	
(for/against/abstentions)	268/2/8

1. Conclusions and recommendations

1.1. Payments are at the forefront of the digitalisation of financial services, and frictionless payment methods are crucial for entrepreneurs and merchants in allowing them to successfully start up and grow their businesses. COVID-19 has accelerated the trend towards cashless and e-commerce payments and increased the need for retailers to adopt omnichannel tools to accept offline, online and mobile-based payments. Adopting these tools, which requires investment in IT systems and hardware, is putting an additional burden on small and medium-sized retailers in particular.

1.2. The EESC shares the Commission's view on the strategic importance of payments and that further work is needed to enable payment transactions within the single market using new home-grown, pan-European payment solutions. The EESC supports the view that the Commission should act as a political catalyst, whilst it is the private sector that should design the innovative digital payment solutions.

1.3. The EESC emphasises that cash remains consumers' preferred means of payment for their point-of-sale and person-to-person retail transactions. Cash is crucially important for social inclusion, and access to basic services.

1.4. The EESC supports the view that a digital euro should be complementary to existing central bank liabilities, that it should not seek to crowd out the private sector, that the private sector should have a role in distributing solutions related to the digital euro and that users' rights and obligations must be clearly defined. Privacy of transactions as an important right of the user should be considered along with other features, similar to those of cash.

1.5. The EESC calls on the Commission to:

1.5.1. Prioritise actions and efforts, given the high number of key actions identified in the strategy.

1.5.2. Reduce the current uncertainties as regards a sustainable business model for instant payments.

1.5.3. Consider as premature any legislative action on the area of payment instruments. The EESC prefers to let market players develop suitable products for customers, and consider legislative action if no suitable solutions are found.

1.5.4. Ensure full enforcement of the SEPA Regulation by the Member States, particularly when it comes to lack of compliance by payers and payees with Article 9 (so-called IBAN discrimination), whereas EU consumers should be able to use a single payment account for euro transfers and make cross-border euro bank transfers within SEPA just as easily as within their home country.

1.5.5. Focus its efforts on interoperability among existing and nascent e-ID solutions; it feels that the private sector, together with the authorities, should be better enabled to create e-ID solutions, to be used partly to carry out Strong Customer Authentication (SCA) for payment transactions. A universally accepted public electronic identity is needed, based on consumers' choice, their consent and the guarantee that their privacy is fully respected.

1.5.6. Harmonise the acceptance of cash at EU level, as this currently differs significantly from one country to another.

1.5.7. Extend data-sharing between different sectors with provisions covering all financial service providers in line with the principles of the General Data Protection Regulation (GDPR) ⁽¹⁾ to unlock further benefits for European consumers, as this can promote an innovative and competitive financial sector.

1.5.8. Propose legislation which seeks to secure the right of access under fair, reasonable and non-discriminatory conditions to infrastructure technologies considered necessary to support the provision of payment services.

1.6. The EESC believes that relevant market players should be subject to appropriate legislation, supervision and oversight, ensuring a level playing field among those offering the same services and activities.

1.7. The EESC understands the need to ensure an open and accessible payment ecosystem and to assess the inclusion of payment and e-money institutions in the scope of the Settlement Finality Directive (SFD).

1.8. The EESC welcomes the proposed actions seeking to secure a commitment to reduce the global average cost of remittances to less than 3 % by 2030 and encourages the Commission to play an active role in monitoring and ensuring support for the relevant actions defined in the Financial Stability Board's Roadmap for Enhancing Cross-border Payments.

2. Commission strategy

2.1. In its Communication from December 2018, the Commission supported 'a fully integrated instant payment system in the EU, to reduce the risks and the vulnerabilities in retail payment systems and to increase the autonomy of existing payment solutions' ⁽²⁾.

2.2. Digital innovation is radically reshaping the provision of financial services. With digitalisation and changing consumer preferences, cashless transactions are increasing rapidly ⁽³⁾. The COVID-19 pandemic has further reinforced the shift to digital payments and confirmed the vital importance of safe, accessible and convenient (including contactless) payments for remote and face-to-face transactions.

⁽¹⁾ OJ L 119, 4.5.2016, p. 1.

⁽²⁾ COM(2018) 796 final.

⁽³⁾ According to the ECB, in 2018, cashless payments reached 91 billion transactions in the euro area and 112 billion in the EU, compared to about 103 billion in 2017.

2.3. There have been substantial improvements in recent years, mostly thanks to the development of the Single Euro Payment Area (SEPA) and to the harmonisation of retail payments legislation. However, the EU payments market remains, to a significant degree, fragmented along national borders, as most domestic payment solutions based on cards or instant payments do not work cross-border. The dynamism of the European payments landscape shows that there is however a risk of inconsistencies, that requires a clear 'governance' framework to underpin the EU retail payments strategy.

2.4. The Commission's objective is that of a highly competitive payments market, benefitting all Member States, whichever currency they use, where all market participants are able to compete on fair and equal terms to offer innovative payment solutions which comply fully with the EU's international commitments.

2.5. As payments are at the forefront of digital innovation in finance, implementing this strategy will contribute to the Commission's broader vision for digital finance and to its objectives of removing market fragmentation, promoting market-driven innovation in finance, and addressing new challenges and risks associated with digital finance whilst ensuring technology neutrality.

2.6. This strategy is therefore presented alongside the digital finance strategy for the EU⁽⁴⁾ and the two legislative proposals on a new EU framework for strengthening digital operational resilience⁽⁵⁾ and on crypto-assets⁽⁶⁾. It is also complementary to the updated retail payments strategy presented by the ECB/Eurosystem in November 2019⁽⁷⁾.

3. General comments

3.1. Digital financial services are increasingly important for European consumers and businesses. The COVID-19 pandemic has only increased the importance of digitalisation in societies, including in financial services. Payments are at the forefront of digitalisation of financial services and frictionless payment methods are key for entrepreneurs and merchants in allowing them to successfully start up and grow their businesses. COVID-19 has accelerated the trend towards cashless and e-commerce payments and increased the need for retailers to adopt omnichannel tools to accept offline, online and mobile-based payments. This adoption requires investment in IT systems and hardware, which is an additional burden particularly on small and medium-size retailers.

3.2. The EESC welcomes the support of the Commission to modernise and simplify EU merchants' payment acceptance facilities through funding and training options. It is important to underline the key role that SMEs play in the European economy. It is a critical sector because about 90 % of European businesses are SMEs, and they represent more than 50 % of jobs. Small and medium-size businesses can contribute to a strong economic recovery.

3.3. The EESC shares the Commission's view on the strategic importance of payments and that a persisting lack of pan-European digital payment solutions that can be used across Europe poses the risk of further market fragmentation, while global players capture the whole intra-European cross-border payments market. Therefore even if European consumers and businesses already have access to efficient, competitive and innovative payment solutions and payment instruments — further work is needed in order to enable payment transactions within the single market through new home-grown, pan-European payment solutions. The EESC supports the view that the Commission should act as a political catalyst, whilst it is the private sector that should design the innovative digital payment solutions.

3.4. The EESC believes firmly that instant payment solutions are paramount. However, it calls on the Commission to clearly prioritise actions and efforts given the high number of key actions identified in the strategy. Some of the key actions and the overall objectives of the Retail Payments Strategy, in particular the objective of home-grown, pan-European payment solutions, will require considerable efforts on the part of the industry in order to materialise. The EESC considers that any additional requirements and regulatory projects should be carefully assessed.

⁽⁴⁾ COM(2020) 591 final.

⁽⁵⁾ COM(2020) 595 final.

⁽⁶⁾ COM(2020) 593 final.

⁽⁷⁾ <https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp191126~5230672c11.en.html>

3.5. The EESC calls on the Commission to pay particular attention to instant payment fraud levels and take appropriate action if necessary.

3.6. The EESC insists on the urgent need to improve digital skills and literacy through education and training. This must be done partly by building on the Digital Competence Framework and encouraging Member States to improve lifelong education for the skills that will be most in demand, at all levels of education. The goal is to ensure that individuals become data-savvy actors, with greater awareness of and control over their data, big data applications and data governance, and understand their digital environment and its risks (e.g. personalisation).

3.7. The EESC would like to prevent consumers becoming 'disconnected' and prone to financial exclusion because of a lack of digital skills or tools, which is a clear risk among the growing number of older people in Europe.

4. Specific comments

Pillar 1: Increasingly digital and instant payment solutions with pan-European reach

4.1. The EESC strongly supports efforts to equip the European payments market with several home-grown, pan-European payment solutions. These should bring added value to consumers and businesses as end users, should enable European market actors to better compete with currently dominating market actors and emerging and possibly dominant markets actors, such as BigTechs, and would enhance the international role of the euro. Given the current market situation and the well-established position of the incumbents in the card market, creating such a pan-European payment solutions would be a major undertaking for the European payments industry.

4.2. The EESC supports the idea of analysing the possibility of using direct debits across Europe for payments in shops. The electronic direct debit (ELV) model, which is widely used in Germany, could be extended. This would expose market-dominant card schemes to competition on the basis of direct debit (SEPA Direct Debit).

4.3. In order to enable the development of pan-European payments solutions based on instant payments, it is essential for market actors to have clarity regarding the business model. Without this, investment decisions cannot be expected to be made. The EESC calls on the Commission to reduce the current uncertainties as regards a sustainable business model for instant payments.

4.4. In terms of the number of Payment Service Providers (PSPs) offering euro-denominated instant payments and signed up to the SEPA Instant Credit Transfer scheme (SCT Inst), there is already good coverage of PSPs in particular in the euro area. However, it is not yet sufficient to achieve full coverage of instant payments. The market is striving to increase the levels of adherence of PSPs and to have broader coverage and provision of instant euro-denominated credit transfers. The EESC supports measures that seek to address amongst others the adherence, interoperability and other issues arising from the widespread use of SCT Inst, including issues related to consumer protection.

4.5. The EESC agrees with the Commission that end-user solutions should be interoperable and accessible, add value and meet the needs of a broad range of users and have features equivalent to other, corresponding payment instruments. The EESC considers that it is premature to ponder any legislative action in this area and that it is preferable to let market actors led by existing market competition develop suitable products for customers and contemplate legislative action if no suitable solutions are found.

4.6. The EESC fully agrees with the Commission on the need to ensure full enforcement of the SEPA Regulation by Member States, particularly when it comes to lack of compliance by payers and payees with Article 9 (so-called IBAN discrimination). As laid down in Article 9, EU consumers should be able to use a single payment account for euro transfers and make cross-border euro bank transfers within SEPA just as easily as within their home country. However, many operators today still refuse cross-border direct debit requests from customers with non-domestic IBANs or even SEPA credit

transfers to non-domestic IBANs. This is a major barrier to the Single Market and limits the ability of customers to access cross-border services. Member States should be called upon to take a stricter stance to enforce this regulation which has been in force since 2014.

4.7. Electronic identity solutions (e-ID) are an essential part of digital services, including financial services. eIDAS has been a first step in enabling cross-border recognition and usage of nationally recognised e-ID schemes. However, it is clear that the current eIDAS framework is not sufficient and cannot achieve the needed outcomes. A universally accepted electronic identity is needed, based on consumers' choice, their consent and the guarantee that their privacy is fully respected. The EESC encourages the Commission to focus its efforts on interoperability among existing and nascent solutions and believes that the private sector, together with the authorities as in the Nordic countries, should be better enabled to create e-ID solutions, to be used partly to carry out Strong Customer Authentication (SCA) for payment transactions.

4.8. Widespread acceptance of digital payments is an essential part of a modern payments market. The EESC supports measures to assess the level of acceptance of digital payment means by merchants, and find ways to increase and facilitate this acceptance, especially by SMEs and smaller merchants. For society at large, it is crucial to preserve access to and ensure acceptance of cash. However, the same is true for digital means of payment as consumers should be given the choice.

4.9. The EESC emphasises that cash remains the most preferred payment instrument by consumers for their point-of-sale and person-to-person retail payments, as demonstrated by the European Central Bank's recently published 'SPACE' study⁽⁸⁾. The characteristics of cash differ greatly from those of digital payments. Cash is the only payment instrument which protects privacy. Cash is public money for which the central bank is liable. Should all electric and electronic devices go black (a 'digital coronavirus'), it will be the only remaining solution in terms of means of payment in the economy. In addition, cash is crucially important for social inclusion, and access to certain basic services. The Commission and the ECB should look very closely at the issues of access and acceptance of cash, taking appropriate measures if needed.

4.10. One of the consequences of the COVID-19 crisis has been that many retailers have decided (temporarily) not to accept cash. As indicated by the Commission, cash is legal tender ensured by the Treaties. The evolution in the use of cash should be demand-driven. Rules on acceptance of cash are different from one country to another. There is a need for harmonisation at EU level.

4.11. Given the ongoing developments, it is understandable that the ECB is studying the possible issuance of a digital euro and that the Commission is supporting these efforts. The impact of a digital euro could potentially be unprecedented, and should be assessed very carefully. The EESC supports the principles put forward by the ECB, namely that a digital euro should be complementary to existing central bank liabilities, that it should not seek to crowd out the private sector, that the private sector should have a role in distributing solutions related to digital euro and that users' rights and obligations must be clearly defined. Privacy of a transaction as an important right of the user should be considered along with other features, similar to those of cash. The same approach should be valid for any CBDC (Central Bank Digital Currency) initiatives in EU Member States, outside the eurozone.

Pillar 2: Innovative and competitive retail payments markets

4.12. The implementation of the second Payment Services Directive (PSD2)⁽⁹⁾ has been a major undertaking for the payment services industry and is still partly ongoing. PSD2 introduced two major changes: the introduction of Strong Customer Authentication (SCA) and Third Party Provider (TPP) access to payment accounts. In some instances in particular with regard to SCA for e-commerce transactions, the implementation deadline was the end of 2020. The EESC urges the Commission to examine in detail the impact of PSD2 before proposing a review.

⁽⁸⁾ Study on the payment attitudes of consumers in the euro area (SPACE), December 2020.

⁽⁹⁾ OJ L 337, 23.12.2015, p. 35.

4.13. The EESC supports moves to build an 'open finance' framework for Europe. Open finance has the potential to unlock further benefits for European consumers as it can promote an innovative and competitive financial sector. The EESC believes that a broad open finance framework cannot be built on the basis of the same principles as PSD2, as this directive deals only with payment accounts and payment services providers and provides for one-sided data sharing by part of the market. There is a need for a specific text covering all financial services providers in line with the principles of the General Data Protection Regulation (GDPR) ⁽¹⁰⁾ and to explore the potential to extend data sharing between different sectors. The Communication on digital finance strategy ⁽¹¹⁾ indicates that the Commission will make this proposal by mid-2022.

4.14. Contactless payments have become increasingly common and are important in the current COVID-19 pandemic context. In most countries, the maximum amount(s) for contactless payments were increased during the first stages of the pandemic, in many cases to the maximum allowed by PSD2 (EUR 50 per transaction and EUR 150 euros cumulative), as a reaction to requests from merchant communities in particular. Any change in these legal maximum amounts as part of a PSD2 review should be carefully assessed to balance ease of use with security and liability considerations.

4.15. The EESC agrees with the Commission that as part of the PSD2 review, the risks stemming from currently unregulated services should be brought within the scope of legislation. Such providers, ancillary to the provision of regulated payment or e-money services, remain outside the regulated perimeter while being major market players. The EESC understands that whenever they are very relevant to market dynamics and are perceived by customers as providing a payment service, they should also be regulated and supervised as payment service providers. It is important that all relevant market actors be subject to appropriate legislation, supervision and oversight, ensuring a level playing field among those offering the same services and activities.

Pillar 3: Efficient and interoperable retail payment systems and other support infrastructures

4.16. The EESC understands the need to ensure an open and accessible payment ecosystem and to assess during the review of the Settlement Finality Directive (SFD) ⁽¹²⁾ whether it would be beneficial to extend the directive's scope to include payment institutions and e-money institutions in order to allow them to directly access payment systems and infrastructures such as TARGET2 and TARGET Instant Payment Settlement (TIPS). The EESC emphasises the need to safeguard the security and integrity of major payment systems. This will be even more important should the directive's scope be extended during the PSD2 review to market actors currently not covered by the legislation, such as technical providers. Again, this emphasises the need to guarantee that all parties have access under the same conditions on a level playing field basis.

4.17. The EESC fully supports the Commission's objective of proposing legislation which seeks to secure right of access under fair, reasonable and non-discriminatory conditions to infrastructure technologies considered necessary to support the provision of payment services. Currently some important technologies supporting the provision of payment services, such as the Near Field Communication (NFC) antenna on some mobile devices, have restricted access, which has the effect of limiting competition in the area of contactless mobile payments, forcing banks to pay a fee to a third party for simply allowing a consumer to use a technology (like NFC) for their everyday payments. Those fees paid by banks may in some cases be subsequently passed on to the consumer. While this issue has already been tackled in some Member States, it is important to take this up at European level in order to allow all EU citizens to benefit from increased competition in this area, enable a level playing field for PSPs, and increase widespread adoption of mobile contactless payments. The legislation should ensure that all participants have the same rights and obligations and are subject to the same licensing and other regulatory requirements.

Pillar 4: Efficient international payments, including remittances

4.18. The EESC agrees with the importance of improving global cross-border payments and the actions identified by the Commission, such as promoting the adoption of global international standards for payments, like the SWIFT GPI (Global Payment Initiative) and ISO20022, that improves cross-border payments across the corresponding banking network.

⁽¹⁰⁾ OJ L 119, 4.5.2016, p. 1.

⁽¹¹⁾ COM(2020) 591 final.

⁽¹²⁾ OJ L 166, 11.6.1998, p. 45.

4.19. Remittances remain the most expensive type of payments. The EESC welcomes the proposed actions which seek to secure a commitment to reduce the global average cost of remittances to less than 3 % by 2030 and encourages the Commission to play an active role in monitoring and ensuring support for the relevant actions defined in the Financial Stability Board's Roadmap for Enhancing Cross-border Payments. Fees can disproportionately harm those financially disadvantaged. Competition and technology advances have already helped improve access to quicker and less expensive means of cross-border remittances, but much remains to be done. For remittance operators working to/from countries in the EU's neighbourhood, better access to the EU-based payment infrastructure may provide a basis for cost reduction.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

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 — A new ERA for Research and Innovation’

(COM(2020) 628 final)

(2021/C 220/11)

Rapporteur: **Paul RÜBIG**

Referral	European Commission, 11.11.2020
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1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the new vision for, and the renewal of, the ERA agenda. The new ERA is not just ‘more of the same’, but is a real ‘New Deal’ for the EU’s Research, Technology and Innovation (RTI).

1.2. The EESC strongly welcomes the focus on rapidly translating R&I results into sustainable business, as outlined in the document. Safeguarding a just transition process is one of the most important elements to ensure that R&I supports the economy and employment in the EU.

1.3. The EESC strongly advocates the need for new governance in the research area in order to remove administrative and regulatory barriers to innovation.

1.4. The EESC welcomes the fact that the new ERA document is overall in line with and supports the UN Sustainable Development Goals (SDG). While fostering the transition towards a more resilient European economy, an inclusive recovery leaving no European behind is essential in the process of moving towards a sustainable European economy⁽¹⁾.

1.5. The EESC would like to point out that an intelligent blending of R&D instruments at all levels (regional, national, global level, EU level) is important. R&D and innovation should be promoted by making use of the large EU structural funds, too, as well as through direct and indirect measures (e.g. tax incentives) for R&D.

1.6. The EESC suggests that the following key sectors and technologies are vital for the prosperity of the EU:

— Digital business models;

— Technologies for manufacturing goods and food;

⁽¹⁾ EESC proposals for post-COVID-19 crisis reconstruction and recovery: ‘The EU must be guided by the principle of being considered a community of common destiny’ (OJ C 311, 18.9.2020, p. 1), pt. 5.3.1.

- Clinical research, pharmaceutical and biotechnological sector;
- Space technologies;
- Clean water and sanitation.

1.7. The EESC notes that research in the social sciences and humanities is very important for the complex renewal of the ERA agenda.

1.8. The EESC would like to emphasise the fact that EU research lags behind in patent performance. Asia has increased its share of global patent applications. In 2019, Asia submitted 65 % of global patent applications. Europe's share of patents has decreased and is now only 11,3 % of global patent applications.

1.9. Numerous studies have shown that the EU is lagging behind the US and Asia in entrepreneurial culture. Entrepreneurial culture needs to be addressed in education, including higher education. Entrepreneurial culture shall therefore be relevant throughout the whole process, from innovation in basic research and applied research to marketing of a new technology.

1.10. The EIC and the EIT, with its KICs, are considered valuable partners and tools in this 'acceleration of R&I translation' and in redirecting the focus of the EU's R&I towards the generation of breakthrough innovations that address concrete needs of citizens and business, particularly in relation to major societal challenges. The EIC accelerator offers substantial EU funds for innovative European start-ups with high growth potential, whereas the EIT by definition pursues research excellence for technology-push innovations in its KICs; thus both the EIC and the EIT are important partners regarding the acceleration of R&I translation.

1.11. The EESC underlines the need to incorporate the principle of scientific and ethical integrity, so as to prevent losses in terms of human health, money, and scientific failure.

1.12. Europe is especially lagging behind the US and Asia regarding the speed of transferring R&D results into innovative products and services. Thus, the EESC encourages the Commission to aim in its RTI policy on 'excellence' as well as 'speed' at the same time.

1.13. The EESC suggests that the European Commission should aim, in its new R&I strategy, for well-balanced portfolios:

- of high-tech industrial production as well as service industry R&D/R&I;
- market-pull innovations (demand-driven innovation) as well as technology-push innovations.

2. General comments

2.1. The EESC welcomes the fact that a new vision for and the renewal of the ERA agenda are key elements in the document. The document thus proves that the new ERA is not just 'more of the same', but is a real 'New Deal' for the EU's RTI. A key aspect of the 'New Deal' is the objective of massively increasing the impact of innovation on the economy and society. With this 'New Deal', the EU-27 is definitively committed to stopping the ongoing process of losing ground to China and South Korea in basic research as well as in applied research, patent applications, high-tech products and services. The 'New Deal' aims to even better educate and train European citizens in all kinds of R&D, innovation and entrepreneurship, and thus to fully unleash the innovation power of European society.

2.2. The EESC welcomes the approach of the European Commission to increase the impact of innovation on the economy and society. The EESC emphasises that organised civil society is a catalyst for social innovation. The participation of civil society is needed now more than ever — and true social innovation only happens when organised civil society is involved ⁽²⁾.

2.3. Asia, especially China and Korea, has massively improved its performance in RTI within the last 20 years. China has not only increased its share of spending on R&D from 0,55 % (1995) to 2,2 % (2018), but has also outperformed the EU in the total budget spent on R&D, spending USD 496 billion in 2017, while the EU spent USD 430 billion. According to the 2020 EU Industrial R&D Investment Scoreboard, from 2018 to 2019, EU companies increased R&D by 5,6 %, US companies by 10,8 % and Chinese companies by 21,0 %.

2.4. The OECD's Science, Technology and Industry Scoreboard reports show, among other things, that the EU is especially lagging behind in digital service businesses and what are known as breakthrough technology-push innovations. The EESC advocates a European path of digitalisation by seizing the opportunities for the economy while safeguarding societal values and fundamental rights. A human-centred focus in all Commission initiatives is very much welcome with a view to developing a European approach to progress ⁽³⁾.

2.5. Promoting the development of breakthrough innovations ⁽⁴⁾ while safeguarding a just transition process is one of the key challenges in the near future.

2.6. The EESC fully supports putting one clear focus on the Twin Transition, i.e. the Digital Transition and the Green Deal.

2.7. The EESC welcomes efforts to ensure that R&I results are rapidly translated into sustainable business. Safeguarding a just transition process, i.e. towards a greener/climate-friendly Europe, a fair digital future, with respect for workers' rights and positions, as outlined in the document, is one of the most important elements to ensure that R&I supports the economy and employment in the EU.

2.8. The EESC welcomes the fact that the new ERA document is overall in line with and supports the SDGs. While fostering the transition towards a more resilient European economy, an inclusive recovery leaving no European behind is essential in the process of moving towards a sustainable European economy ⁽⁵⁾.

2.9. The EESC would like to point out that an intelligent blending of R&D instruments at all levels (regional, national level, EU level) is important. R&D and innovation should be promoted by making use of the large EU structural funds, too, as well as through direct and indirect measures (e.g. tax incentives) for R&D.

3. The European Research Area in a new context

3.1. As pointed out in our general comments, the EESC clearly thinks that, if the EU's RTI strategy remains 'more of the same', it will continue to lose ground in the global RTI competition, especially against China, Korea and the USA.

3.2. The EESC underlines the need to incorporate the principle of scientific and ethical integrity, so as to prevent losses in terms of human health, money, and scientific failure.

3.3. The EESC encourages the European Commission to design a 'New Deal' RTI agenda for the EU.

⁽²⁾ EESC proposals for post-COVID-19 crisis reconstruction and recovery: 'The EU must be guided by the principle of being considered a community of common destiny' (OJ C 311, 18.9.2020, p. 1), pt. 6.8.

⁽³⁾ OJ C 364, 28.10.2020, p. 101.

⁽⁴⁾ Clayton M. Christensen, *The Innovator's Dilemma — When New Technologies Cause Great Firms to Fail*, 2016.

⁽⁵⁾ EESC proposals for post-COVID-19 crisis reconstruction and recovery: 'The EU must be guided by the principle of being considered a community of common destiny' (OJ C 311, 18.9.2020, p. 1), pt. 5.3.1.

3.4. State-of-the-art, efficiently managed R&I infrastructures are one important key issue for this acceleration of R&I translation.

3.5. The day-to-day management of these R&I infrastructures could be professionalised in the EESC's view. Utilisation of some of these expensive R&I infrastructures is relatively low: some have a utilisation of less than 25 % of annual working hours.

3.6. The EESC welcomes the EC's Open Science Initiatives (EOSC).

3.7. The EESC agrees that the technologies mentioned in the document are very important, strategic key technologies for the EU, and proposes that the following key technologies and sectors be added:

- Digital business models;
- Technologies for manufacturing goods and food;
- Clinical research, pharmaceutical and biotechnological sector;
- Space technologies;
- Clean water and sanitation.

3.8. Digital business models are currently the fastest growing businesses in the globe and will continue to be in the years to come. One just has to look at e-commerce (e.g. Amazon), Industry 4.0, e-banking, e-gaming, digital social networks (e.g. Facebook), e-security, etc.

3.9. The EESC notes that research in the social sciences and humanities is very important for the complex renewal of the ERA agenda.

3.10. The EESC notes that EU research lags behind in patent performance. Asia has increased its share of global patent applications. In 2019, Asia submitted 65 % of global patent applications. Europe's share of patents has decreased and is now 11,3 % of global patent applications.

3.11. Other important R&I topics include (but are not limited to) manufacturing of goods (which has always been and still is a stronghold of the EU), IT, software and AI, and medium tech.

3.12. Most of the jobs within the EU still are in medium tech (which, similarly, has always been a stronghold of the EU). High tech is of course important, but there is a lot of growth potential and job potential in medium tech too.

3.13. The coronavirus crisis is a severe challenge for mankind and all possible measures should be taken to develop vaccines and treatments for COVID-19. This crisis has exposed several issues that need to be addressed to prevent similar pandemics in the future, not least as regards our relationship with the natural world and animals. European R&I must play an important role in identifying, researching and solving those issues. On the other hand, the crisis should not be the only guideline for the EU's long-term R&I strategy.

3.14. Numerous studies have shown that the EU is lagging behind the US and Asia in entrepreneurial culture. Entrepreneurial culture needs to be addressed in education, including higher education. Entrepreneurial culture shall therefore be relevant throughout the whole process, from innovation in basic research and applied research to marketing of a new technology. Entrepreneurial culture must be a key competence in all of the EU's RTI and thus, of course, in the new ERA too.

4. The vision: a stronger European Research Area for the future

4.1. The communication devotes a number of paragraphs to new common technology roadmaps, a New Industrial Strategy and key future technologies for the Commission. The EESC, again, would like to point out that all these topics need to be seen in close connection with the SDGs. In other words, R&D needs to be pushed in particular within the new ERA and common technology roadmaps, where any of the 17 areas of the SDGs can be supported. The EESC is convinced that a constructive social and civic dialogue at all levels will contribute to a successful implementation of the strategy.

4.2. The EESC appreciates the strengthening of RTI cooperation within the EU. Any EU Member State alone is simply too small to compete with the large research nations such as the USA or China. The individual Member States lack 'economies of scale', which are very important especially for large breakthrough innovations. Europe's achievements in science and technology have been significant and research and development efforts form an integral part of the European economy. Europe has been the home of some of the most prominent researchers in various scientific disciplines, notably physics, mathematics, chemistry and engineering. Scientific research in Europe is supported by industry, by the European universities and by several scientific institutions. The output from European scientific research consistently ranks among the world's best. While cooperation is one key element in efficient innovation to generate new products and services, competition is the major driving force for innovation in the global economy. Thus the EESC recommends a well-balanced portfolio of cooperation as well as competition between the Member States in the EU's 'New Deal' for RTI.

4.3. The EIC and the EIT with its KICs, are considered valuable partners and tools in this 'acceleration of R&I translation' and in redirecting the focus of the EU's R&I towards the generation of breakthrough innovations that address concrete needs of citizens and business, particularly in relation to major societal challenges.

5. Translating R&I results into the economy

5.1. The communication states that 'The EU is lagging behind its main global competitors in business R&D intensity, in particular in high-tech sectors, and in scaling-up innovative SMEs with negative effects on productivity and competitiveness. (...) Unlocking investment in innovation in business, services as well as in the public sector is critical to reversing this trend, as well as to reinforce Europe's industrial and technological sovereignty. The EU needs to make full use of its excellent research and innovation results to support the green and digital transition of the EU economy'. The EESC shares this position, but wants to stress that the digital transition in particular needs a responsible RTI approach. The EESC reiterates its full support for the EU's strategy of seeking trustworthy and human-centric artificial intelligence (AI), and reiterates its call for a 'human-in-command' approach to AI, as called for since its first opinion on AI in 2017 ⁽⁶⁾.

5.2. Europe is especially lagging behind the US and Asia regarding the speed of transferring R&D results into innovative products and services. Thus, the EESC encourages the Commission to aim in its RTI policy on 'excellence' as well as 'speed' at the same time.

5.3. The EESC certainly recognises that the communication acknowledges that R&I translation into viable products and the chain of innovation need attention. However, most actions and measures proposed in the document still focus on the input side of the chain of innovation (higher education, research careers for talented people, more money for public and basic research, etc.).

5.4. The EESC encourages the Commission to aim for a well-balanced equilibrium between focusing on the input side of the chain of innovation and the output side.

5.5. The EESC encourages the Commission to further stimulate market-pull innovations by, for example:

— promoting lead user concepts;

— investing in systematic social innovation studies to anticipate early appreciation and acceptance of new products and services by society.

⁽⁶⁾ OJ C 288, 31.8.2017, p. 1.

6. Service industries

6.1. Industrial production processes can be highly automated, such that they can produce very high batch sizes with a small share of labour costs and globally competitive production costs, even with Europe's high hourly wages. Regarding service industries, this situation is more complicated. Digital service business models, too, can be highly automated. Services to individuals, like hair-cutting, massages, etc., however, cannot be automated. For all these reasons, the EU would be well advised to aim, in its new R&I strategy, for a well balanced portfolio of high-tech industrial production and service industries.

7. Deepening the Framework for Research Careers

7.1. The EESC welcomes the measures proposed in the communication to enhance the technological and scientific excellence and the mobility of young researchers, but encourages the Commission to step up measures regarding enhancing the entrepreneurship of young researchers and innovators as well. This would include better career prospects for researchers as well as higher salaries, especially for researchers at the beginning of their careers. Furthermore, connecting universities with economic entities to ensure the transformation of innovation into marketable products seems to be fruitful. The EESC proposes establishing a single register of EU researchers and innovators with basic professional research data to connect EU researchers and innovators more closely.

7.2. Key competences and key innovative cultures, new learning and teaching technologies, personalised training.

7.2.1. The EESC would once again like to point out that it is not only key strategic technologies that are very important, but that key competences of employees and innovative cultures within all EU enterprises are also very important if the EU is to prosper.

7.2.2. The following element is especially important for the new ERA agenda, the new R&I agenda and the new 'Pact for Research and Innovation in Europe': fostering an innovative culture and a culture of entrepreneurship within EU enterprises, for the management as well as for all employees, for example by offering appropriate training courses, etc. to employees.

8. Citizens' engagement

8.1. The EESC agrees with the statement in the communication that 'The engagement of citizens, local communities and civil society will be at the core of the new ERA to achieve greater societal impact and increased trust in science'. The EESC explains its support for the European Commission's approach which is based on the idea that 'research organisations and industry should involve citizens in technology choices'.

8.2. The social partners and civil society organisations such as consumer organisations, NGOs, etc. should be involved as active partners in European R&I processes and projects, in particular when the research affects or impacts the people or cause they represent. Involving these partners at an early stage will promote engagement, understanding, ownership and acceptance of the innovation, and support the just transition processes that are necessary, especially for breakthrough innovations. It will also help researchers understand the impact of their innovations on society at large and help them address potential negative impacts at an early stage in the process. For this reason, the EESC has also been calling for a multidisciplinary approach in certain research areas, where there is an impact on multiple research areas. One of these areas is again AI, where the EESC has been calling for the involvement of the humanities, law, economics, ethics, psychology, etc. in the R&I of AI, beyond the mere technical element (⁷).

8.3. The EU's economy relies heavily on exports of its goods and services.

8.4. Technology choices should thus be based on EU citizens' preferences for goods and services, but also on those of the rest of the 7,8 billion people in the world. The EESC calls on the Commission to particularly promote R&I in reaching the UN SDGs.

(⁷) OJ C 288, 31.8.2017, p. 1.

8.5. As pointed out in our general comments, the importance of RTI needs to be better communicated to politicians, the media and society.

8.6. It is therefore also important to develop smart means and strategies for communicating the importance of RTI, but also its results, in the context of the communication and the new EU RTI strategy.

9. Governance of the new ERA

9.1. The EESC agrees that a transparent monitoring system (ERA Scoreboard) will be essential in order to monitor the EU's performance in the global RTI competition. The EESC advocates the need for new governance in the research area in order to remove administrative and regulatory barriers to innovation.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a Regulation of the European Parliament and of the Council on the Extension of the term of Community plant variety rights for the species asparagus and the species groups flower bulbs, woody small fruits and woody ornamentals’

(COM(2020) 36 *final* — 2021/0019 (COD))

(2021/C 220/12)

Referral	European Parliament, 11.2.2021
Legal basis	Article 118 and Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	262/0/14

Since the Committee endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 559th plenary session of 24 and 25 March 2021 (meeting of 24 March), by 262 votes with 14 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/2397 as regards the transitional measures for the recognition of third countries certificates’

(COM(2021) 71 *final* — 2021/0039 (COD))

(2021/C 220/13)

Referrals	Council of the European Union, 26.2.2021 European Parliament, 8.3.2021
Legal basis	Article 91(1) of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	262/0/14

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 559th plenary session of 24 and 25 March 2021 (meeting of 24 March), by 262 votes in favour and 14 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

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 — Enhancing the accession process — A credible EU perspective for the Western Balkans’

(COM(2020) 57 final)

on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An Economic and Investment Plan for the Western Balkans’

(COM(2020) 641 final)

and on ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — 2020 Communication on EU enlargement policy’

(COM(2020) 660 final)

(2021/C 220/14)

Rapporteur: **Andrej ZORKO**

Co-rapporteur: **Ionuț SIBIAN**

Referral	European Commission, 11.11.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	External Relations
Adopted in section	3.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	243/1/10

1. Conclusions and recommendations

1.1. The EESC welcomes the Commission’s communications adopted in 2020 in connection with the enlargement of the European Union (EU) to the Western Balkans⁽¹⁾ and agrees that integrating the Western Balkan partners into the EU represents a geostrategic investment in the peace, stability, security and economic growth of the entire continent.

1.2. The EESC agrees with the conclusions of the Zagreb Summit⁽²⁾, at which EU leaders reaffirmed the EU’s determination to strengthen its cooperation with the region and welcomed the commitment of the Western Balkan partners to implement the necessary reforms in a thorough and decisive way. The Western Balkans are an integral part of Europe and a geostrategic priority for the EU.

(1) COM(2020) 57 final (5.2.2020) *Enhancing the accession process — A credible EU perspective for the Western Balkans*; COM(2020) 641 final (6.10.2020) *An Economic and Investment Plan for the Western Balkans*; COM(2020) 660 final {SWD(2020) 350 final} — {SWD(2020) 351 final} — {SWD(2020) 352 final} — {SWD(2020) 353 final} — {SWD(2020) 354 final} — {SWD(2020) 355 final} — {SWD(2020) 356 final} (6.10.2020) 2020 Communication on EU enlargement policy.

(2) Zagreb Declaration, 6 May 2020.

1.3. The EESC is convinced that, in addressing common challenges and problems that are not only political but also economic and social, social partners and other civil society organisations (CSOs) ⁽³⁾ should play a greater role in, and be more actively involved in, the entire enlargement process. The Commission should define the concept of 'key stakeholders' more clearly. After all, organised civil society is the bridge between politics and people, helping to monitor whether fundamental principles such as freedom of speech, the rule of law, the independence of the media, equal treatment and the fight against corruption are actually implemented in practice.

1.4. The EESC welcomes the revised enlargement methodology adopted by the Commission in 2020 ⁽⁴⁾. Since the aim of the revision was to make the process more credible, predictable and political, the Commission should implement it for Albania and North Macedonia, as soon as the Council of the EU adopts its negotiating frameworks, and should swiftly clarify how it will also be adapted to Montenegro and Serbia, which have already expressed willingness to adopt it.

1.5. The EESC welcomes the fact that negotiating chapters will be organised in thematic clusters and that negotiations on each cluster will be opened as a whole. The idea of applying a set of strict conditions in a tangible way will make it easier for EU candidate countries to make progress on the path of reform. The EESC is also particularly satisfied by the emphasis placed on the importance of the Fundamentals cluster and the fact that progress here will determine the overall pace of negotiations.

1.6. The EESC welcomes the Commission's proposals to strengthen the accession process and the Council's 'green light' for opening accession negotiations with Albania and North Macedonia ⁽⁵⁾, but regrets that the process has been blocked once again and calls for the EU to act as a credible partner and remove the obstacles that are preventing the start of negotiations as quickly as possible.

1.7. The EESC appreciates the way in which the Commission is attaching major importance to building trust among all stakeholders and making sure that, in order for the accession process to regain credibility on both sides and deliver to its full potential, it is based on mutual trust and clear, joint commitments.

1.8. Given the difficulties experienced by the Member States in reaching unanimity on enlargement, the EESC considers that the Council should revisit the possibility of introducing qualified majority voting, at least for all intermediary stages of the EU accession process ⁽⁶⁾. This would grant Member States a strong political role, as is the intention of the new methodology, yet it would also prevent them from frustrating the process while it is ongoing, which is precisely what is currently undermining trust in enlargement and the transformative power of the policy.

1.9. To rebuild confidence in enlargement and strengthen the ways in which the EU reaches out to its natural allies in the region, the EESC is convinced that the EU should allow political leaders and citizens from the Western Balkans to join the activities and discussions held in the context of the Conference on the Future of Europe (CoFoE), on a consultative basis. In so doing, the EU would build on the precedent of the European Convention of the early 2000s ⁽⁷⁾.

⁽³⁾ In accordance with the established terminology of the EESC, the concepts of 'civil society' and 'civil society organisations' in this opinion include social partners (i.e. employers and trade unions) and any other non-state actors (see Opinion of the European Economic and Social Committee on *Economic and social cohesion and European integration of the Western Balkans — challenges and priorities* (OJ C 262, 25.7.2018, p. 15)).

⁽⁴⁾ COM(2020) 57 final (5.2.2020).

⁽⁵⁾ Council conclusions on enlargement and stabilisation and association process — the Republic of North Macedonia and the Republic of Albania, 25.3.2020.

⁽⁶⁾ Cvijic, Srdjan, Kirchner, Marie Jelenka, Kirova, Iskra and Nechev, Zoran (2019), *From enlargement to the unification of Europe: Why the European Union needs a Directorate-General Europe for future Members and Association Countries*, Open Society Foundations.

⁽⁷⁾ Stratulat, Corina and Lazarevic, Milena (2020), *The Conference on the Future of Europe: Is the EU still serious about the Balkans?*, EPC Discussion Paper, Brussels: European Policy Centre.

1.10. The EESC firmly believes that the EU should also invest in developing horizontal civil society structures by providing social partners and other CSOs from the Western Balkans with expertise, technical support, and regional and international networking opportunities, not least for the purpose of ensuring that they have a more active role in the enlargement process. To keep a check on the transparency and accountability of Western Balkan political elites, the EU should commission regular 'shadow' reports on the state of democracy from CSOs in the region⁽⁸⁾.

1.11. The EESC stresses that building the national capacity of CSOs and facilitating regional cooperation, as well as expertise exchange, should be maintained among the priorities of the EU and of national funding. Furthermore, reciprocal acknowledgment and collaboration between social partners and other CSOs is essential for levelling up in terms of the challenges raised by the reform agenda in the region and the advancement of the EU enlargement process.

1.12. The EESC appreciates that in order to help Western Balkan partners cushion the blow of the pandemic and relaunch economic and social convergence with the EU, the EU's support should be generous and should include much more than just access to EU programmes. Gradually opening up the European Structural and Investment Funds to the Western Balkan partners (for example to support infrastructure projects), extending the use of the EU's financial stability mechanisms, allowing the region to participate in the Common Agricultural Policy or enabling circular migration, for example, are ideas that warrant serious consideration⁽⁹⁾.

1.13. The EESC welcomes the European Green Deal⁽¹⁰⁾, which includes specific objectives for the Western Balkans, as well as the *Guidelines for the Implementation of the Green Agenda for the Western Balkans accompanying the Economic and Investment Plan for the Western Balkans*⁽¹¹⁾. It calls on the partners from the region to work with the EU to adopt green policies by 2030 and achieve climate neutrality by 2050.

1.14. The EESC's expectation is that the next country reports should follow a clear structure for monitoring how civil society is dealt with by Western Balkan governments. This scrutiny should provide the basis for responding with political actions, where backsliding would have consequences and progress would bring concrete benefits. Ultimately, this will reinforce the credibility and transformative power of the enlargement policy towards the Western Balkans.

1.15. The EESC once again invites the EU institutions and the Western Balkans governments to provide for the strengthening of the overall capacities of the social partners, while at the same time fully preserving their independence. A functioning social dialogue should be an important element of the EU accession negotiations. The EESC emphasises that the social partners should be consulted, more systematically and in a timely matter, on all relevant legislative proposals and at all stages when developing strategic documents⁽¹²⁾.

1.16. The EESC calls for High-Level Civil Society Conferences or Fora to be organised just before, or as side events to, the regular EU-Western Balkans Summits in order to allow the voice of civil society to be heard on subjects addressed at the summits⁽¹³⁾. Such consultations are vital to ensure objective, bottom-up monitoring of progress in the negotiating process. The EESC could play a role in these events.

⁽⁸⁾ Stratulat *et al.* (2019), *op. cit.*, p. 113.

⁽⁹⁾ Stratulat and Lazarević (2019), *op. cit.*

⁽¹⁰⁾ COM(2019) 640 final (11.12.2019) *The European Green Deal*.

⁽¹¹⁾ SWD(2020) 223 final {COM(2020) 641 final} (6.10.2020) *Guidelines for the Implementation of the Green Agenda for the Western Balkans accompanying the Economic and Investment Plan for the Western Balkans*.

⁽¹²⁾ Final declaration of the 7th Western Balkans Civil Society Forum — 16.-17.4.2019, Tirana, Albania.

⁽¹³⁾ Conclusions of the High Level Conference on Economic and social cohesion in the Western Balkans — 15 May 2018, Sofia, Bulgaria.

1.17. The EESC reiterates the recommendations stipulated in the EESC's External Relations (REX) Section contribution to the EU-Western Balkans Summit on 6 May 2020 ⁽¹⁴⁾ as well as in the recent EESC opinions on the *Contribution of civil society to the Green Agenda and Sustainable Development of the Western Balkans as part of the EU accession process*, adopted on 18 September 2020 ⁽¹⁵⁾ ⁽¹⁶⁾.

1.18. The EESC calls upon the current Portuguese Presidency of the Council of the EU, and in particular the upcoming Slovenian Presidency, to keep the enlargement policy towards the Western Balkans high on the EU's agenda in 2021.

2. EU enlargement towards the Western Balkans matters

2.1. A credible accession perspective is the key incentive for and driver of transformation in the region — ironically already a geographical enclave in the EU, surrounded as it is by Member States — and thus enhances our collective security and prosperity. It is a key tool for promoting democracy, the rule of law and respect for fundamental rights, which are also the main engines of economic integration and the essential anchor for fostering regional reconciliation and stability.

2.2. Maintaining and enhancing this policy is thus indispensable for the EU's credibility, success and influence in the region and beyond — especially at times of heightened geopolitical competition. Relegating enlargement to a position lower down on the EU's list of priorities or a slowdown in the process could make it easier for other actors, which often do not share the EU's democratic ambitions — most notably Russia and China — to meddle in the Balkans and cosy up to countries like Serbia, Montenegro and Bosnia-Herzegovina, as has also been demonstrated during the ongoing pandemic. Such foreign powers can frustrate the EU's efforts to guarantee the continent's security.

2.3. Modern-day challenges such as globalisation, ageing societies, migration, climate change, social disparities, terrorism, radicalisation, organised crime, cyber-attacks and COVID-19 prove that the EU and the Western Balkans region share not only similar interests but, increasingly, the very same problems as well. In strategic, political and economic terms, the EU and the Western Balkans are thus in the same boat. This interdependence begs for joint action if they are to successfully navigate today's complex and unpredictable world ⁽¹⁷⁾.

3. The EU's leverage rests on its credibility

3.1. An Ipsos poll conducted in 2020 ⁽¹⁸⁾ shows that public opinion in the region continues to be overwhelmingly in favour of EU membership (82,5 % on average). It is likely that people in the Western Balkan countries are still supportive of EU integration because they see it as an opportunity for much-needed change in their countries' quality of governance and economic performance. People evaluate positively the EU's role in national political (39,7 %) and economic (40,3 %) reforms. Moreover, it is possible that the Western Balkan public associates the EU with the freedom to work and travel but also peace and security.

3.2. The EESC expresses satisfaction regarding the unprecedented solidarity that the EU has shown towards the Western Balkans during the COVID-19 pandemic, including by giving access and allowing participation in the EU's instruments and platforms usually reserved only for the EU Member States (such as the Health Security Committee (HSC), the European Medicines Agency (EMA), the Joint Procurement Agreement). It expresses hope that such inclusion in the EU policies and instruments will continue also in the post-pandemic period. On other hand, the EESC is concerned that the delays in EU's ability to provide the Western Balkans with urgently needed COVID-19 vaccines could negatively impact the image of the EU in the public opinion of the region.

⁽¹⁴⁾ EESC Contribution to the EU-Western Balkans Summit on 6 May 2020 (published on 28.4.2020).

⁽¹⁵⁾ OJ C 429, 11.12.2020, p. 114.

⁽¹⁶⁾ See also Opinion of the European Economic and Social Committee on *Economic and social cohesion and European integration of the Western Balkans — challenges and priorities* (OJ C 262, 25.7.2018, p. 15) and Opinion of the European Economic and Social Committee on the *Proposal for a Regulation of the European Parliament and of the Council establishing the Instrument for Pre-accession Assistance (IPA III)* (OJ C 110, 22.3.2019, p. 156).

⁽¹⁷⁾ Stratulat et al. (2019), *op. cit.*

⁽¹⁸⁾ Survey commissioned by the European Fund for the Balkans in October 2020, as a resource for the Balkans in Europe Policy Advisory Group (BiEPAG) and conducted in all six countries of the region, based on a nationally representative sample consisting of a minimum of 1 000 respondents aged 18+, through telephone and online interviews.

3.3. Yet, according to the same Ipsos survey (2020), 52,1 % of respondents across the region are dissatisfied with their country's progress towards EU accession and, in particular, with the slow pace of the process. A growing number of citizens in the Western Balkans think that their countries will never join the EU and are concerned that 'the EU does not want us'. More than 44,9 % of respondents in Bosnia and Herzegovina, 42 % in Serbia, 40,5 % in North Macedonia, and 36,8 % in Albania expect their country to become an EU member only after 2040, or possibly never⁽¹⁹⁾. This suggests that the currently high level of popular support for the EU in the region will probably only be as sustainable as the accession prospect proves credible. The time when the EU could take pro-European sentiment on the part of the Western Balkan partners for granted is thus drawing to a close.

3.4. The EESC points out that the plethora of positions taken by the European Parliament's political parties, by EU Member State governments and the by EU institutions are not always aligned with each other, and that this can send incoherent and confusing messages to the region. The EESC is convinced that there is a need for greater internal cohesion among the different actors involved in the formulation of enlargement policy within Member States, so that they can speak with one consistent voice.

3.5. EU institutions like the Commission and the European Parliament (EP) should communicate better and work more closely with Member States in the process of assessing progress and devising strategies for assisting and responding to the Western Balkan partners. The Commission should develop closer bilateral contacts with Member States, for example by organising meetings with ministries of foreign affairs and national parliaments to discuss enlargement, and should coordinate better with other EU-level and regional actors (such as the European External Action Service, the Council, the EP, the EESC, the Committee of the Regions and the Regional Cooperation Council), as well as with civil society. The EP should furthermore encourage better cooperation with and among national parliaments within the EU as a means of nurturing their Europeanisation⁽²⁰⁾.

3.6. The EESC agrees with the Commission's conclusion⁽²¹⁾ that there is a need to focus more on the political nature of the process and to ensure stronger guidance and cooperation at a high level from the EU Member States. The EESC also highlights that it is essential for such stronger political guidance and cooperation to be constructive and beneficial, and that effective assistance is highly important.

3.7. The EESC is convinced that the EU's support for and commitment to the enlargement process in the Western Balkans must be strong and visible. Above all, it is necessary to ensure that the results of the implemented reforms are properly presented and that the impact of those reforms represents a rise in the quality of people's lives.

3.8. The Commission should step up and diversify its communication efforts on enlargement on the ground in the EU Member States and in the region through its local offices and delegations, but also through initiatives that involve local stakeholders and social partners. Reliable communication about the massive EU support on the part of the Western Balkan partners, as well as about the costs and benefits of European integration more generally, depends also on the existence of free and viable media in the region. For this reason, the Commission should insist on respect of the freedom of the media on the part of the Western Balkan partners and should invest in the development and sustainability of the sector.

4. The democratic consolidation of the region is non-negotiable

4.1. The Ipsos poll (2020) reveals that the focal point of people's dissatisfaction is in their national politicians and institutions. Respondents from across the region doubt that their leaders are genuinely committed to the EU integration agenda and decry their corrupt and dysfunctional state institutions⁽²²⁾.

⁽¹⁹⁾ Stratulat, Corina, Kmezić, Marko, Tzifakis, Nikolaos, Bonomi, Matteo, and Nechev, Zoran (2020), *Between a rock and a hard place: Public opinion on integration in the Western Balkans*, Balkans in Europe Policy Advisory Group (BiEPAG).

⁽²⁰⁾ Balfour, Rosa and Stratulat, Corina (2015) (ed.), *EU Member States and enlargement towards the Balkans*, EPC Issue Paper No 79, Brussels: European Policy Centre, p. 234.

⁽²¹⁾ COM(2018) 65 final (6.2.2018) *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*.

⁽²²⁾ Stratulat et al. (2020), *op. cit.*, p. 5.

4.2. It seems that neither the adoption of democratic constitutions nor the EU's rigorous democratic conditionality have managed to overcome informal power structures, state capture and patronage in the Western Balkans, but have instead actually consolidated them⁽²³⁾. Weak democratic institutions and the rise of autocratic rulers in the Western Balkans may reduce rule of law standards, the independence of the judiciary and the freedom of the media in these countries.

4.3. The EU should not make allowances for politicians in the region who clearly dodge their commitment to democracy. The magnitude of calling out 'state capture' in the Commission's 2018 strategy towards the region⁽²⁴⁾, or of critically evaluating the different countries in annual reports, greatly diminishes if the same rhetoric is not echoed by EU officials or Member State politicians travelling to the Western Balkans⁽²⁵⁾. Without a democratic *acquis* to bring to bear on power monopolies, party organisation and competition, or informal practices, Western Balkan politicians are unlikely to pay heed to European democratic requirements when disregarding them is precisely what sustains their power.

4.4. The efforts of the EU institutions to improve the quality of democracy in the Western Balkans through the accession process would be greatly reinforced if democratic reforms in the existing Member States were discussed and addressed together with the EU hopefuls. The many years of strict democratic conditionality applied to the Western Balkan aspirants have produced a wealth of knowledge and practical experience in terms of what does and does not help to induce domestic governance reforms. The Western Balkan partners could thus contribute to the EU's discussions about protecting its rule of law, media freedom and civil society, such as in the context of the Conference on the Future of Europe (CoFoE)⁽²⁶⁾.

4.5. The EU should also acknowledge that the growing practice in the Council of withholding promised rewards in spite of tangible progress in the region demotivates politicians from the region from implementing the EU reform agenda, risking derailing even the most reform-minded and consensus-driven political leaders in the Western Balkans.

5. A fragile socioeconomic situation

5.1. The EESC also welcomes the adoption of the Economic and Investment Plan⁽²⁷⁾, which aims to spur long-term recovery, boost economic growth and support the reforms required to move forward on the path to EU accession, including bringing the Western Balkans closer to the EU Single Market. It aims to unleash the untapped economic potential of the region and the significant scope for increased intra-regional economic cooperation and trade.

5.2. The EESC is convinced that all these steps taken by the Commission are very positive and should give a major impetus to the policy; however, in reality, the situation is still challenging (the latest Commission communication on EU enlargement policy and its annual country reports reflect the persisting problems well⁽²⁸⁾).

5.3. The COVID-19 pandemic has certainly caused major shocks in terms of supply and demand for goods and services, a decline in production, rising unemployment and increasing social distress. Yet the region's economic woes precede the Coronavirus crisis. Since the 2008 financial, economic and social crisis, the process of economic and social convergence with the EU in terms of GDP per capita has been very slow or non-existent. Unable to accelerate economic development by

⁽²³⁾ Richter, Solveig and Wunsch, Natasha (2020), *Money, power, glory: the linkages between EU conditionality and state capture in the Western Balkans*, Journal of European Public Policy 27(1), pp. 41-62.

⁽²⁴⁾ COM(2018) 65 final (6.2.2018).

⁽²⁵⁾ Stratulat *et al.* (2020), *op. cit.*, p. 7.

⁽²⁶⁾ Stratulat and Lazarević (2019), *op. cit.*

⁽²⁷⁾ COM(2020) 641 final (6.10.2020) *An Economic and Investment Plan for the Western Balkans*.

⁽²⁸⁾ COM(2020) 660 final {SWD(2020) 350 final} — {SWD(2020) 351 final} — {SWD(2020) 352 final} — {SWD(2020) 353 final} — {SWD(2020) 354 final} — {SWD(2020) 355 final} — {SWD(2020) 356 final} (6.10.2020) 2020 Communication on EU enlargement policy.

correcting structural problems, such as a lack of public and private investment or a rapidly ageing population, the Western Balkan citizens have been helplessly gazing into a future of relentless deprivation. The pandemic has only exacerbated these socioeconomic problems, risking creating a *de facto* enclave of underdevelopment in the middle of Europe⁽²⁹⁾.

5.4. The EESC highlights that enhanced economic cooperation and intra-regional trade must help to create decent, safe and quality jobs and to reduce social disparities, and should not be based on unfair competition and social dumping. In this sense, the EU should provide more financial and technical support to the Regional Economic Area and the Connectivity Agenda for the Western Balkans, to encourage trade liberalisation and integration in the region⁽³⁰⁾, as well as to prevent the region becoming dependent on non-EU powers.

5.5. The Western Balkans have significant untapped economic potential and substantial scope for greater intra-regional economic cooperation and trade. Despite some acceleration in growth and job creation and increases in income in recent years, the countries are still lagging behind in reforming their economic structures and improving competitiveness. They still face high unemployment rates, in particular among young people, significant skills mismatches, persistent informal economies, a brain drain, low female labour market participation and low levels of innovation⁽³¹⁾. The EESC suggests that consideration should be given to the possibility of applying the principles of the European Pillar of Social Rights when assessing the fulfilment of conditions for EU membership⁽³²⁾.

5.6. The EESC believes that it is very important to improve the quality and relevance of the education and training systems in the region, and that it is essential to strengthen links between employers and educational institutions.

5.7. The investment climate remains largely unchanged and is characterised by weak rule of law, inadequate enforcement of State aid rules, an entrenched grey economy, poor access to finance for businesses and low levels of regional integration and connectivity. State interference in the economy persists. There is a real need to upgrade infrastructure, and investment should be channelled through single project pipelines and be consistent with the priorities agreed with the EU.

5.8. The EESC recalls that the Western Balkans are highly sensitive to the impact of climate change resulting in damage to general health and the economy, and need urgent action to improve the quality of life for their citizens, especially children and young people, by a just transition to a greener model, bearing in mind the 'no one left behind' principle⁽³³⁾. There are numerous worrying trends as regards climate change in the Western Balkans, such as high dependence on solid fossil fuels. But there are also a lot of opportunities, such as the renewable energy potential and rich biodiversity. The importance and necessity of including the Western Balkans in the Green Deal is not only because climate change knows no national or physical borders, but also because it is important for people's wellbeing and health and provides a tangible benefit from the EU for the citizens of the Western Balkans⁽³⁴⁾.

5.9. The EU should identify and invest in the key sectors driving the economies of the Western Balkan partners, including in SMEs and the agro-food sector. The EU should also ensure that the standards required of the region do not stifle the development of these sectors with measures that are currently too restrictive for the Western Balkans. Instead, the bar has to be adjusted according to the progress made in these countries and in such a way as to allow for growth to take place.

⁽²⁹⁾ Bonomi, Matteo and Reljić, Dušan (2017), *The EU and the Western Balkans: so near and yet so far*, Stiftung Wissenschaft und Politik (SWP) Commentary, SWP.

⁽³⁰⁾ Stratulat et al. (2019), *op. cit.*, p. 113. and Opinion of the European Economic and Social Committee on the *Contribution of civil society to the Green Agenda and Sustainable Development of the Western Balkans as part of the EU accession process* (own-initiative opinion) (OJ C 429, 11.12.2020, p. 114).

⁽³¹⁾ Opinion of the European Economic and Social Committee on *Economic and social cohesion and European integration of the Western Balkans — challenges and priorities* (OJ C 262, 25.7.2018, p. 15).

⁽³²⁾ *Idem.*

⁽³³⁾ OJ C 429, 11.12.2020, p. 114.

⁽³⁴⁾ *Idem.*

5.10. While the EESC welcomes the EUR 3,3 billion financial package mobilised by the EU for the benefit of citizens and businesses in the Western Balkans, it is necessary to ensure that this money is properly channelled and that the benefits of investment reach people, in keeping with the rationale behind it. The EESC believes that the recovery from the COVID-19 crisis should promote the economic and social cohesion of the region, as well as green policies, and that the green transition has to be an integral part of a comprehensive and forward-looking recovery plan in the Western Balkans.

5.11. The EESC believes that active participation on the part of social partners, including by encouraging collective bargaining, and other CSOs in planning and implementing economic, social and other reforms, can significantly contribute to increasing economic and social convergence, especially in the aftermath of the COVID-19 pandemic.

5.12. The Commission's request for greater transparency in the use of funds and the implementation of reforms is welcomed, but it is not clear whether the Commission considers civil society to be among the 'key stakeholders'. In fact, civil society is unfortunately barely mentioned in the Commission's 2020 communications on the Western Balkans.

6. Regional cooperation

6.1. The EESC believes that regional cooperation is a key factor for raising living standards in the Western Balkans.

6.2. Both the Western Balkans Summit in Poznań in 2019 and the EU-Western Balkans Zagreb Summit in May 2020 were opportunities for the leaders of the region to agree to pursue an ambitious green and digital transformation and to continue developing connectivity in all its dimensions: transport, energy, digital and people-to-people.

6.3. The EESC agrees that the Green Agenda, the Economic and Investment Plan, the economic restructuring efforts, investment in tourism and energy and the digital transformation are extremely important for the development and stability of the region. It points out, however, that it is necessary to provide quality and decent jobs that will enable workers to work safely, ensure the economic and social security of workers and bring benefits to the people.

6.4. The EESC believes that special attention should be paid to competitiveness, inclusive growth, living standards, sustainable development, connectivity and the digital transition in the Western Balkans. Entrepreneurial capacity and innovation are also essential for the recovery of the region and local economies. Therefore, the EESC recommends making increased use of the EU's pre-accession funds for supporting start-ups, facilitating training for entrepreneurship and enhancing smart economic strategies in the region, as well as for the investment in necessary infrastructure.

6.5. In the field of environmental policy, the EU focuses on phasing out fossil-based energy sources and replacing them with renewables. In contrast, the Western Balkan partners, especially Serbia, have been accepting Chinese loans to build new thermal plants that run on cheap, inefficient coal, without performing environmental impact assessments⁽³⁵⁾. As a result, Belgrade, Skopje and Sarajevo constantly compete for the position of the most polluted city in the world during the cold winter months, when energy consumption goes up⁽³⁶⁾. One can safely assume that if the region is to be involved in the EU's effort, including during the CoFoE process, to shape a green transition, such projects would be inconceivable⁽³⁷⁾.

⁽³⁵⁾ Matkovic Puljic, Vlatka; Dave Jones; Charles Moore; Lauri Myllyvirta; Rosa Gierens; Igor Kalaba; Ioana Ciuta; Pippa Gallop; and Sonja Risteska (2019), *Chronic coal pollution EU action on the Western Balkans will improve health and economies across Europe*, Brussels: Health and Environment Alliance, p. 18.

⁽³⁶⁾ See, for example, European Western Balkans, *Sarajevo and Belgrade among the most polluted world capitals*, 13 January 2020; Bateman, Jessica, *The young people fighting the worst smog in Europe*, BBC, 2 July 2020.

⁽³⁷⁾ Straulat and Lazarević (2019), *op. cit.*

6.6. The EESC welcomes the fact that the Declaration on the Recognition of Higher Education Qualifications was endorsed at the Poznań Western Balkans Summit, setting out a model for automatic recognition of higher education qualifications and periods of study abroad, but nevertheless considers it necessary to step up efforts to advance the mutual recognition of professional qualifications in order to create a more integrated labour market and to offer much-needed opportunities for young people in the region.

6.7. The EESC stresses the importance of promoting increased cooperation and cross-border partnership between the EU's Member States and the partners from the Western Balkans, not only at the level of governments, but also at regional and local level, as well as that of organised civil society⁽³⁸⁾.

7. Civil society plays a key role in the accession and legislative process

7.1. The EESC calls for organised civil society to be better recognised in the context of the revised methodology. While the EESC does welcome the fact that funding for CSOs will not decrease in the event of lack of progress in a given country, it regretfully notes that civil society is insufficiently recognised in the Communication⁽³⁹⁾, especially in view of the specific political, economic and social contexts in the Western Balkans, where the role of CSOs in democratic reforms needs to be strengthened.

7.2. The EESC is especially supportive of the cluster approach in the new methodology and stresses the vital importance of the role of the CSOs in all clusters, with a particular emphasis on the Fundamentals and the Green Agenda and Sustainable Connectivity clusters.

7.3. Civil society continues to be assessed separately within the political criteria as one of the four pillars of democracy; however — much like previous reports — the depth of the assessment varies between countries and there is no consistent and systematic reference to the *Guidelines for EU Support to Civil Society in Enlargement Countries (2014-2020)*⁽⁴⁰⁾, even if it represents a detailed monitoring tool. In the absence of strategic coherence, a clear monitoring framework and political commitment to further support organised civil society in the enlargement countries, the EU is failing to deliver the political support that CSOs so badly need, not to mention clear guidance for national governments⁽⁴¹⁾.

7.4. The EESC believes that factual merit in a merit-based approach cannot be determined or be considered complete without accrued participation from CSOs and their objective monitoring of the specific political contexts which each of the partners from the region is experiencing.

7.5. The EESC endorses the Commission's proposal that the implementing mechanisms for EU funding should provide a clear basis for defending civic space and for responding to immediate threats to it. Investment in civic education, a more enabling environment, civil society infrastructure and joint action would be crucial to achieve this. An effective response to the shrinking of civic space could be provided through applying the newly-introduced principle of performance to support civil society action. Instead of simply withdrawing allocations from countries that regress in their democratic development, the funds could be re-allocated as civil society support aimed at tackling democratic backsliding in the same country⁽⁴²⁾.

⁽³⁸⁾ Amongst many others, some good examples of such cooperation can be seen in the EU Strategy for the Adriatic and Ionian Region (EUSAIR), the EU Strategy for the Danube Region (EUSDR), CIVINET Slo-Cro-SEE, the Balkan Rural Development Network (BRDN), the Western Balkans 6 Chamber Investment Forum (WB6 CIF) and the Regional Trade Union Council Solidarnost.

⁽³⁹⁾ COM(2020) 57 final (5.2.2020) *Enhancing the accession process — A credible EU perspective for the Western Balkans*.

⁽⁴⁰⁾ *Guidelines for EU Support to Civil Society in Enlargement Countries (2014-2020)*.

⁽⁴¹⁾ BCSDN *Background Analysis of the Enlargement Package 2020: Should Civil Society Be Satisfied with Just Being Acknowledged?*, October 2020.

⁽⁴²⁾ BCSDN *Feedback on the Consultation of CSOs in the Preparation of IPA III*, 22 April 2020.

7.6. The EU institutions can draw on local civil society resources and enlist the help of the EU delegations in the region to mobilise citizens in the Western Balkan partners, giving them the chance to join the platforms on which EU citizens will have exchanges during the CoFoE. Allowing young people and/or ordinary citizens from the Western Balkans to attend the CoFoE's EU-wide citizens' events would be a significant investment in the region's social capital, creating greater awareness on the ground in the Western Balkans about EU affairs and their relevance to their respective countries. It would also build people-to-people contacts between the EU and the region and improve the ability of these better-informed citizens to keep their political elites in check on issues linked to the EU integration process ⁽⁴³⁾.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

⁽⁴³⁾ Stratulat and Lazarević (2020), *op.cit.*, p. 7.

Opinion of the European Economic and Social Committee on ‘Communication from the Commission to the European Parliament, the Council and the European Central Bank — Tackling non-performing loans in the aftermath of the COVID-19 pandemic’

(COM(2020) 822 final)

(2021/C 220/15)

Rapporteur: **Kęstutis KUPŠYS**

Referral	European Commission, 24.2.2021
Legal basis	Article 304 TFEU
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	10.3.2021
Adopted at plenary	24.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	246/2/11

1. Conclusions and recommendations

1.1. The EESC welcomes the presentation of the new Commission Action Plan (communication) on non-performing loans (NPLs), but regrets that it essentially lacks new proposals fit for COVID-19 times, leaving Europe to face an extraordinary time with rules written for ordinary times. As such, the EESC recommends tackling first and foremost the root causes of NPLs in order to prevent their build-up in the future, and also proposes a careful review and temporary adaptation of the definition of default, ensuring a ‘soft landing’ for European households and businesses. The EESC notes that in the present COVID-19 crisis, there is a need for monetary and fiscal policy and financial sector regulation to be coherent with the times we live in.

1.2. Tackling the root causes of NPLs is paramount. The EESC stresses that the most effective ways to avert the build-up of high volumes of NPLs by households and SMEs alike are: ensuring that we strive constantly to improve competitiveness, focusing on business continuity and economic recovery, building solid social security systems, combating poverty, over-indebtedness and unemployment, guaranteeing adequate wages and implementing countercyclical economic policy measures in times of crises. Through these steps, we can maintain and strengthen financial market stability and economic resilience, whilst tackling poverty and massive inequality at the same time.

1.3. The EESC argues that ‘pre-COVID-19’ NPLs should be dealt with in a very different manner to ‘post-COVID-19’ (COVID-19-induced) NPLs due to the completely different circumstances before and after March 2020. The EESC accordingly suggests a careful, targeted and strictly temporary review of the EBA guidelines on the definition of default. The EESC also recommends that the EBA Guidelines on credit moratoria stay in place as long as needed.

1.4. The EESC calls for relief measures for credit institutions to go hand in hand with governmental aid measures for borrowers who have only become distressed as a result of the pandemic. Among the measures that should be used in this situation are deferrals with maturities of one to three years, interest rate rebates, restructuring of debt to less expensive forms of credit and moratoria on loan repayments, where possible. The EESC is in favour of this internal workout process.

1.5. The EESC notes that the need for a pan-EU, cross-border NPL market is overstated. Therefore, the Committee is concerned with plans to provide an EU-wide operating ‘passport’ to debt collectors without proper supervision from both their ‘home’ and ‘host’ countries. This move could only be justified if there is a counterbalancing set of measures helping protect distressed borrowers — an EU-wide consumer protection standard for debt collectors.

1.6. Another pillar of the Action Plan is related to — the proposal for AECE — accelerated extra-judicial collateral enforcement, which is strictly limited to corporate loans and applicable only if a prior voluntary agreement between the parties has been achieved when concluding the loan contract. The EESC notes that AECE could provide a balanced solution for debtors but demands that extra-judicial enforcement does not become a default option in the loan contracts.

1.7. The EESC strongly urges against fusing the NPL issue, reflecting a widespread phenomenon in the economy, with issues related to preserving financial stability. To maintain the moral and operational integrity of the banking sector, these two issues should be addressed separately.

1.8. The EESC calls for the option of selling NPLs to asset management companies (AMCs, which are also colloquially referred to as 'bad banks') to remain an exceptional case and for preference to be given to bilateral workout agreements between the credit institution and the borrower, in which case the solution should be focused on business continuity and economic recovery. The EESC highlights that any use of 'precautionary recapitalisation', if funded with public money, is likely to divert public funds away from other more socially and economically useful aims. The EESC also underlines the need for any 'precautionary' measures to be used in a highly responsible manner, in order to avoid moral hazards and bank bailouts at society's expense by using public money.

1.9. In light of the current situation, where potentially viable businesses might run into payment difficulties in spite of their 'pre-COVID-19' creditworthiness, the EESC suggests a careful review of EBA guidelines on the definition of default, which could give COVID-19-induced distressed debtors a chance to recover before their loans are considered non-performing. However, the EESC stresses that any such changes must be **strictly temporary**, they should not interfere with detailed and accurate identification and reporting of credit risk by banks and they should be done in accordance with the fundamental need to ensure the stability and solvency of the banking sector.

1.10. The EESC broadly recommends that capital requirements — including the NPL backstop regulation — be kept firmly in place. This will ensure that banks have full capacity to withstand losses and will decrease the likelihood of future public interventions (such as 'precautionary recapitalisation') and bank bailouts at the taxpayer's expense. However, temporary flexibility could be looked into and applied to the definition of default and the provision of the NPL backstop in order to mitigate the effects of the COVID-19 crisis.

2. Background

2.1. The European Commission's NPL Action Plan, announced in December 2020 ⁽¹⁾, is intended to prevent a future build-up of NPLs across the European Union as a result of the COVID-19 crisis. A loan becomes non-performing when it is unlikely to be repaid, or when the borrower is 90 days late on a payment. Due to the pandemic, the European Central Bank estimates that in a severe scenario with a much weaker and protracted recovery, the sum of NPLs held by euro area banks could reach 'up to EUR 1,4 trillion' ⁽²⁾.

2.2. In July 2017, the Action Plan to Tackle Non-Performing Loans in Europe was unveiled ⁽³⁾, and, in the course of a few subsequent years, it helped to address and reverse the build-up of NPLs in banks. A subsequent Communication on completing the Banking Union ⁽⁴⁾ followed.

2.3. In March 2018, the European Commission introduced a legislative proposal ⁽⁵⁾ to spur on the development of the secondary market of NPLs in the EU. The draft directive should help banks sell their NPL portfolios easily to third party investors anywhere in the EU. The proposal also introduces an out of court enforcement procedure called 'accelerated extra-judicial collateral enforcement'. The draft directive is still a work in progress, although the two issues have been detached in separate legislative acts.

⁽¹⁾ COM(2020) 822 final.

⁽²⁾ 1 October 2020 speech by Andrea Enria, chair of the Supervisory Board of the ECB. NPLs amounted to nearly EUR 1 trillion at the end of 2016, equivalent to 5,1 % of total bank loans. Using 2019 data for reference, the EUR 1,4 trillion portfolio of NPLs would constitute approx. 12 % of Euro area GDP.

⁽³⁾ *Action Plan to Tackle Non-Performing Loans in Europe*, ECOFIN Council, July 2017. <https://www.consilium.europa.eu/en/press/press-releases/2017/07/11/conclusions-non-performing-loans/>

⁽⁴⁾ COM(2017) 592 final.

⁽⁵⁾ Directive on credit servicers, credit purchasers and the recovery of collateral, COM/2018/0135 final — 2018/063 (COD).

2.4. With the outbreak of the COVID-19 pandemic, the Commission reacted swiftly by enacting measures to help the banking sector deal with the expected and upcoming NPL build-up. The Banking Package in April 2020 has already provided substantial short-term support⁽⁶⁾ to the banking sector, including rules on how banks assess the risk of a borrower not able to repay the loan, or prudential rules for the classification of non-performing loans, and the accounting treatment of delays in repayments. Banks have also been benefiting from significant liquidity support measures (ECB Pandemic Emergency Purchase Programme⁽⁷⁾ and the easing of conditions for targeted longer-term refinancing operations, TLTRO III, in March 2020). Now it is time to think about the solvency levels of European firms.

2.5. The accompanying Capital Markets Recovery Package provided the banking sector with further support by removing regulatory obstacles to the securitisation⁽⁸⁾ of NPLs.

2.6. In recent months, the European banking sector has benefited from regulatory relief and liquidity support measures aimed at safeguarding financial and economic stability and supporting European households and companies. Consequently, the banking industry has continued to lend to their clients and no credit crunch has occurred.

2.7. Member States have also taken decisive action, with support schemes to alleviate liquidity difficulties affecting households and businesses. These schemes typically involve public guarantee schemes and/or payment deferrals ('moratoria'). These measures help borrowers with temporary liquidity problems and prevent an immediate surge in non-performing loans (NPLs). The Commission has also adopted a Temporary Framework to enable Member States to use the full flexibility provided for under State aid rules to support the economy during the COVID-19 outbreak.

3. General comments

3.1. The EESC notes that the current Commission Action Plan (communication) follows and reiterates the same measures already contained in the 2017 plan. It essentially lacks new proposals fit for COVID-19 times, leaving Europe to face an extraordinary time with rules written for ordinary times. The EESC argues that 'pre-COVID-19' NPLs should be dealt with in a very different manner to 'post-COVID-19' (COVID-19-induced) NPLs due to the completely different circumstances before and after March 2020. The EESC accordingly recommends a careful, targeted and strictly temporary review of the EBA definition of default, to avoid the automatic classification of debtors as defaulted and to mitigate the procyclical effects of the current regulation and ensure a 'soft landing' for European households and businesses.

3.2. The pandemic led to a reduction of demand and consumption, which created concerns for SMEs in terms of finding customers. While access to finance is currently not reported by SMEs (in ECB surveys⁽⁹⁾) as the most pressing problem, all the issues that SMEs are facing should be considered when tackling NPLs.

3.3. The EESC consistently advocates⁽¹⁰⁾ for non-performing loans to be reduced in a socially sustainable way while preserving financial stability⁽¹¹⁾. During COVID-19 times, this is now more important than ever. In contrast to what happened a decade ago during the 2008-2009 financial crisis, the current expected NPLs surge is not the fault of the financial sector or any other specific category of players within the economic system, but it is not the fault of the 'real economy', governments or European citizens either. The intervention of EU-level regulators and Member States' governments with the right tools is critically important.

⁽⁶⁾ COM/2020/169 final.

⁽⁷⁾ <https://www.ecb.europa.eu/mopo/implement/pepp/html/index.en.html>

⁽⁸⁾ COM(2020) 822 final and COM(2020) 283 final.

⁽⁹⁾ https://www.ecb.europa.eu/stats/ecb_surveys/safe/html/ecb.safe202011~e3858add29.en.html

⁽¹⁰⁾ OJ C 353, 18.10.2019, p. 32.

⁽¹¹⁾ Financial institutions are expected to 'continue identifying and reporting asset quality deterioration and the build-up of NPLs in accordance with the existing rules, so as to maintain a clear and accurate picture of risks in the banking sector', as expressed in a letter from the ECB of 4 December 2020. In addition, the ECB warns that 'from a prudential perspective, sound staging and provisioning policies and procedures are key to ensure adequate credit risk management and coverage, including the timely identification and management of distressed debtors'.

3.4. While the EESC acknowledges that there are certain advantages to developing secondary markets for NPLs, the Committee would favour bilateral workout agreements between the credit institution and viable borrowers. Although NPL volumes on banks' balance sheets can be reduced via sales to credit purchasers, this does not mean that NPL sales are optimal from a borrower's perspective or for society as a whole. NPL sales should be a last-resort solution.

3.5. Tackling the root causes of NPLs is paramount. The EESC stresses that the most effective ways to avert the build-up of high volumes of NPLs by households and SMEs alike are: ensuring solid social security systems, combating poverty, over-indebtedness and unemployment, guaranteeing adequate wages and implementing countercyclical economic policy measures in times of crises, while enhancing productivity and the competitiveness of the European economy, focusing on business continuity and economic recovery, with a clear and updated regulatory framework that gives visibility to long term investments. Through these steps, we can maintain and strengthen financial market stability and economic resilience, whilst tackling poverty and inequality at the same time. In this light, the EESC recommends that the EBA Guidelines on credit moratoria stay in place as long as needed and suggests a careful, targeted and strictly temporary review of the definition of default.

3.6. In the EESC's view, the Action Plan reflects the basic logic that nowadays banks act as an essential infrastructure in the monetary-flow-based economy in Europe, and that the health and stability of the banking sector is a necessary prerequisite for economic recovery. As the Commission puts it in the related communication⁽¹²⁾, 'making sure that European citizens and businesses continue to receive support from their banks is a top priority for the Commission'. In this context, the EESC points to the decisive role of the ECB in safeguarding banks' stability and credit supply, and notes that the European economy is supported by measures that are intended to ensure that lending would be provided to solvent credit demand.

3.7. The EESC notes that reliable data on NPLs are partially missing and that much uncertainty remains as to the future of COVID-19 vaccination, SARS-CoV-2 virus mutations (COVID-19 variants), lockdown measures and economic recovery. The EESC stresses the importance of data quality to properly assess the extent of the problem and the identification of viable firms. The EESC, therefore, calls for caution and for measures that could get the European economy back on its feet quickly, such as measures to support small businesses and to guarantee adequate wages and solid social security systems. The EESC points out that banking sector deposits have increased substantially⁽¹³⁾, which means that there is good potential for consumer demand in the months following the lifting of lockdown restrictions.

3.8. It remains to be seen how firms and households which 'have come under significant financial pressure due to pandemic'⁽¹⁴⁾, can be assisted by banks ('receive support from their banks'⁽¹⁵⁾) if the rise in NPLs is addressed. The proposed changes or regulatory easing are currently not conditional on banks' lending to solvent SMEs or households. The EESC regrets that, except for the banking sector, the Commission's Action Plan provides few new measures to help ailing economic actors. In the face of the external economic shock making many workers and companies even more dependent on loans, support and mitigating measures for banks should be aimed at lending more to solvent SMEs and households. At the same time, authorities should establish adequate safeguards to prevent irresponsible lending and subsequent over-indebtedness.

3.9. The EESC recommends acknowledging civil society as a whole as stakeholders in the field of financial market regulation. In particular, with regard to tackling of NPLs in the aftermath of the pandemic, NPLs have several impacts, also affecting, for example, workers' interests in their role as debtors, employees in indebted companies, financial sector employees or taxpayers (especially relevant in the case of public funds being used to tackle NPLs).

⁽¹²⁾ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2375. Valdis Dombrovskis, Executive Vice-President for an Economy that Works for People, hopes that the strategy 'will help contribute to Europe's ... recovery by helping banks to offload these [NPL] loans from their balance sheets and keep credit flowing'.

⁽¹³⁾ Total euro area deposits by non-financial corporations increased from EUR 2,73 trillion (March 2020) to EUR 3,12 trillion (October 2020) despite the pandemic. The same figure for households increased from EUR 7,85 trillion to EUR 8,21 trillion respectively. (<https://sdw.ecb.europa.eu>).

⁽¹⁴⁾ Commissioner responsible for financial services, financial stability and the Capital Markets Union — Mairead McGuinness, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2375

⁽¹⁵⁾ Ibid.

3.10. The EESC notes that the need for a pan-EU, cross-border NPL market is overstated despite the fact that the banking sector is steadily moving towards an EU-wide Banking Union. It is highly questionable whether the cross-border operations of credit purchasers provide tangible economic benefits for the economic system overall, and not just for banks, credit purchasers and credit servicers (while it is true that the latter may definitely gain from economies of scale).

3.11. In that context, the EESC also underlines that distributing the risk may not lead to a reduction of it. On the contrary, the 2008-2009 financial market crisis taught us that this may result in a non-transparent accumulation of risk in the economy. The EESC urges that the objective of all measures dealing with incentives for the financial sector should be to discourage market players from taking too much risk.

3.12. At the same time, the EESC highlights that European businesses, households, workers and civil society require resources and full support to withstand the crisis and thus such support measures should be put forward by the EU. Such assistance should be available over a period of up to three years (as per the Next Generation EU stimulus package) to support businesses and borrowers that were deemed healthy and creditworthy prior to the pandemic. Virtually the entire population of Europe is affected by the rising socioeconomic insecurity. Businesses experience disruption due to forced closures and reduced demand, while households are confronted with unemployment and a fall in income. The EESC believes that European citizens and businesses would need an entirely different kind of measures and obviously not the fast enforcement of the NPL framework as the Commission proposes.

4. Specific comments

4.1. The Commission is convinced that the agreement on the proposal for a directive on credit services and credit purchasers, in essence creating a common secondary market for NPLs, is a top priority. The EESC is concerned with plans to provide an **EU-wide operating 'passport'** to debt collectors without proper supervision from both their 'home' and 'host' countries. This move could only be justified if there is a counterbalancing set of measures helping protect distressed borrowers — an EU-wide consumer protection standard for debt collectors. The EESC is also concerned that the proposal for a directive on credit servicers and purchasers⁽¹⁶⁾ would prevent states from enacting any other or further requirements for credit servicers and purchasers, even if such requirements were deemed to protect debtors. If 'home' and 'host' supervision is ensured, consumer protection rules are observed, 'best practice' guidelines are provided via the EBA and a uniform approach to such activities is envisaged, most of the issues raised here would be addressed. Considering such arguments, in order to make the EU-wide operating passport functional, borrower protection rules have to be stepped up to avoid the above-mentioned risks.

4.2. The EESC notes that certain credit purchasers and debt collectors have a bad reputation — hence why some credit purchasers are called 'vulture funds' — and underlines that providing the EU-wide operating 'passport' to debt collectors without proper supervision from both their 'home' and 'host' countries, and without proper 'best practice' guidelines being implemented in a timely and effective manner throughout EU, might lead to improper business conduct by such credit purchasers or credit servicers, to the detriment of distressed borrowers. The EESC also highlights the need to ensure that the proposal for a directive on credit servicers and purchasers does not prevent states from enacting additional legal requirements for credit servicers and purchasers, thus guaranteeing that the 'gold-plating' principle is observed properly in this case.

4.3. In addition, some credit purchasers are known to have tax avoidance issues. For example, in Ireland, some of them are registered as charities and pay almost no taxes. The EESC calls on the European Commission to step up its efforts in tackling the issue of tax avoidance.

4.4. Another pillar of the Action Plan is related to the proposal for AECE — **accelerated extra-judicial collateral enforcement** –, which is strictly limited to corporate loans and applicable only if a prior voluntary agreement between the parties has been achieved when concluding the loan contract. The EESC acknowledges that households (private consumers) are excluded from this procedure and notes the need to achieve a balance between AECE tool and Directive (EU) 2019/1023 of the European Parliament and of the Council⁽¹⁷⁾ and insolvency procedures. The EESC notes that the AECE could provide a balanced solution for debtors but demands that extra-judicial enforcement does not become the default option in the

⁽¹⁶⁾ See Article 5, Article 11, in particular Article 11(5) and Article 15(2) of the proposal for a directive.

⁽¹⁷⁾ OJ L 172, 26.6.2019, p. 18.

loan contract. It should be ensured that distressed businesses are not left helpless and do not lose access to the standard judicial system with its checks and balances, developed on the basis of age-long tradition. In the EESC's view, systematic collateral recovery delay issues should be dealt with on a country-by-country basis, by carrying out well-prepared reforms and with targeted interventions by Member States where bottlenecks persist.

4.5. The EESC agrees with Commission's statement that '[...] banks should be incentivised as much as possible to apply a proactive approach to engage with their debtors early and constructively', as this will avoid harming viable firms and ensure business continuity. However, the Committee calls on the Commission to put forward tangible measures to deliver on this vital objective.

4.6. The EESC welcomes the initiative to further converge the various insolvency frameworks across the EU and notes that such convergence is beneficial not only for the banking business but for the whole entrepreneurial landscape in Europe overall. Such a convergence should not necessarily be tied to the NPL issue. It should be noted, however, that this measure will not help in the short term and will not provide much help in the aftermath of the COVID-19 crisis. Certainty over rules regarding creditor and debtor rights and greater harmonisation of collateral removal procedures across Member States will reduce risks and provide further impetus for cross-border investments and internal trade. The EESC stresses that when reforming insolvency frameworks, due consideration should be given to borrowers.

4.7. The EESC points out that the secondary market for NPLs in no way helps businesses flourish, nor does it sustain jobs or allow closed undertakings to reopen. For businesses to re-start, targeted state-funded measures are fundamentally important. The EESC believes that lending to an economy suffering from an unprecedented loss of output due to COVID-19-induced lockdowns is crucial, yet such lending should not turn into an excessive one, which may not prove sustainable.

4.8. However, the proposal the Commission is pushing for — the pan-EU secondary market and, to a lesser extent, AECE — raises fears that a single secondary market for NPLs in Europe will open up room for abuse and leave bank customers vulnerable to 'vulture funds', the majority of which are not of EU origin. The EESC recommends more transparency and proper rules so as to ensure that consumers are protected from abuses by credit servicers, credit purchasers or 'vulture funds'.

4.9. The EESC advocates that credit investors and debt collectors should not be given an EU-wide operating 'passport' if they buy consumers' (private customers) NPLs. It could be examined whether the debt of micro-enterprises should be exempted too.

4.10. The emphasis on **NPL data standardisation** across the EU is welcome, but it is not sufficient given the task and, in principle, it is not very relevant. The EESC also notes that EU institutions and taxpayers should not bear the costs of creating efficient markets and improving the standardisation of NPLs with a view to easing their trading; these costs should be borne by market participants themselves as the main beneficiaries of NPL trading. Data transparency is required to ensure that both external and internal (within banking groups) sales of NPLs follows all International Financial Reporting Standards (IFRS) rules and are carried out in a proper manner.

4.11. National **asset management companies** (AMCs), widely advertised by the Commission's document, and which are also colloquially referred to as 'bad banks', may and most likely will require public money. The EESC consequently urges each Member State to carry out an in-depth analysis of the use of public money for the creation of such AMCs, depending on the situation at hand in each Member State while respecting the state aid rules.

4.12. The EESC strongly urges against fusing the NPLs issue, reflecting a widespread phenomenon in the economy, with issues related to preserving financial stability. To maintain the ethical and operational integrity of the banking sector, those two issues should be addressed separately. The EESC believes that even though specific financial institutions' problems may be due to an overload of NPLs on their balance sheet, no justification should be given for rescuing non-viable banks with public money, using the AMCs model under the guise of 'off-loading' bad NPLs, and believes that the issue of banks' crises management should be addressed as a whole. The EESC calls for the sale of NPLs to AMCs to remain an exception and for preference to be given to working out such loans on banks' balance sheets.

4.13. Moreover, it is essential that the Commission should prevent public money from being used to bail out private banking interests time and time again. Saving a bank should not be perceived as having a value in itself; it is not the ultimate goal of economic policies. In the long run, repeated bank-saving campaigns, involving huge amounts of public money, could create a moral hazard and disturb the system of incentives embedded in the banking business. Hence, the EESC warns against any policy that results in the 'privatisation of profits and socialisation of losses'. Instead, banks should be incentivised to address their NPL issues internally and to better manage their loan portfolios; any kind of implicit or explicit government support will not help to tackle underlying balance sheet problems. The EESC acknowledges the existence of the Single Resolution Fund, which is funded by contributions from credit institutions. The sizing of the Single Resolution Fund to the right capacity would prevent public money from being used to bail out private banking interests, hence addressing the concerns of 'privatisation of profits and socialisation of losses'.

4.14. The EESC strongly calls for efforts to be directed at completing the Banking Union, which would boast a resilient, adequately capitalised and, most importantly, self-sustaining banking sector. A balance has to be struck between risk sharing and risk reduction. Significant impact on public budgets and on taxpayers in the event of a crisis, whether at national or EU level, should be prevented. Thus robust minimum requirements for own funds and eligible liabilities (MREL) and effective anti-money laundering measures need to be implemented. Moreover, greater attention should be paid to the regulation of the shadow banking sector. It has to be ensured that risk is not transferred from well-regulated to less regulated financial market players. Moreover, attention should be paid to the regulation of any financial activity not conducted by a regulated entity, following the principle of 'same risks, same activity, same regulation and same supervision'.

4.15. From the point of view of consumer protection, the aim of AMCs is clearly to maximise returns and efficiency by selling off loans to third party investors or realising the collateral, and this does not seem compatible with ensuring the right protection for household borrowers and ensuring viable repayment plans and a minimum living standard. The EESC recommends that the AMCs incorporate socially-oriented objectives into their policies.

4.16. The EESC is worried that any use of '**precautionary recapitalisation**' is likely to divert public money away from more socially and economically useful aims. As such, the use of 'precautionary recapitalisation' should remain absolutely exceptional in the context of COVID-19. The EESC underlines the need for any '**precautionary measures**' to be used in a highly responsible manner, in order to avoid moral hazards and bank bailouts at society's expense by using public money. It is worth mentioning that financial stability is also a public good and therefore, financial regulators and supervisors should ensure that strong prudential rules are in place to avoid endangering the public good that is financial stability.

4.17. The EESC notes the communication's assertion that the Recovery and Resilience Facility (RRF) can provide support 'to reforms aimed at improving insolvency, judicial and administrative frameworks and underpinning efficient NPL resolution'. RRF funds, as claimed by the European Council, should be used to 'boost growth potential, job creation and economic and social resilience' ⁽¹⁸⁾. Further explanation is needed to clarify the Commission's intentions in linking the RRF to NPLs, and to ensure that the RRF is not derailed from its original goal of fostering green and digital transition.

4.18. In spite of the aims of the RRF agreed by co-legislators, not a single measure in the Commission's Action Plan is directed at ailing businesses in Europe — small and large, corporations and family businesses. In addition, the EESC notes that in the present communication, the Commission provides no tools to address how consumers struggling to pay their bills and make ends meet can survive the pandemic's effects and avoid sliding into a poverty trap. The EESC also points out other aspects that need dedicated action plans such as small and large corporations and family businesses suffering from the impact of the pandemic.

4.19. The EESC recommends reviewing the following specific regulations:

4.19.1. In light of the current situation, where many potentially viable business might run into payment difficulties in spite of their 'pre-COVID-19' creditworthiness, the EESC proposes that a careful review of EBA guidelines on the definition of default (e.g. the number of days past the due date before a loan is considered non-performing; the Net Present Value threshold at which a restructured debt is considered 'unlikely to pay' (UTP), etc.) might give such businesses a chance to recover before being considered non-performing. However, the EESC stresses that any such changes must be **strictly**

⁽¹⁸⁾ <https://www.consilium.europa.eu/fr/infographics/20201006-recovery-resilience-rrf/>. Moreover, the RRF may be spent 'in line with European Semester country-specific recommendations', plus at least 37 % of resources should be contributed to climate action and environmental sustainability — and at least 20 % to the EU's digital transition.

temporary and related to the COVID-19 pandemic only, they should not interfere with detailed and accurate identification and reporting of credit risk by banks, and regulators and supervisors must balance any temporary change with the fundamental need to ensure the stability and solvency of the banking sector.

4.19.2. The EESC recommends that the EBA Guidelines on credit moratoria stay in place as long as needed.

4.19.3. In view of the fact that non-performing loans are non-performing no matter the reasons behind payment difficulties, and given that it is extremely difficult to ascertain which, out of the distressed borrowers, will in fact recover quickly once the pandemic is under control, -the EESC recommends that capital requirements — including the NPL backstop regulation, whose provisioning calendar already provides for very gradual increments in capital — should be kept firmly in place. This will allow banks to be able to withstand losses, be they linked to the pandemic or to other factors, and would be a key factor in decreasing the likelihood of public interventions and bank bailouts at the taxpayer's expense. However, temporary flexibility could be looked into and applied to the definition of default and the provision of the NPL backstop in order to mitigate the effects of the COVID-19 crisis. Furthermore, this could help to avoid firesales on NPLs by banks. In this context, the EESC notes and suggests to take into account the halt in Civil Courts and other delays in civil proceedings experienced throughout Europe.

4.19.4. For banks able to provide evidence of a strong link to the real economy (a significant share of their assets relating to non-financial businesses and households), the EESC envisages that further flexibility could be granted. On the other hand, the utmost care must be taken in relation to globally systemic financial institutions that are highly interconnected with other financial market players.

4.20. The EESC advocates that the Commission should propose reliable methods to ensure strict rules to protect distressed borrowers from unfair treatment:

4.20.1. The EESC calls for relief measures for credit institutions to go hand in hand with aid measures for borrowers who have only become distressed as a result of the pandemic. Among the measures that should be used in this situation are deferrals with maturities of one to three years, interest rate rebates, restructuring of debt to less expensive forms of credit and moratoria on loan repayments, where possible.

4.20.2. Concerning the internal sales of NPLs, in some cases special purpose vehicles (SPVs) might make a profit from a client's debt in a debt collection process but the client is still left in debt. The EESC recommends that the European Commission further considers regulating to ensure that borrowers' rights are protected and they are not additionally indebted after such transaction.

4.21. The EESC maintains the view that comprehensive measures to sustain a just and safe business climate should be provided, with particular emphasis on ensuring that the needs of the most vulnerable are met. The competitiveness of European businesses is built, first and foremost on a strong internal market, constant innovation and a predictable and socially responsible set of rules based on trust between economic stakeholders. The EESC warns against any legislative move that would treat non-performing loans as any other commodity. The EESC notes that such a move would not improve the environment of trust, but would, on the contrary, do more harm. It is imperative that a proper balance between borrowers' and creditors' rights is safeguarded.

4.22. The COVID-19 pandemic is just one of many outside shocks. There are many more to come. Policy measures aimed at containing the extensive damage of such massive shocks should be based on principles that are universal and withstand the test of time. The EU strives to maintain its social market economy orientation and reiterates its promise to leave no one behind, while enhancing the competitiveness of the European economy. The EESC strongly urges that the Commission's action plans and legislative initiatives should take good care of these underlying principles.

Brussels, 24 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Proposal for a directive of the European Parliament and of the Council on adequate minimum wages in the European Union’

(COM(2020) 682 final — 2020/310 (COD))

(2021/C 220/16)

Rapporteurs: **Milena ANGELOVA and Cinzia DEL RIO**

Referral	European Parliament, 11.11.2020 Council, 10.11.2020
Legal basis	Articles 153(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	11.3.2021
Adopted at plenary	25.3.2021
Plenary session No	559
Outcome of vote (for/against/abstentions)	155/100/20

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) strongly supports the underlined goal for Europe to lead the way from fragility towards a new vitality by creating opportunities and prosperity by promoting innovation, sustainable growth and fair competition ⁽¹⁾, in order to stimulate upward economic and social convergence. The EESC agrees with the overall objectives of achieving adequate minimum wages and strengthening collective bargaining systems across the EU, making work pay, fighting poverty, and strengthening the role of social partners and social dialogue, in line with national industrial relations systems.

1.2. The EESC notes that the proposed directive will contribute to the objectives of the Union — namely to promote the well-being of people, to develop a highly competitive social market economy (Article 3 TEU) and to promote improved living and working conditions (Article 151 TFEU). It also deals with the rights enshrined in the EU’s Charter of Fundamental Rights, such as the right of workers to fair and just working conditions (Article 31), and is in line with Principle 6 of the European Pillar of Social Rights (EPSR). The European Commission points out that it does not contain any measures with a direct impact on the level of pay, and thus that the provisions set out in Article 153(5) TFEU are fully respected.

1.3. The EESC agrees with the overall objectives of the proposal and expects that it is carefully designed to respect national traditions, laws and practices, and that it leaves discretion for adaptation to the domestic context in its obligations. There are divergent views within the EESC regarding some elements of the legal base of the proposal. Despite these differences in views, the EESC expresses its opinion on certain issues included in the EC proposal.

1.4. The role of the State to create the ‘enabling conditions’ — both political and legal — by supporting and respecting the role of social dialogue and collective bargaining for trade unions and employers’ organisations — is recognised by several international institutions and also recalled in several opinions of the EESC. The social partners should be autonomous and employers’ organisations and trade unions should be protected from any form of restriction of their right to organise, represent or take collective action. At the same time, the EESC reiterates again the importance of joint actions and capacity-building programmes at European and national level managed directly by the European and national social partners.

⁽¹⁾ State of the Union Address by President von der Leyen at the European Parliament Plenary

1.5. The EESC supports the objective of increasing collective bargaining coverage, according to national laws and practices and in full respect of and compliance with the division of competences and autonomy of social partners. The EESC agrees with the proposed target of 70 % and believes that national action plans (Article 4) could play a crucial role in upward wage convergence and in establishing the most appropriate measures and mechanisms for wage setting and increasing coverage at national level, also in order to close the gender and age pay gap and reduce inequalities and discrimination, with particular attention to young workers. The EESC recommends that any national action plan shall be designed by social partners and agreed in a tripartite process.

1.6. The EESC recognises that in countries where a self-regulatory collective bargaining system exists, which ensures fair and adequate wage floors, together with other agreed working conditions, any intervention of the State should be avoided in order to safeguard/preserve a well-functioning industrial relations system, which is able by itself to guarantee the achievement of the objectives set in the proposed directive.

1.7. The EESC believes that the representativeness of social partners is an important factor, as it guarantees their democratic mandate. Different criteria exist which could represent good practice to be considered in designing action plans according to national laws and practices. There is a number of complex factors/criteria that could be taken into account when assessing the representativeness of social partners at national level, bearing in mind that they vary across the MS.

1.8. The EESC supports well-developed wage-setting systems and well-functioning social protection systems that provide safety nets for those in need, as well as other measures to prevent in-work poverty. The EESC notes that the proposed directive only lays down the general principle of adequacy of wages — based on non-binding reference values estimated for median or average gross or net wages — and does not include any specific measures or provisions on how wages should be set at the national level, as this remains solely an MS competence. The EESC supports setting binding indicators to guide MS and social partners in their assessment of the adequacy of statutory minimum wages and in identifying and introducing relevant measures in the national action plans.

1.9. The EESC notes that Article 9 of the directive includes provisions for workers employed in public procurement and sub-contracting, by inviting MS to comply with minimum wages in all public procurement projects. The EESC reiterates its call for public procurement contracts to fully respect collective agreements and for trade agreements to be suspended in the event of non-compliance with ILO fundamental and up-to-date Conventions.

1.10. The EESC recommends that the reports submitted by MS are examined and assessed with a proper involvement of social partners in EMCO and a specific subgroup could be created for this purpose — consisting of representatives of national governments, national and European trade unions and employers' organisations and experts appointed by the EC.

2. General remarks

2.1. The EESC agrees with the overall objectives of achieving adequate minimum wages and strengthening collective bargaining systems across the European Union (EU), making work pay, fighting poverty, and strengthening the role of social partners and social dialogue, in line with national industrial relations systems. A well-adapted minimum wage level contributes to stimulating domestic demand and economic growth and developing a highly competitive social market economy. There are several governance instruments through which the European Union (EU) and Member States (MS) work together to achieve these goals, including the European Semester. The full, structured and effective involvement of the social partners and civil society organisations (CSO) in the whole Semester process at European and national level is crucial in order to implement economic and social policies.

2.2. The EESC notes that the proposed directive will contribute to the objectives of the Union — namely to promote the well-being of peoples, to develop a highly competitive social market economy (Article 3 TEU) and to promote improved living and working conditions (Article 151 TFEU). It also deals with the rights enshrined in the EU's Charter of Fundamental

Rights, such as the right of workers to fair and just working conditions (Article 31), and is in line with Principle 6 of the European Pillar of Social Rights (EPSR). The European Commission points out that it does not contain any measures with a direct impact on the level of pay, and thus that the provisions set out in Article 153(5) TFEU are fully respected.

2.3. There are divergent concerns and views within the EESC regarding elements of the legal base of the proposal ⁽²⁾ but, despite these differences, in this opinion the EESC expresses its views on certain issues included in the EC proposal.

2.4. The EESC is concerned that the proportion of people who work but still face poverty increased from 8,3 % of the total EU workforce in 2007 to 9,4 % in 2018, with a significant impact on young people (28,1 % of the workers aged 16-24 % are at risk of poverty or social exclusion), women, people with a migration background, people with disabilities and those who are at the margins of the labour market. These groups are in more precarious and atypical jobs with low wages and lower social protection coverage, which will have an impact on the sustainability of welfare systems in the medium to long term. Targeted actions and reforms should be taken in order to make sure that marginalised groups are sufficiently protected from falling into poverty ⁽³⁾.

2.5. The EESC recommends that actions are taken in order to prevent the risk of non-compliance, including an unwelcome growth in the number of undeclared workers, leading to unfair competition and that these aspects should be closely monitored and addressed in the implementation phase of the proposal.

3. Specific Remarks on the Proposal

3.1. *Avenues and Enabling Conditions for Promoting the Collective Bargaining on Wage-setting*

3.1.1. The proposed directive aims at ensuring that workers in the EU are protected by adequate minimum wages allowing for a decent living wherever they work and at promoting collective bargaining in wage-setting and in general on working conditions in all MS ⁽⁴⁾. The EESC expects the proposal for a directive to be carefully designed to respect established national traditions in this field, and to leave discretion for adaptation to the domestic context in its obligations.

3.1.2. The European social partners have several times called on the institutions to promote or create, where necessary, favourable and enabling conditions for social dialogue and collective bargaining to be effective and respond to the actual challenges. The Quadripartite statement ⁽⁵⁾ 'A new start for social dialogue' and the Council conclusions of 16 June 2016 call on MS to 'support the improvement of the functioning and effectiveness of social dialogue at national level, which is conducive to collective bargaining and creates an appropriate space for social partners' negotiations'.

3.1.3. The role of the state to create the 'enabling conditions' — both political and legal — is recognised by several international institutions. The EESC recognises that effective social dialogue must include: representative and legitimate social partners with the knowledge, technical capacity and timely access to relevant information to participate; the political will and commitment to engage in social dialogue; respect for the fundamental rights of autonomy for the social partners, freedom of association and collective bargaining, which remain at the core of industrial relations, and an enabling legal and institutional framework to support social dialogue processes with well-functioning institutions' ⁽⁶⁾. Studies show that in those countries where the role of collective bargaining is well recognised and fully supported and respected by the state, unemployment rates are lower, productivity is higher and wage convergence is promoted ⁽⁷⁾. It is also important that the outcomes of social dialogue processes deliver tangible outcomes for both workers and businesses.

⁽²⁾ OJ C 429, 11.12.2020, p. 159.

⁽³⁾ Questions and answers: Adequate minimum wages.

⁽⁴⁾ Article 4 of COM(2020) 682 final, p. 23.

⁽⁵⁾ Quadripartite statement.

⁽⁶⁾ OJ C 10, 11.1.2021, p. 14, point 1.3. See OECD Job Strategy; Eurofound Study 'Capacity building: towards effective social dialogue', 2019; ILO Resolutions 2013 and 2018 concerning the Recurrent Discussion on Social Dialogue.

⁽⁷⁾ The role of collective bargaining systems for labour market performance.

3.1.4. Joint actions and capacity-building programmes at European and national level managed directly by the European and national social partners are an effective instrument to strengthen capacity in the area of social dialogue and collective bargaining for trade unions and employers' organisations where this is needed⁽⁸⁾. The EESC recommends that capacity-building programmes and actions are sufficiently supported and that their outcomes are assessed in order to best achieve their envisaged objectives.

3.1.5. The EESC recommends that some provisions and concepts in the proposal⁽⁹⁾ are more precisely formulated so as to leave no room for uncertainties and for interpretation by the CJEU. The subject matter and scope in Articles 1 and 2 apply to all MS, including countries where a self-regulatory collective bargaining system exists.

3.1.6. The EESC recommends that any national action plan aiming to enable the promotion of the collective bargaining coverage be designed by social partners and agreed in a tripartite process. They should also be drawn up in full compliance with the well-recognised principles of freedom of association and voluntary nature of collective bargaining enshrined in the ILO conventions. The EESC appreciates the balanced approach set in Articles 1 and 3 of ILO Convention 131 on minimum wage fixing⁽¹⁰⁾. The EESC recommends that the provisions of the proposal for a directive respect the principles of ILO conventions 87, 98 and 154 in order to safeguard the social partners' autonomy, their possibilities to recruit members and the incentives and rights to negotiate and conclude collective agreements.

3.1.7. The EESC supports the objective of increasing collective bargaining coverage, according to national laws and practice and in full respect of — and compliance with — the division of competences and autonomy of social partners. In this regard, the EESC supports the promotion of the capacity of social partners and promotes their joint actions to engage in collective bargaining on wage-setting, and to encourage constructive, meaningful and informed negotiations on wages⁽¹¹⁾. Article 4 sets out requirements for government intervention in the preparation of frameworks and action plans and the EESC insists that this is done with a tripartite approach in a way that respects the social partners' autonomy and in cooperation with them. In some MS, the coverage of the collective agreements is decided by the social partners, while in other MS, the law or common practice provide for mechanisms to extend collective agreements and these differences shall be respected.

The EESC agrees with the proposed target of 70 % and believe that national action plans, agreed and designed with the social partners, could play a crucial role in upwards wage convergence and in establishing fair mechanisms for wage-setting at national level, including in order to close the gender and age pay gaps. They will also allow to take into account national practices and improve systems, where needed. Such action plans should be properly implemented, assessed, reviewed and adapted in order to gradually increase coverage of collective bargaining in the medium term. In some countries, extension mechanisms for collective agreements are in place and aim at increasing the collective bargaining coverage. However, using extension mechanisms is only one of the ways one can promote collective bargaining and increase coverage, in addition to joint actions and capacity-building, anti-union-busting measures, protecting the rights of trade union and employers' organisations to bargain collectively, setting agreed representativeness criteria and countering all forms of discrimination, for example. These elements and targeted proposals should be taken into account in the national action plans, together with other initiatives.

3.1.8. However, in countries where a self-regulatory collective bargaining system exists, which ensures fair and adequate wage floors, together with other agreed working conditions, any intervention of the state should be avoided in order to safeguard/preserve a well-functioning industrial relations system, which is able by itself to guarantee the achievement of the objectives set in the proposed directive. In these countries, in the event of a collective bargaining coverage falling below a given threshold, national action plans have to come in the first instance from — and be agreed by — the social partners.

⁽⁸⁾ European social partners have recently jointly stated that further work is to be undertaken in the area of capacity building. They have stated in their Joint programme 2019-2021: 'Capacity building activities remain a priority for the European social partners. They recognise that in order for the European social dialogue to have a positive impact, much needs to be done to strengthen and support social dialogue at all levels.'. See also OJ C 10, 11.1.2021, p. 14, points 3.23 and 3.24.

⁽⁹⁾ Especially regarding respect of the social partners' competences.

⁽¹⁰⁾ Ratified by ten MS which all have a statutory minimum wage system.

⁽¹¹⁾ OECD 'Job strategy 2018', page 143 on 'Achieving higher convergence'.

3.2. The proposal sets out a differentiating approach between the MS with statutory minimum wage-setting and those with collective agreement wage-setting. Such a classification, even if it is widely used by the OECD, Eurofound and other institutions for academic and research purposes, could be questioned when used for the purpose of any wage-setting-related exercise — for different reasons, one of which is that in some MS where the intervention of the government is limited to the officialisation of agreements negotiated by the social partners, the minimum wage is not statutory but conventional.

3.3. *Collective Bargaining — Definitions and Coverage*

3.3.1. The EESC stresses that collective bargaining is the most effective tool for setting adequate and well-adapted wages, including minimum wages, which are an essential component of the social market economy. Article 3 of the proposal includes some definitions that apply for the purpose of the directive.

3.3.2. The EESC believes that the representativeness of the social partners is an important factor, as it guarantees their democratic mandate. Different criteria exist which could represent good practice to be considered at national level according to national laws and practices. There are a number of complex factors/criteria that could be taken into account when assessing the representativeness of social partners at national level, bearing in mind that they vary across the MS: the number of members and the significance of the presence in the territory at national level; capacity to mobilise their members and take action; the number of collective agreements signed at the different levels (sector/company etc.); the number of elected trade union or employers' representatives; affiliation to a European social partners organisation (recognised by the EC); recognition by government and presence in national/sectoral bipartite/tripartite SD structures or bodies, etc. The EESC calls for the term 'workers' organisations' to be replaced with 'trade unions' as the former could lead to misleading interpretations and open negotiations up to other non-recognised forms of workers' interest groups or even 'yellow' unions.

3.3.3. The EESC has several times stated that social dialogue is part and parcel of the European social model. The social partners should be autonomous and employers' and workers' organisations should be protected from any form of restriction of their right to organise, represent or take collective action. This is equally important for employers and for trade unions.

3.3.4. Article 7 of the directive sets out provisions on the involvement and consultation of social partners when it comes to determining and updating statutory minimum wages. In the last few years, in the context of the European Semester, several country-specific recommendations (CSRs) have been issued to call on MS to ensure adequate involvement of social partners in this process. In the Semester 2020-2021, 12 Member States received CSRs pointing out the need to increase the social partners' involvement and ownership in decision-making processes⁽¹²⁾.

4. Adequacy

4.1. As a result of the economic crises and the current pandemic, data show that there has been an overall stagnation of wages and in some countries even a deterioration in the last few years. The EESC underlines that collective bargaining plays a key role in providing adequate minimum wage protection. Countries with high collective bargaining coverage tend to have a lower proportion of low-wage earners, higher minimum wages compared with the median wage and lower wage inequality and higher wages than other countries⁽¹³⁾.

4.2. The EESC supports well-developed wage-setting systems and well-functioning social protection systems that provide safety nets for those in need, as well as other measures to prevent in-work poverty. The EESC notes that the proposed directive only lays down the general principle of adequacy of wages — based on non-binding reference values estimated for median or average gross or net wages — and does not include any specific measures or provision on how wages should be set at the national level, as this remains a competence of MS alone. The EESC supports setting binding indicators to guide MS and social partners in their assessment of the adequacy of statutory minimum wages and in identifying and introducing relevant measures in the national action plans. Wages are in fact set by national laws that provide for a statutory minimum wage, where they exist, or by collective bargaining. At the same time, lifting more people out of poverty will reduce public

⁽¹²⁾ See OJ C 10, 11.1.2021, p. 14 point 6.13 and the overview of the 2020-2021 country-specific recommendations (CSRs) in the social field.

⁽¹³⁾ AMECO Online.

expenditure for social protection schemes. Poverty thresholds and social exclusion indicators are used at EU level for analyses and common data collection, but no agreed indicator currently exists at EU level to measure in absolute terms the fairness and adequacy of minimum wages, which the proposal leaves to MS to address in national plans.

4.3. Important elements, such as competitiveness, productivity, economic development by sector, skills' management, new production processes due to the introduction of new technology, digitalisation and different and more flexible work organisation in certain productive sectors should be considered by the social partners when setting wages through collective bargaining according to national law and practice. Underlining the need of upward wage convergence, the EESC points out that higher wages also mean an increase of consumption and hence of internal demand, with a positive economic impact, and rising wages also lead to higher revenues for social security and tax systems. These effects must be carefully analysed.

4.4. The proposed directive, however, aims at fixing an indicative threshold at EU level as a reference for statutory minimum wages in the countries where they exist. Bearing in mind that wages are payment for work done, other factors may also be considered, such as the poverty line, a minimum decent standard of living, each country's cost of living. These elements are the key basic factors in setting statutory and collective agreed minimum wages in EU countries. A clear distinction between minimum wage-setting and wage increases should be made.

4.5. The criteria put forward concerning the adequacy of minimum wages are, with the exception of purchasing power, criteria concerning the distribution of wages and their evolution. They concern more generally inequality aspects and not the protection of the most vulnerable workers. 'Minimum wages should be fair in relation to the wage distribution in the different countries and their level should also be adequate in real price terms, so that they allow for a decent standard of living whilst at the same time safeguarding the sustainability of those companies that provide quality jobs' ⁽¹⁴⁾.

5. Public Procurement

5.1. Article 9 of the directive includes provisions for workers employed in public procurement and sub-contracting, by inviting MS to comply with minimum wages in all public procurement projects. In line with Directives 2014/23/EU ⁽¹⁵⁾, 2014/24/EU ⁽¹⁶⁾, 2014/25/EU ⁽¹⁷⁾ of the European Parliament and of the Council, the provision obliges all contractors to comply with the applicable level of minimum wages, be they statutory or agreed in collective agreements. This provision is also in line with some decisions by the CJEU and in particular with the 'Regiopost' ruling of 2015 (Case C-115/14) ⁽¹⁸⁾. MS have the possibility to reject tender bids for public contracts from contractors who do not undertake to pay workers locally regulated or collectively agreed minimum rates of pay, as stated in Article 70 of Directive 2014/24/EU and Article 3 of the Posted Workers Directive ⁽¹⁹⁾. The EESC has already called for public procurement contracts to fully respect collective agreements and for the suspension of trade agreements in the event of non-compliance with ILO fundamental and up-to-date Conventions. The EESC has also called for sanctions, including exclusion from public procurement and public funding, for enterprises that do not respect due diligence obligations in the proposed mandatory due diligence instrument ⁽²⁰⁾.

6. Monitoring and Data collection

6.1. There are already a significant number of databases and analyses regarding minimum wages and collective bargaining processes. Making trustworthy and updated data available to institutions and the social partners could help to better assess and understand actual trends, when it comes to taking decisions in this area. Therefore, the EESC calls on the EC to further assist MS, in cooperation with the social partners, to keep improving the collection of data and monitoring the evolution of statutory minimum wages ⁽²¹⁾.

⁽¹⁴⁾ OJ C 429, 11.12.2020, p. 159, point 1.5.

⁽¹⁵⁾ OJ L 94, 28.3.2014, p. 1.

⁽¹⁶⁾ OJ L 94, 28.3.2014, p. 65.

⁽¹⁷⁾ OJ L 94, 28.3.2014, p. 243.

⁽¹⁸⁾ Case C-115/14.

⁽¹⁹⁾ Ref. to ILO Conv. 94 and OJ C 429, 11.12.2020, p. 197 and OJ C 429, 11.12.2020, p. 136.

⁽²⁰⁾ OJ C 429, 11.12.2020, p. 197, point 6.4 and OJ C 429, 11.12.2020, p. 136, point 4.10.

⁽²¹⁾ OJ C 429, 11.12.2020, p. 159, point 6.4.1.

6.2. In some MS, collective agreements are available and published and, in some cases, public internet websites allow free consultation of them, while in other MS collective agreements and the adequacy of wage levels are owned and examined by the social partners themselves and not by authorities or made publicly accessible. While being supportive of the delicate further development of the accessibility of data (which might be sensitive regarding the respect of the autonomy of the social partners and of collective bargaining and agreements, data protection, fair competition and other areas), the EESC is concerned about the possible increase in the administrative burden, especially for SMEs and for non-profit social economy enterprises, and calls for a balance to be struck between the added value stemming from the very detailed annual information obligation and the need to reduce such a burden as much as possible — when this provision is implemented at national level, in particular when it comes to the necessity to give information for covered and non-covered workers, disaggregated by gender, age, disability, company size and sector. Further clarity is also required on the need to give a distribution in deciles of minimum wages in countries with a conventional approach.

6.3. The EESC recommends that the reports submitted by MS are examined and assessed with the proper involvement of the social partners in EMCO and a specific subgroup could be created for this purpose — consisting of representatives of national governments, national and European trade union and employers' organisations and experts appointed by the EC.

6.4. The EESC notes the introduction, in the directive, of strong non-regression clauses and calls on the Parliament to further strengthen some key points in this area, in particular:

- No possible future interpretation of this directive should be used to undermine well-functioning minimum wages or collective agreement systems;
- No provision in the directive should be used to the detriment of freedom of association or the autonomy of the social partners;
- No statutory minimum wages will be introduced where they do not exist, except with the agreement of the social partners;
- Wage-setting mechanisms are a national prerogative, and no decisions coming from the European Union institutions should be aimed at directly interfering with wage-setting mechanisms at national and company level, which remain a prerogative of the social partners.

The EESC also calls on the European Parliament to further underline that nothing in the directive shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or the MS are party, including the European Social Charter and the relevant Conventions and Recommendations of the International Labour Organization.

The provision also provides for MS and social partners to introduce legislative/regulatory/administrative provisions or apply collective agreements that are more favourable for workers. The EESC also stresses the need for ensuring compliance with applicable collective agreements and effective enforcement, which is essential to ensure access to minimum wage protection and to avoid unfair competition for businesses.

Brussels, 25 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

ANNEX

The following counter-opinion, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 43(2) of the Rules of Procedure):

1. Conclusions

1.1. The EESC has in its recent opinion SOC/632 Decent minimum wages across Europe, recognised that the legal situation regarding an EU initiative on minimum wages is highly complex. The EU can adopt legal instruments on working conditions on the basis of Articles 151 and 153(1)(b) TFEU. The Treaty provides that the provisions of Article 153 shall not apply to 'pay'. On the other hand, there is EU case law and existing directives that have treated the issue of pay as a key working condition. There are clearly divergent opinions on this matter and the EESC acknowledges that a balanced and cautious approach will have to be adopted by the Commission ⁽¹⁾, when a growing number of voices are calling upon the European Commission to use a Council Recommendation instead of a Directive ⁽²⁾.

1.2. The EESC has also stated that ⁽³⁾ it is important that any EU action is based on accurate analysis and understanding of the situation and sensitivities in the Member States and fully respects the social partners' role and autonomy, as well as the different industrial relations models. It is also essential that any EU initiative safeguards the models in those Member States where the social partners do not consider statutory minimum wages to be necessary.

1.3. The EESC outlines below the reasons why the Commission proposal ⁽⁴⁾ on adequate minimum wages in the European Union does not follow the balanced and cautious approach and why it cannot be seen as being based on accurate analysis and full respect of social partners' autonomy and the different industrial relations models as requested by the EESC.

2. General remarks

2.1. Wages, including minimum wages, are an important aspect of the European Union's social market economy model. Ensuring decent minimum wages in all the Member States would help in achieving a number of EU objectives including upward wage convergence, improving social and economic cohesion, eliminating the gender pay gap, improving living and working conditions in general and ensuring a level playing field in the Single Market. Wages represent payment for work done, and are one of the factors that ensure mutual benefits for companies and workers. They are linked to the economic situation in a country, region or sector. Changes may have an impact on employment, competitiveness and macro-economic demand ⁽⁵⁾.

2.2. The EESC recalls what its earlier work has indicated ⁽⁶⁾ in regard to the topic of minimum wages: Opinions within the EESC diverge. Some EESC members support the view that all workers in the EU should be protected by fair minimum wages which allow a decent standard of living wherever they work. Other EESC members are of the view that setting minimum wages is a matter for the national level, done in accordance with the specific features of respective national systems.

⁽¹⁾ OJ C 429, 11.12.2020, p. 159, Decent minimum wages across Europe <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe>, see point 6.1.2.

⁽²⁾ Nine MS have sent a letter to the German and Portuguese Presidency of the Council of the European Union about the need for legal analysis and referred to a Council Recommendation as a better legal instrument and that the implementation of the EPSR should respect the boundaries of the EU Treaties.

⁽³⁾ OJ C 429, 11.12.2020, p. 159, point 1.11.

⁽⁴⁾ Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union {SEC (2020) 362 final} — {SWD(2020) 245 final} — {SWD(2020) 246 final}.

⁽⁵⁾ OJ C 429, 11.12.2020, p. 159, Decent minimum wages across Europe <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/decent-minimum-wages-across-europe>, see point 1.4.

⁽⁶⁾ OJ C 429, 11.12.2020, p. 159 point 1.2.

2.3. The EESC has previously stated⁽⁷⁾ its belief that further efforts are needed regarding convergence of wages and establishing minimum wages in the Member States, whilst also stressing that the competence and autonomy of the national social partners regarding wage-setting processes must be fully respected in accordance with national practices⁽⁸⁾. These efforts should also aim at strengthening collective bargaining, which would also contribute to fairer wages in general.

2.4. The EESC emphasises that the level of the minimum wage is a key economic policy tool, which must remain a matter for decision-making at the Member State level in order to take flexible account of their political, economic and social developments.

2.5. As the Commission has stated in its memorandum explaining the proposed measures, Member States with high collective bargaining coverage achieve better results than others in terms of higher wages and fewer low-paid workers. The EESC believes that the success of a such collective bargaining models can be explained by the fact that the state is involved in neither setting the criteria for collective bargaining agreements nor their enforcement, and that the social partners have full responsibility and autonomy for both.

COVID pandemic

2.6. Already in its opinion SOC/632, the EESC stated that the COVID-19 pandemic had hit Europe hard. The European Union and its Member States are still facing an economic recession of historic proportions with dramatic consequences for people and businesses⁽⁹⁾. Since then, the situation has rather worsened than improved. Business investment is still low.

2.7. We have not yet seen the full employment impact of the COVID crisis but it is clear that the current crisis is expected to give rise to significant unemployment increases in the coming year. The COVID crisis has weakened the financial situation of many SMEs, which makes them more vulnerable to increased costs. The situation is similar across Europe.

Effects on employment

2.8. The EESC has already stated⁽¹⁰⁾ that another source of concern is that a European statutory minimum wage policy could potentially have negative effects on employment⁽¹¹⁾, especially in the case of young people and low-skilled workers, and could aggravate non-compliance, which could also push a number of low-wage workers towards informality⁽¹²⁾. Undeclared work leads to unfair competition and deteriorates the social and tax systems and disrespects workers' rights — including the rights to decent working conditions and a minimum wage. The EESC regrets the lack of complete assessment done by the European Commission of the impact of its proposal on employment and the economy as a whole. A directive on minimum wages is particularly damaging now, as our economies and societies are confronted with the unprecedented challenge of COVID-19.

3. Comments on the actual Commission proposal

3.1. Legal basis

3.1.1. According to the Commission proposal⁽¹³⁾, the proposed Directive is based on Article 153(1) (b) of Treaty on the Functioning of the European Union (TFEU).

3.1.2. The EESC notes that Article 153(5) of the TFEU expressly excludes 'pay, the right of association, the right to strike or the right to impose lockouts' from the EU's legislative competence in the area of social policy. Thus, these matters are entirely a national competence.

⁽⁷⁾ OJ C 429, 11.12.2020, p. 159, point 1.3 and OJ C 125, 21.4.2017, p. 10.

⁽⁸⁾ OJ C 429, 11.12.2020, p. 159, point 1.3.

⁽⁹⁾ OJ C 429, 11.12.2020, p. 159, point 1.1.

⁽¹⁰⁾ OJ C 429, 11.12.2020, p. 159, point 3.4.8.

⁽¹¹⁾ Based on Graph A12.9, page 197 of the Commission's impact assessment.

⁽¹²⁾ Eurofound (2019) Upward convergence in employment and socioeconomic factors.

⁽¹³⁾ Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union {SEC (2020) 362 final} — {SWD(2020) 245 final} — {SWD(2020) 246 final}.

3.1.3. There are divergent views within the EESC on whether any EU legal initiative under Article 153, especially a directive, would be legitimate⁽¹⁴⁾. The EESC has already stated⁽¹⁵⁾ that among its key concerns are that the EU has no competence to act on ‘pay’, including pay levels, and that such action could interfere with the social partners’ autonomy and undermine collective bargaining systems, particularly in Member States where minimum wage floors are set through collective agreements. Furthermore, there are divergent views as to the added value of EU action, including within the Committee itself: while a majority of EESC constituents believe that such action could provide an added value, others disagree. Under all circumstances, and given the fact that the setting of minimum wages is a national competence, the EU should exercise its legislative powers with caution in any legislative initiative so as to be in full compliance with the subsidiarity principle.

3.1.4. Furthermore, as regards the legal basis, other provisions of the proposal refer to collective rights, such as the promotion of collective agreements in various ways (Article 4). The EESC notes that the TFEU contains a special legal basis in Article 153(1)(f) which covers representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5. The EU has competence to legislate with this basis only by unanimous decision. The EESC is of the opinion that this article should have been used as regards provisions on promotion of collective bargaining.

3.1.5. Based on the above concerns, further strengthened by the fact that in many cases the language used in the title of the proposal, in the title of some articles and in their text and in the preamble is deviating from being consistent with the actual scope of proposal, the Commission should consider to publish a recommendation instead of a directive. This would provide much needed flexibility for Member States to achieve the objectives of the proposal, while respecting their wage formation systems and the autonomy of the social partners.

3.2. *Subject matter and scope*

3.2.1. Article 1 states that workers should have ‘access to minimum wage protection’ either by law or collective agreement. According to Article 2 the directive would apply to workers who have an employment contract or employment relation as defined by law, collective agreement or practice in force.

3.2.2. No Member State and no worker is excluded from the scope of the directive. In countries which rely exclusively on collective bargaining — where not all workers are covered by minimum wages and hence are not guaranteed access to minimum wage protection — this means a significant and unacceptable legal uncertainty. The EESC fears that the directive could be interpreted, also as regards countries relying exclusively on collective bargaining, as to ensure rights for all workers, to be covered by minimum wage protection. This, in practice, despite the reassurances in Article 1(3), would directly interfere with the minimum wage coverage in the Member States and push these countries in the direction towards universal application of collective agreements. This would undermine — and in the longer term force them to change — their labour market models.

3.2.3. The EESC recommends that some provisions and concepts in the proposal⁽¹⁶⁾ are more precisely formulated not to leave space for uncertainties and for interpretation by the CJEU. The subject matter and scope in Articles 1 and 2 apply to all Member States, including countries where a self-regulatory collective bargaining system exists. As stated above, in countries which rely exclusively on collective bargaining this leaves space for legal uncertainty. Further, some adjustments have to be included for some specific cases which should fall out of the scope of the proposal — e.g. seafarers — whose wage-setting is arranged in international conventions⁽¹⁷⁾.

3.3. *Definitions*

3.3.1. Article 3 of the proposal makes no distinction between statutory minimum wages and minimum wages, or rather wage floors, stipulated in collective agreements.

⁽¹⁴⁾ OJ C 429, 11.12.2020, p. 159, point 1.8.

⁽¹⁵⁾ OJ C 429, 11.12.2020, p. 159, point 1.9.

⁽¹⁶⁾ Especially regarding respect of the social partners’ competences.

⁽¹⁷⁾ The ILO Maritime Labour Convention (ILO, MLC, 2006).

3.3.2. While the EESC understands that in statutory minimum wage systems there is a need for criteria on adequacy, set at the national level with the involvement of social partners, the EESC questions treating the two types of minimum wages identically in the directive proposal. In the case of systems relying only on collective bargaining, regulating adequacy of minimum wages infringes the autonomy of social partners.

3.3.3. The EESC recalls that minimum wages in collective agreement-based models are determined in negotiations between employers and employees which cover wages and working conditions also more generally. This means, for example, that in these situations 'adequacy' is inherently balanced against other interests and other parts of the collective agreement, whereas statutory minimum wages are exogenous.

3.4. *Promotion of collective bargaining on wage setting*

3.4.1. Article 4 requires Member States to take measures to strengthen the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level. A threshold of 70 per cent for collective bargaining coverage is proposed.

3.4.2. The EESC has stressed in its earlier opinion⁽¹⁸⁾ that well-functioning collective bargaining systems, particularly sectoral collective bargaining, play a crucial role in providing for fair and adequate wages across the whole wage structure, including statutory minimum wages, where they exist.

3.4.3. The EESC underlines that it must be ensured that it is up to each Member State to decide, under national conditions, in accordance with their respective industrial relations system, firstly, what is the appropriate coverage objective and secondly, what measures should be taken nationally in the event the level falls below the nationally defined objective.

3.4.4. The EESC also fears that the proposed binding target (of 70 % coverage) would weaken social partners in the long-term since in some countries, one way to achieve such a target would be to introduce a system of automatically extending collective agreements to all companies and workers, thereby reducing the role of social partners and weakening collective bargaining.

3.5. *Adequacy*

3.5.1. Article 5(2) refers to national criteria for Member States to use when setting statutory minimum wages. These criteria include for instance purchasing power, growth rate of gross wages and labour productivity developments. Recital 21 states that indicators 'such as 60 % of the gross median wage and 50 % of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages'. However, those indicators concern more generally inequality aspects and not the protection of the more vulnerable workers

3.5.2. The EESC is concerned that — despite reassurances from the Commission in the explanatory memorandum to the contrary — the proposal is intended to have an impact on the level of the minimum wage and as a consequence the level of pay. Moreover, statements in the explanatory memorandum, clarifies that the Directive should allow for a decent living, reduce in-work poverty and create a more level playing field. The EESC considers these provisions as addressing the level of minimum wages, which exacerbates its concerns about the validity of the legal basis and choice of legal instrument.

3.6. The EESC notes that the proposal goes further than the provisions in the Procurement Directive 2014/24/EU, Article 18(2). This states that Member States shall ensure that economic operators comply with the applicable labour law obligations set out in, inter alia, collective agreements. In the proposal to Article 9 of the proposal, the word 'applicable' is not included. This gives a perception of Article 9 that wages agreed in collective agreements should always be required in public procurement. This raises the question, whether the Commission's intention is to go beyond Directive 2014/24/EU by always demanding a salary according to a collective agreement in all procurement.

⁽¹⁸⁾ OJ C 429, 11.12.2020, p. 159, point 3.3.10.

3.7. *Monitoring and data collection*

3.7.1. Article 10 requires Member States to report, among other things, data on collective bargaining coverage and level of minimum wages. Member States must also ensure that collective agreements are transparent and publicly available both with respect to wages and other provisions. The minimum wages will then be assessed by the Commission and the Council's Employment Committee, EMCO.

3.7.2. In the labour market models based exclusively on collective bargaining, the adequacy of wages is not examined by the state or a government agency. These agreements are owned and interpreted solely by the social partners. It would be unacceptable to make wage levels in collective agreements subject to review. It is also questionable with reference to the autonomy of the social partners to oblige them to make agreements accessible and transparent in a general way, particularly since the agreements solely can be interpreted and reviewed by the social partners. EESC also recalls that collective agreements do not always contain minimum levels for wages or wage floors. Furthermore, the reporting obligations are very labour intensive and in some parts the data requirements are not feasible.

Outcome of the vote:

In favour: 106

Against: 147

Abstention: 17

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 — Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability’

(COM(2020) 474 *final*)

(2021/C 220/17)

Rapporteur: **Dumitru FORNEA**

Co-rapporteur: **Michal PINTÉR**

Referral	European Commission, 23.9.2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	28.10.2020
Section responsible	Consultative Commission on Industrial Change (CCMI)
Adopted in section	5.3.2021
Adopted at plenary	25.3.2021
Plenary session No	559
Outcome of vote	
(for/against/abstentions)	258/0/3

1. Conclusions and recommendations

1.1. The European Commission's Communication represents a step forward, providing a clear roadmap with initiatives and actions to be taken at EU level, and therefore the EESC recommends that the European Parliament and the Council support this approach for improving the EU's Critical Raw Materials Resilience.

1.2. The EESC is convinced that the measures proposed by the EC can contribute towards the security of supply of critical raw materials, thus maintaining and developing an industrial and technological base in the EU. They can also promote essential research and development capabilities, which enable us to implement the ambitious objectives of the EU Green Deal while ensuring new permanent and decent jobs and, at the same time, a fair transition in communities affected by industrial change.

1.3. The EESC fully supports the green transition of the energy sector and considers the extraction of raw materials necessary for the deployment of green technologies a fundamental step. These materials, such as metals and minerals, are the basic elements of creating solid infrastructure for supplying hydrogen or green electricity. The generation of green energies and green energy vectors will allow the decarbonisation of the extractive and processing industry, thus creating a win-win situation.

1.4. Exploration is a high-risk activity which increases capital costs significantly. Risk reduction through loan guarantees and depreciation regimes can greatly assist investments. Other fiscal incentives include tax credits and state aid. These mechanisms are widely used globally for mining and processing, but not broadly in the EU. However, in Europe there is an exception (Finland) that has established national support in the form of risk funds. Similar initiatives should be initiated at European level.

1.5. The EESC, having in mind the current best practice, technique and technology as a baseline, proposes that the EU develop a streamlined authorisation process for mining activities. For instance, the example of other critical infrastructure, such as renewables grids and other critical infrastructure, has paved the way for increased trust in streamlined processes. A streamlined process does not prejudice the outcome of any decision-making process, but is intended to improve the timeliness, predictability and transparency of the environmental review and authorisation processes for the infrastructure projects implemented through this method.

1.6. The EESC considers of paramount importance the existence of adequate financing instruments that facilitate the green transition for the ore extraction and processing sectors. At the same time, it is crucial to invest (e.g. via Horizon 2020) in recycling of critical and strategic raw materials.

1.7. The EESC has already embraced the importance of circularity for the EU economy. It is essential for the circular economy to close the loop of materials in Europe. Consequently, the export of waste containing valuable materials whose processing in the EU could help cut EU greenhouse gas emissions, should be carefully assessed and occur only when useful in terms of sustainability. Therefore, a fast and effective revision of existing instruments such as the Waste Shipment Regulation is supported by EESC.

1.8. The EESC sees the proposal to map the potential supply of secondary critical raw materials from EU stocks and wastes as a key action in improving the EU's raw materials resilience. Therefore, we call on the Commission to make this mapping exercise a priority and carry it out by the end of 2021 instead of the currently envisaged 2022 deadline.

1.9. The EESC considers that there is a need to remove obstacles in legislation and regulations concerning domestic use and shipment of secondary raw materials. However, the environmental and health and safety issues concerning the trade in dangerous streams of such materials must be carefully monitored and implemented. A balance has to be struck between strict and fast procedures so that domestic shipment, recycling and reuse of secondary raw materials is not hampered. There are many examples where recycling opportunities are stifled by formalities ⁽¹⁾.

1.10. The EESC emphasises the importance of integrating new dimensions, into the methodology used for the regular assessment of the list of critical minerals. Appropriate criteria to check if the global supply chains of these types of raw materials comply with ethical principles should be defined in order to assess the 'ethical dimension'. These principles should consider the UDHR ⁽²⁾, the UNGP ⁽³⁾, including the ILO's fundamental labour rights, the Declaration of Fundamental Principles and Rights at Work, which includes the Core Labour Standards and the MNE Declaration ⁽⁴⁾, as well as the UN SDGs ⁽⁵⁾. Moreover, the trade and global market situation of the raw materials should be taken into account, improving the assessment of the trade conditions associated with each raw material. The actual approach of the methodology to assess trade barriers is a very rough indicator. The existence of trade barriers and oligopolies should be better taken into account.

1.11. The EESC emphasises the need for coordination between national education, training, retraining and certification systems, with a view to reserving and to allocating sufficient capacity to train specialists in the areas that contribute to strengthening critical and strategic raw materials resilience. The EU must improve the training of specialists in line with the accelerated evolutions of the digital revolution and to provide professional opportunities for those who are involved in ensuring the security of supply and processing of these minerals essential in the functioning of advanced economies.

1.12. The EESC, in the context of policies to strengthen critical and strategic raw materials resilience, notes the importance of the availability of technological and industrial capacities in the EU to replace these minerals in case of persistent scarcity. It is necessary to increase the role of relevant European institutions in planning significant and constant investments in R & D programmes to discover new materials and processes for ensuring a justified substitution.

⁽¹⁾ For instance, different Member States apply different classification methods for assessing whether or not the properties of waste are hazardous. This creates unnecessary bureaucracy — too many documents; lengthy processes; misalignment among authorities — and unnecessary burden due to the financial guarantee associated with the waste shipment that depends on the waste classification.

⁽²⁾ Universal Declaration of Human Rights.

⁽³⁾ UN Guiding Principles for Business and Human Rights.

⁽⁴⁾ Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

⁽⁵⁾ UN Sustainable Development Goals.

1.13. The EESC demands that the European Commission takes into account, in a convincing and respectful manner, the needs and aspirations of raw material supplying developing countries by encouraging and supporting companies that clearly operate on the basis of respect of the economic, social and ecological interests of these countries and their population. The Commission should conceive a formula of a 'partnership playing field' which promotes trust, durability, security, reliability and mutual respect in the common interest of the trading partners.

1.14. The EESC emphasises the importance of widening the definition and the paradigm of critical raw materials. Conventionally, critical raw materials have been understood as materials coming mainly from mining sector. This is too narrow scope and limits the growth of green energies. Today, wood-based materials can be efficiently used in much more applications than in the past. From textiles to new lighter and more environmentally friendly battery technologies, this is an area that is advancing with great speed. Bioeconomy has the unique possibilities of adding resilience to the EU economy and geopolitical stability for our continent. Using renewable materials would simultaneously also help mitigate climate change as it allows keeping the fossil emissions in the ground, creating green resilience to fossil sectors.

2. Background

2.1. The raw materials sector provides about 350 000 jobs within the EU, but there are more than 30 million jobs in downstream manufacturing industries that depend on reliable and unhindered access to mineral raw materials. In 2018, EU reliance on imports of metals ranged between 75 % and 100 % depending on the metal, and more than half of the EU's energy needs are met by net imports. Prices for raw materials are extremely volatile and resources constitute the largest share of industry input costs ⁽⁶⁾. Nevertheless, industries in the EU that depend on raw materials provided EUR 206 billion of added value ⁽⁷⁾.

2.2. The World Bank projects that the demand for metals and minerals will increase proportionally in line with climate ambition. The OECD forecasts that global material use will double by 2060. Metals use is expected to grow by 150 %, from 8 billion tonnes today to 20 billion tonnes by 2060. The OECD also predicts that the growth in materials use and the processes of extracting and processing them is very likely going to increase pressure on the planet's resources and jeopardise gains in wellbeing. This can cause environmental and social problems, pollution, biodiversity and land losses etc.

2.3. The EU produces less than 5 % of world production of mineral raw materials. China alone provides 66 % of the finished Li-batteries. The EU provides less than 1 %. The EU produces less than 1 % of world fuel cells and 1 % of the raw materials for wind energy ⁽⁸⁾. China has a quasi-monopolistic position in terms of components for photovoltaics (PV). The EU provides 1 % of silicon-based PV assemblies. 44 materials are relevant for the robotics industry, with the EU producing only 2 % of them and China supplying 52 %.

2.4. Success in transforming the EU economy and the achievement of EU climate goals by 2030 and 2050, relies on securing a sustainable supply of critical and strategic raw materials. Minerals, metals and advanced materials are crucial for clean energy, green technologies and mobility. Without them, the implementation and progress of clean and digital technologies will be delayed, as will the implementation of the 2030 Agenda for the Sustainable Development Goals. The EU must act in order to reduce external dependency, to diversify its supply chains and to invest in recycling facilities. If it is not successful, the survival of European jobs and industries will be jeopardised.

3. The Commission's actions on raw materials

3.1. On 3 September 2020, the EC Communication *Critical Raw Materials Resilience: Charting a Path towards Greater Security and Sustainability* presented ten actions for supporting a secure and sustainable supply of raw materials. The Communication stresses the importance of achieving open strategic autonomy in the EU, via the following elements: diversification of extra-EU suppliers; reduction of extreme dependency via circularity and resource efficiency and domestic

⁽⁶⁾ 2018 EU Raw Materials Scoreboard.

⁽⁷⁾ Euromines.

⁽⁸⁾ UNEP IRP.

extraction and processing; increasing the domestic supply capacity; establishing resilient supply chains for EU industrial ecosystems; strengthening sustainable and responsible supply; the creation of a Raw Materials Alliance and R & D programmes; increasing financing opportunities; enhancing mining skills; increasing exploration capacity; assessing environmental impacts; promoting international trade and partnerships.

3.2. On 11 March 2020, the release of the EC Communication *A new Circular Economy Action Plan for a cleaner and more competitive Europe* highlighted the importance of creating a market for secondary raw materials and of taking into account ethical sourcing of raw materials and security of supply.

3.3. On 10 March 2020, the EC Communication on *A New Industrial Strategy for Europe* stressed the importance of all industrial value chains in the EU. A secured supply of clean and affordable energy and raw materials is a key step towards the reduction of industrial carbon footprints, thus accelerating the transition.

3.4. On 11 December 2019, the EC unveiled its Communication on *The European Green Deal*, which is the new growth strategy of the EU for transforming the current economy into one that is resource efficient, competitive and climate-neutral. The Communication highlights the importance of a strategic security of access to resources in order to implement the Green Deal. The transition will need a sustainable supply of all raw materials which are necessary for clean and digital technologies.

4. General comments

4.1. The EESC welcomes and supports the European Commission's efforts and actions to strengthen security of supply of raw materials. The opinions adopted over the last 15 years by the EESC's Consultative Committee on Industrial Change, as well as joint work on this issue with the Commission, confirm the interest and commitment of the EU's organised civil society in the continued development of the European Raw Materials Partnership

4.2. In this regard, there is a need to develop more concrete proposals and actions for securing the path towards greater security and sustainability envisaged by the Communication of the European Commission on Critical Raw Materials. Moreover, we call on the Commission to consider appropriate action on all the raw materials that are relevant for the EU's industry and economy, in order to avoid further dependencies.

4.3. The Raw Materials Initiative, launched by the European Commission in 2008, paved the way for structured and coordinated action at the level of relevant European institutions, both to raise awareness among European citizens about the need to ensure security of supply of critical and strategic raw materials for European industries, as well as for concrete actions in this regard at EU and Member State level.

4.4. The European Technology Platform on Sustainable Mineral Resources (officially recognised in 2008), the European Innovation Partnership on Raw Materials (2012), the European Institute of Innovation and Technology — Raw Materials (2015), the European Battery Alliance (2017), the European Raw Materials Alliance (September 2020) or the annual activities within the framework of the EU Raw Materials Week represented successful Commission initiatives and important working tools of the European Union in its sustained efforts to identify the technological, legislative and administrative solutions needed to adopt a coherent EU Action Plan on raw materials. However, these initiatives could have been stepped up and the EESC calls on the Commission to conduct stringent assessments on the work, output and effectiveness of said alliance platforms and provide the results to the EESC on a regular (annual) basis. We, as representatives of civil society, need to be informed of whether this approach indeed yields tangible results for advancing and achieving the goal of raw materials resilience.

4.5. The EC Communication has primarily a European perspective, which is totally understandable, since the central issue is the supply of raw materials to Europe's economy. However, the EESC considers that the EC should take into consideration the needs and interests of the people and the economies in the countries from which raw materials are to be exported to Europe, especially when communicating frequently on 'European values', 'global responsibility' and global

'sustainable development goals'. It is also important to consider that non-EU countries from the European Economic Area are rich in mineral resources, and the raw materials strategies, strategic partnerships and access to financial instruments for the green transition of the mining sector should be made available to these countries as well.

4.6. The goal of enhancing the EU's resilience on critical and strategic raw materials is inextricably linked with the EU's efforts to maintain a strong industrial and technological base that keeps pace with the digital revolution and the global challenges of climate change and environmental protection. It is critical that the EU is successful in this process. The EESC has already highlighted that 'solar panels, wind farms and batteries are crucial for our new industrial paradigm. However, they also require raw materials that are controlled by our peer competitors in the international arena. Industrial policy must go hand in hand with a firm trade and foreign policy that in turn must secure access to these resources' ⁽⁹⁾.

4.7. Raw materials policies must positively contribute, together with other policies, to ensuring supply to European industries, to meeting the demand for EU products and services, respecting the environment and limiting the impact of human activities on the climate and to creating decent jobs. These benefits — economic, environmental and social — should be evenly distributed throughout the EU. It is important to focus not only on raw materials that are classified as 'critical' according to the methodology proposed by the EU Commission. Raw materials that are an essential part of many supply value chains and whose mining and extraction is also a carrier of critical raw materials should be recognised as having strategic importance.

4.8. The constant and predictable EU demand for critical and strategic raw materials is a basic condition for strengthening domestic and global trade relations and supply chains. As the demand for raw materials is steadily increasing, the EU should also continue to enhance its capacity to source domestically and internationally. Reliability and predictability in supply chains is key to maintaining industrial production and related infrastructure in the Member States, but it is also a necessary precondition for strengthening the EU's resilience with regard to critical raw materials.

4.9. The need for critical and strategic raw materials is one of the indicators that allows us to assess and establish the type of the EU's industrial production capacity, as well as the education, training, retraining, life long learning and certification needs, that we should maintain in the EU in order to cope with the global competition, and to avoid not only dependency on certain raw materials, but also subordination in the field of innovation, research and technological development.

4.10. Technological and industrial capacity to replace critical raw materials is considered essential for strengthening resilience, but it is not possible to achieve it in a short period of time and without significant and constant investment in research and development to discover new materials. Compared with the dynamic developments in China, one might say that the EU's resilience with regard to critical raw materials can be strengthened by implementing ambitious projects to interconnect and modernise trans-European transport, energy and ICT infrastructures. All this can be done in the context of the EU Green Deal, thus maintaining a sufficiently high demand for such raw materials in the EU, demand that stabilises global supply chains, leading to an influx of new investments, not only in the industries that process these materials, but also in R & D programmes for critical raw material substitution.

5. Specific comments

5.1. The EC Communication represents a step forward, providing a clear roadmap with initiatives and actions to be taken at European level, and therefore, the EESC recommends that the European Parliament and the Council support this approach for improving the EU's Critical Raw Materials Resilience.

5.2. While investment in sustainable mining creates supply, jobs and economic progress, it must also ensure socioeconomic and environmental improvements on the basis of corporate social responsibility. The key concern is how to reach a balance between promoting sustainable mining in Europe and ensuring public acceptance. Raising awareness among citizens is paramount.

⁽⁹⁾ OJ C 364, 28.10.2020, p. 108.

EU Green Deal, 2030 and 2050 climate goals and the demand for raw materials

5.3. A clean and circular economy promises to reduce our dependence on imported materials and energy, to lower the EU's negative impact on health and the environment, to develop future economic models and to create more local jobs. It will also help improve self-sufficiency and tackle the resilience issues exposed by the COVID-19 pandemic in relation to the global supply chains. The EESC has already called for a clear strategy in order for the EU to 'become the world leader in the circular economy and clean technologies. It will work to decarbonise energy-intensive industries' ⁽¹⁰⁾.

5.4. The EC's Communication does not mention or discuss deep sea mining ⁽¹¹⁾ or help change the perception that extraction industries are not eco-friendly. There are cases in which they are 'eco-friendly' thanks to sustainable mining practices.

5.5. The Commission suggests that mining waste is rich in critical raw materials and can create new economic activities. What is unclear, however, is the level of investment needed as well as the level of public acceptance for such action. The economic opportunities arising from critical raw materials in mining waste are associated not only with coal mining sites but also other ores such as iron, zinc or nickel.

5.6. Increasing the recycling, extraction and processing capacity of metals is essential for developing the green and clean technologies necessary for the green energy transition and, to a wider extent, the green industrial transition too. The recovery of strategic and critical materials is key, and so innovative technologies for sorting and treating waste have to be deployed. Both EU domestic sourcing routes — extraction and reuse — have to be properly promoted and financially supported.

The EU Critical Raw Material List — methodology of assessment

5.7. Based on the new technological developments, every two years a revision of the list of critical raw materials in the EU should be carried out. The European Commission mentions the monitoring of the actions presented in the current proposal. Impact assessments are needed along the way, with the possibility to change/regulate.

5.8. The Commission emphasises in this Communication that the periodically assessed list of critical raw materials is also relevant in promoting sustainable and responsible sourcing. Therefore, the methodology used for the periodic assessment of this list should be reassessed in terms of compliance with UDHR ⁽¹²⁾, the UNGP ⁽¹³⁾, including the ILO's fundamental labour rights, the Declaration of Fundamental Principles and Rights at Work, which includes the Core Labour Standards, and the MNE Declaration ⁽¹⁴⁾, as well as the UN SDGs ⁽¹⁵⁾.

5.9. The risks of human rights infringements, including business-related human rights infringements in GVCs ⁽¹⁶⁾ or environmental destruction in the prospective producer countries must be effectively taken into account in the methodology of the periodic assessment of the list of critical raw materials. Appropriate criteria must therefore be found and included in the assessment methodology. This is paramount, given that the EU Commissioner for Justice is working on a mandatory due diligence directive that is to be presented in the first half of 2021.

5.10. Critical Raw Materials have been understood generally as materials coming from the mining sector, but they encompass something much wider than that. For example, wood-based materials can be efficiently used in much more applications than in the past: from textiles to new lighter and more environmentally friendly battery technologies, this is an area that is advancing with great speed. Furthermore, bioeconomy has unique possibilities of adding resilience to the EU

⁽¹⁰⁾ OJ C 364, 28.10.2020, p. 108.

⁽¹¹⁾ The International Seabed Authority is tasked with making sea floor mining possible legally and practically.

⁽¹²⁾ See footnote 2.

⁽¹³⁾ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁽¹⁴⁾ See footnote 4.

⁽¹⁵⁾ See footnote 5.

⁽¹⁶⁾ Global Value Chains.

economy and geopolitical stability for our continent. Using renewable materials would simultaneously help mitigate climate change and shall allow keeping the fossil emissions in the ground, creating green resilience to fossil sectors.

Mapping of EU raw materials

5.11. The proposal to map the potential supply of secondary critical raw materials from EU stocks and wastes is a key action in improving the EU's raw materials resilience. Therefore, the Commission must make this mapping exercise a priority and carry it out by the end of 2021 instead of the currently envisaged 2022 deadline, making the available data well known to the stakeholders and citizens.

5.12. Given the current lack of overview and information on secondary raw material availability within the EU, tracking of strategic and critical materials, both sector-specific and cross-sectoral, has to be carried out as a priority action, including by making use of digital and big data tools.

Mining, related skills and the social licence to operate

5.13. Raw materials mining and quarrying activities are essential in terms of mitigating supply risk, e.g. providing materials for the deployment of low-carbon technologies and agriculture, and increasing the resilience of manufacturing value chains. The European minerals sector can ensure the availability of essential materials needed for current and future technologies to create a climate-neutral, service and welfare-orientated, circular and resource-efficient economy while sourcing raw materials in a sustainable and responsible way.

5.14. Additionally, mining in Europe is operating at the highest environmental and social standards compared to non-EU countries. The industry in Europe is committed to contributing substantially to climate change mitigation: it not only continuously explores methods of decarbonisation in order to efficiently and effectively meet the continued increasing demand for resources, but also enables other economic activities to improve their environmental performance.

5.15. The fact is that there are extremely few examples of raw material exports in developing countries triggering sustainable economic and social development from which broad sections of the population would have benefited. Rather, the situation often entails social exploitation and environmental pollution with usually only a few profiteers on the winning side.

5.16. The raw materials must not only serve to guarantee economic prosperity in Europe, but must also be the basis for sustainable, i.e. socially and environmentally compatible, economic development in the countries of origin. In this sense, the EU should become proactive and clearly support all conceivable efforts by companies that shift from the previous policy of unilaterally securing the cheapest possible raw materials towards a new approach of a 'strategic partnership'. Such a strategic partnership must take into account, in a fair way, the economic, social and ecological needs and interests of both the supplier and recipient countries of raw materials and support and promote self-determined socioeconomic development in the countries of origin. By creating a 'partnership playing field', a high level of trust, durability, security and reliability can be achieved in trade relations in the common interest and on the basis of mutual respect.

5.17. There is always a need to weigh local environmental problems against the benefits that such projects could bring to solve wider European and global CO₂ issues, such as the demand for more copper for example. Such balancing should be part of prioritising mining projects in Europe. This prioritising should also include regional economic considerations.

5.18. It is not enough to have access to raw materials, if the EU does not have high-tech processing facilities. Commissioner Breton stated that 'for critical raw materials, the aim is to have European mining and refining capacity operational by the start of the next decade.' This is not ambitious enough. Hence, the EESC recommends that the EU promote immediate investment and common regulated incentives for investors. To accelerate Europe's 'strategic autonomy' regarding critical raw materials the creation of a European Partnership (Horizon Europe) or a IPCEI should be considered. Such a IPCEI should cover the entire CRM supply chain: assessing domestic mineral sources, mining, smelting,

transforming, recycling, re-purposing. Indeed, as for batteries, the establishment of a fully integrated domestic rare earth value chain will be of key importance for delivering on the twin digital and green transition.

5.19. Four key industrial projects in sustainable mining and processing, totalling almost EUR 2 billion, are under way in Europe. They are expected to cover 80 % of our lithium needs in the battery sector by 2025. These projects could provide inspiration in terms of covering other raw materials essential for European value chains in many more strategic sectors.

5.20. The industry is already using automation, digitalisation, blockchain technology and artificial intelligence, but the use of the Copernicus Programme must be explored, to identify new raw material sites and monitor the environmental footprint. Furthermore, the EESC has already recommended 'the development of an EU regulatory roadmap addressing the challenges created by the digital transformation of the raw materials sector, dealing with topics such as cybersecurity, artificial intelligence, automation, multi-level governance and sea and space mining' ⁽¹⁷⁾.

5.21. New methods for extraction, recovery and production should be developed. They should meet the highest environmental and social standards. Exploiting the resources within EU landfills and mine tailings represents a potential source of CRMs. Meanwhile, environmental specialists are urging that local communities should be involved in the decision-making process on future mining sites.

5.22. Mining skills can be transferred to metal and minerals exploitation, possibly in the same regions. The Just Transition Mechanism will help coal and carbon-intensive regions, through the sustainable infrastructure financing available under Invest EU. However, time and incentives for investors are needed, as is legislation on quicker authorisation procedures (an EU regulation could be a solution). Social, environmental and sustainability standards are key requirements for all future EU projects.

5.23. One of the core prerequisites for effective local content policies (LCPs) on the creation of more, greener and better-paid jobs in mineral-rich countries is the availability of the required skills and capabilities to meet the demands of the industry throughout the life cycle of a mine. It is also crucial to develop new skills sets and adapt existing ones to rapidly respond to technological changes. Recent studies have confirmed the likely impact of new technologies on the nature of jobs, highlighting how, in the mining sector, new skills sets will be required not only for new occupations, but also for existing ones, as current operational jobs will most likely have to adapt to automation. Redundancy should be avoided through social dialogue by retraining workers and ensuring they have access to the new positions and jobs created by new technologies and recycling processes.

5.24. Education, training, retraining and certification are extremely important, and it is important that they take place through social dialogue for the future of the industry and acquiring the necessary skills requires time and financing. Special disciplines such as geology, metallurgy and mining could be taught even at undergraduate level.

Investments

5.25. Exploration is a high-risk activity which increases capital costs significantly. Risk reduction through loan guarantees and depreciation regimes can greatly assist investments. Other fiscal incentives include tax credits and state aid. These mechanisms are widely used globally for mining and processing, but not in the EU.

5.26. An efficient financial incentives system must be developed and designed in order to support the ecological transitions in the waste industry. In addition, penalties should be applied for the abuse of waste-valuable resources.

⁽¹⁷⁾ OJ C 429, 11.12.2020, p. 37.

5.27. Enhancing the EU's capacity to effectively address tariff and non-tariff trade barriers, including in the area of dumping and public procurement, deployed by our international partners is essential to ensure a level playing field in the area of raw materials trade.

5.28. Significant investment in R & D is needed for Europe in order to maintain leadership in global value chains. Keeping up with other economic powers is important and requires the close coordination of instruments under different policies, including the new Industrial Strategy, and the EU's Trade Policy. The implementation of the Screening of Foreign Direct Investments Regulation is becoming ever more important in order to protect EU strategic value chains.

5.29. The EU needs to pay special attention to monitoring global raw materials markets as well as the evolution of strategic supply chains. Reliable and complete information needs to come from all Member States and stakeholders through standardised reporting data formats.

5.30. Green transition-related investments by EU companies in the extracting, processing and recycling sector need to support industrial efforts to get involved in the transition and progress towards climate neutrality objectives⁽¹⁸⁾. The sector should benefit from easy access to sustainable financing, but only when its planned investments, R & D plans and industrial transformation projects show a clear adherence to climate objectives, full and productive employment, sustainable economic growth and decent work for all. The EESC has already mentioned in a previous opinion that 'sustainable growth should refer to environmental, economic, social and governance dimensions in a balanced, global and comprehensive approach aligned with all the Sustainable Development Goals and the Paris Agreement on Climate Change, establishing minimum cross-cutting conditions that cannot be substituted.'⁽¹⁹⁾

5.31. Moreover, mining projects showing the same commitments should be supported and incentivised within IPCEI (Important Projects of Common European Interest) and PCI (Projects of Common Interest) frameworks as well. The evaluation of the contribution of such investments and projects shall focus also in identifying any 'green-washing' activity or misleading information.

Trade and the international dimension

5.32. China is today providing 98 % of the EU's supply of rare earths elements (REE). We are entering an era of great geopolitical competition, hence developing an effective economic diplomacy at EU level is key to ensure access to diversified suppliers, while investing in reusing and recycling capabilities. In this respect the EESC insists on forging strategic partnerships with like-minded nations in a plurilateral framework as a way to avoid that supply disruptions (sometimes politically inspired) create standstills in sophisticated industrial value chains in the EU.

5.33. Enhancing the role of the euro as an international and reference currency is vital in preventing price volatility and reducing the dependence of EU stakeholders on the US dollar. The EC should seek ways to encourage trading of CRMs in euros, using the available economic diplomacy and trade policy instruments. In this regard, we welcome the European Commission's Communication on the European economic and financial system: fostering openness, strength and resilience⁽²⁰⁾.

⁽¹⁸⁾ McKinsey Report *How the European Union could achieve net-zero emissions at net-zero cost*, 3 December 2020: 'Reaching net-zero would require investing an estimated EUR 28 trillion in clean technologies and techniques over the next 30 years'. 'Of that EUR 5,4 trillion, about EUR 1,5 trillion would be invested in the buildings sector (29 percent), EUR 1,8 trillion would be used for power (33 percent), EUR 410 billion for industry (8 percent), EUR 76 billion for agriculture (about 1 percent), and EUR 32 billion in transportation (less than 1 percent). About EUR 1,5 trillion (28 percent) would fund infrastructure to improve energy transmission and distribution in all sectors'.

⁽¹⁹⁾ Action Plan on Sustainable Finance (OJ C 62, 15.2.2019, p. 73).

⁽²⁰⁾ COM(2021) 32 final, 19.1.2021, Communication to EU Parliament, Central Bank and Economic and Social Committee; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0032>

5.34. The export of secondary raw materials must only be permitted when it makes sense in sustainability terms. However, the EU should work towards changing the rules of the game and allowing the export of waste containing valuable materials only when useful in terms of sustainability. More precisely, the export of this type of waste should occur only when, at destination, the environmental and social standards and measures to mitigate climate effects are equivalent to EU standards.

5.35. International cooperation within the OECD, the United Nations, the WTO and the G20 must be enhanced, having in mind the future sustainability of the industry and the EU interest in securing access to critical raw materials. Ensuring a level playing field with other parts of the globe is essential for European stakeholders. The EU must use all instruments at its disposal, including trade agreements and strategic partnerships in order to create the conditions to facilitate EU joint ventures in third, resource-rich countries, especially from Africa and South America, while always taking account of responsible sourcing and best practice on business conduct. Integrating the Western Balkans countries in the EU supply chain is also vital.

Brussels, 25 March 2021.

The President
of the European Economic and Social Committee
Christa SCHWENG

Opinion of the European Economic and Social Committee on ‘Sustainability requirements for batteries in the EU’

(COM(2020) 798 final — 2020/353 (COD))

(2021/C 220/18)

Rapporteur: **Bruno CHOIX**

Co-rapporteur: **Franck UHLIG**

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Outcome of vote (for/against/abstentions)	256/0/4

1. Conclusions and recommendations

1.1. The EESC supports the measures set out by the regulation [COM(2020) 798 final — 2020/0353 (COD)] proposed by the European Commission (EC).

1.2. The EESC considers avoiding fragmentation of the internal market through possible divergent approaches by Member States to be a key issue to be addressed by all stakeholders.

1.3. The EESC calls for more precise and functional governance instruments and arrangements to be set out to implement the new regulation, involving all the different stakeholders.

1.4. The EESC proposes that these challenges be addressed by further strengthening the role and resources of the European Chemicals Agency (ECHA).

1.5. On issues related to health, safety and working conditions in the production process, as well as the recycling and repurposing of batteries, the EESC proposes strengthening the role of the European Agency for Safety and Health at Work (EU-OSHA).

1.6. Concerning the application of the duty of due diligence for monitoring the battery supply chain, the EESC calls for full transparency in the implementation of this monitoring system.

1.7. Recycling, refurbishing and re-use make it possible to secure the upstream value chain. It is essential to support research and development on ecodesign. The EESC suggests that this should take the form of an ‘important project of common European interest’ (IPCEI).

1.8. With regard to the jobs and skills requirements aimed at promoting the development of a sustainable European battery industry, the EESC proposes broadening and strengthening the role of the European Centre for the Development of Vocational Training (Cedefop) and the role of the relevant European sectoral social dialogue committees in line with the just transition process integrated into the European Green Deal.

1.9. In the context of the Commission's Pact for Skills initiative and the European projects ALBATTIS, DRIVES and COSME, the EESC considers it a particular priority to frame and implement training projects on ecodesign and battery recycling, that are provided with sufficient financial resources to ensure their success, with the active involvement of the social partners and in cooperation with any national schemes or certain employment catchment areas that are directly concerned.

1.10. In line with the EU's carbon neutrality commitments, the EESC proposes rapidly introducing maximum carbon footprint thresholds for battery manufacturing and upstream material supply logistics and increasing the resources allocated by the Commission to rapidly develop and implement the tools for assessing and monitoring the carbon footprint of the battery industry.

1.11. The EESC considers it necessary to establish producer liability that is compatible with the promotion of ecodesign. In this context, it seems necessary to separate the end of life of batteries from the end of life of the devices that use them.

1.12. The EESC proposes that the concept of 'end-of-use' be introduced in addition to 'end-of-life' in order to promote the re-use, refurbishing or second life and recycling of batteries.

1.13. The provisions of the draft regulation concerning labelling should include an obligation to better inform people about the potential risks of hazardous substances other than cadmium, lead and mercury and other safety risks to allow for informed choices and better use of batteries.

2. Introduction

2.1. On 10 December 2020, the European Commission presented a proposal for a Regulation of the European Parliament and of the Council [COM(2020) 798 final 2020/0353 (COD)] concerning batteries and waste batteries, repealing Directive 2006/66/EC of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and modifying Regulation (EU) 2019/1020 of 20 June 2019 on market surveillance and compliance of products.

2.2. The proposed regulation aims to develop an EU framework covering the whole life cycle of batteries, including harmonised and more ambitious rules for batteries, components, battery waste and recycled materials.

2.3. The main objectives of this regulation are to improve the sustainability of batteries throughout their life cycle, ensuring minimum sustainability requirements for batteries placed on the EU internal market, to increase the resilience of the EU battery supply chain by promoting the circular economy, and to reduce environmental and social impacts at all stages of the life cycle of batteries.

2.4. This includes encouraging the production of high quality and efficient batteries and placing them on the EU market, enhancing and exploiting the potential of EU primary and secondary battery raw materials, ensuring that they are efficiently and sustainably produced, and ensuring the proper functioning of secondary raw material markets and related industrial processes.

2.5. With this regulation, the Commission is committed to promoting innovation and the development and implementation of EU technical expertise.

2.6. This should make it possible, in line with the circular economy, to reduce the EU's dependence on imports of strategically important raw materials and rare earths and to implement appropriate collection and recycling of all waste batteries.

2.7. In order to reduce environmental and social impacts, the regulation should contribute to responsible sourcing, promote the efficient use of raw materials and recycled materials, reduce greenhouse gas emissions throughout the life cycle of batteries, reduce risks to human health and the quality of the environment and improve the social conditions of the communities concerned.

3. General comments

3.1. Over the next decade in Europe, battery technology will be one of the main catalysts of the green energy transition. By enabling the electrification of transport, where appropriate, and the use of renewable energy as reliable energy sources, the use of batteries should contribute to achieving the EU's objectives under the Paris Agreement on climate change.

3.2. According to Commission Vice-President Maroš Šefčovič, in view of the progress made under the European Battery Alliance (EBA) set up by the Commission in 2017, the EU should be able to meet up to 80 % of its needs within five years.

3.3. This strategic autonomy will be built together with the EBA to provide legal instruments to bring together the automotive, raw materials and chemical industries of the Member States to design and implement 100 % European value chains, with the first European battery production plants expected to come into operation in 2021 or 2022.

3.4. The EESC supports the measures set out in the regulation proposed by the Commission in terms of their capacity to cope with the many challenges posed by the rise in global battery production and consumption.

3.5. However, in line with the EU's strategic autonomy, the EESC warns that they need to be strengthened and implemented quickly in order to avoid not only an increase in the technological, industrial and energy dependence of battery users in the EU on Asian or American producers, but also the relocation of European car plants to third countries close to battery production sites, with negative economic, social and environmental consequences, as already pointed out in a previous EESC opinion ⁽¹⁾. In addition, the interests of European businesses must also be protected by making full use of all relevant EU instruments. In this respect, the EESC also wants to express its concerns about the way the Commission intends to verify and enforce the requirements regarding carbon footprint, the levels of recycled content and due diligence in the supply chain. In this respect, the EESC insists on robust compliance investigations of imported products to avoid unfair competition from abroad.

3.6. Solar panels, wind farms and batteries are crucial for our new industrial paradigm ⁽²⁾. They rely on raw materials and other materials, know-how and added value from countries mainly outside the EU. Currently only about 1 % of world production of lithium batteries is located in Europe ⁽³⁾. Alongside the development of a European stationary battery industry, with a view to efficient and secure implementation of existing and future electricity grid plans, the EESC recommends that a framework for a complementary V2G (vehicle-to-grid) approach be established at EU level.

3.7. The EESC supports the proposals for more sustainable transport and the Strategic Action Plan for Batteries aimed at narrowing the European energy gap and creating a value chain for batteries. The decarbonisation of transport and the transition to clean energy are among the core elements of the third mobility package, the European Green Deal and the Sustainable and Smart Mobility Strategy. This initiative is part of the wider ambition of the Circular Economy Action Plan ⁽⁴⁾.

3.8. The European Circular Economy Stakeholder Platform can play a role in communication on these topics ⁽⁵⁾.

3.9. An appropriate system is also needed to inform end users about the quality of batteries available on the market and enable consumers to better understand their role in the collection of battery-related waste.

⁽¹⁾ OJ C 353, 18.10.2019, p. 102.

⁽²⁾ OJ C 364, 28.10.2020, p. 108.

⁽³⁾ OJ C 282, 20.8.2019, p. 51.

⁽⁴⁾ OJ C 62, 15.2.2019, p. 254.

⁽⁵⁾ <https://circulareconomy.europa.eu/platform/en>

3.10. The best way to ensure that the batteries manufactured are 'clean' is to comply with European environmental standards and rules, as promoted, for example, by the circular economy approach going from the mines to the end of battery life. To achieve this goal, large-scale investment from industry is essential, while the Commission's role is to lay down proper boundary conditions, such as technical standards⁽⁶⁾.

3.11. The EESC supports the Commission's proposal for a regulation to consider the challenges of critical raw materials used in batteries as defined in the European Commission Communication of 3 September 2020 — *Critical raw materials resilience: charting a path towards greater security and sustainability*. The critical raw materials contained in the batteries are lithium, cobalt, natural graphite and antimony, and the two main parameters taken into account when determining criticality are economic importance and supply risk.

3.12. The EESC has already expressed support for opting for legal requirements to boost the market for secondary raw materials, especially for packaging, vehicles, construction materials and batteries⁽⁷⁾.

3.13. Due to their intermittent nature, renewable energies and their development pose a real challenge in terms of storage. Storage is a strategic issue for the European Union, in order to permanently guarantee the security of the EU's supply and the viability of the energy market, both technically and in terms of budget. The EESC points out that — alongside its advantages — energy storage can have significant financial, as well as environmental and health costs. For this reason, it calls for impact assessments to be carried out systematically, not merely to assess the competitiveness of the technologies, but also to evaluate their impact on health and the environment. The EESC also considers it important to assess the effect that these technologies have on the creation of activities and jobs. The EESC supports the need for greater harmonisation of Member States' energy storage rules. The EESC also calls for a Europe-wide public dialogue on energy (the European Energy Dialogue) to allow individuals and the whole of civil society to take ownership of the energy transition and to influence future decisions on energy storage technologies⁽⁸⁾. The quality of battery labelling should help with this.

3.14. The economic challenges are substantial: the Commission estimates that global demand for batteries will increase 14-fold by 2030 compared to its 2018 level and the EU is expected to account for 17 % of this demand. The number of lithium batteries is expected to multiply by 700 between 2020 and 2040.

3.15. To assess the impact of the implementation of the new legislation on jobs and skills needs, the regulation is based on two reference studies published by CEPS⁽⁹⁾ and RREUSE⁽¹⁰⁾ as well as the work carried out by the EBA.

3.16. The CEPS study estimates that the development of battery collection and recycling activities will have an impact on the creation of direct and indirect jobs: approximately 850 jobs with a recycling rate of 55 % and 5 500 jobs with a rate of 75 %.

3.17. On the other hand, according to the study by the organisation RREUSE, repair and reuse of batteries creates five to ten times more full-time equivalent jobs than collection and recycling, which raises the question of the political issues involved in measures that favour the collection and recycling industry over that of the repair and reuse of batteries.

3.18. Regarding the skills gap, this mainly concerns ecodesign work on batteries to maximise their sustainability and optimal use.

3.19. To improve investment in production capacity for sustainable batteries, in view of the social and environmental risks, it is necessary to bring projects related to batteries in line with the EU's taxonomy⁽¹¹⁾ for sustainable activities, taking the InvestEU programme into account.

⁽⁶⁾ OJ C 262, 25.7.2018, p. 75.

⁽⁷⁾ OJ C 364, 28.10.2020, p. 94.

⁽⁸⁾ OJ C 383, 17.11.2015, p. 19.

⁽⁹⁾ CEPS: Drabik E. and Rizos V., *Prospects for electric vehicle batteries in a circular economy*, 2018.

⁽¹⁰⁾ RREUSE: *Briefing on job creation potential in the re-use sector*, 2015.

⁽¹¹⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020.

4. Specific comments

4.1. The EESC calls for more precise and functional governance instruments and arrangements to be set out to effectively and efficiently implement all of the measures established in the new regulation.

4.2. Thus, the EESC proposes that these challenges be addressed by revising the role of the European Chemicals Agency (ECHA), located in Helsinki, which is responsible for the implementation of the European Reach Regulation (2005, revised in 2018) on chemical substances, to include the registration, assessment, monitoring and control of the new standards and rules laid down in the new regulation on battery sustainability.

4.3. The development of a sustainable battery industry must address the problem of compliance with EU occupational health and safety standards posed by the protection of workers who have contact with batteries and recyclable raw materials in industrial or vehicle batteries. The European Agency for Safety and Health at Work (EU-OSHA), located in Bilbao, has carried out expert studies on the subject that must be taken into account in order for the regulation to provide appropriate rules. The EESC therefore also proposes to strengthen the role of EU-OSHA.

4.4. Concerning the application of the duty of due diligence for monitoring the battery supply chain and for an independent audit, monitoring and control system under the auspices of the European Commission, in line with the rules laid down in the OECD's guidelines on this subject⁽¹²⁾, the EESC calls for full transparency in the implementation of this monitoring system.

4.5. With regard to the jobs and skills requirements for implementing the measures in the Regulation aimed at promoting the development of a sustainable European battery industry, the EESC proposes broadening and strengthening the role of Cedefop in this field, and the role of the relevant European sectoral social dialogue committees (on electricity, the metal industry, the chemicals industry, the extractive industries, etc.) in line with the just transition process integrated into the European Green Deal. Vocational education institutions in the Member States will have to implement similar training projects in student curricula to guarantee the availability of trained workers for a sustainable European battery industry.

4.6. As part of the European Commission's Skills Pact, the projects ALBATTIS (Alliance for Batteries Technology, Training and Skills), DRIVES (Development and Research on Innovative Vocational Educational Skills) and COSME (the multiannual European plan for the competitiveness of businesses and SMEs) have been launched. The EESC considers it a particular priority to frame and implement training projects on the new skills relating to ecodesign as well as to battery diagnostics with a view to repair, refurbishment and recycling, with the active involvement of the social partners and in cooperation with any national schemes or certain employment catchment areas that are directly concerned.

Research and innovation are needed to improve the sustainability, quality and safety of the products and processes and to reduce costs. The aim is to immediately give priority to research and development on batteries, with a holistic approach across the whole battery value chain, and significant and continuous investments over time, covering both short- and long-term research priorities.

4.7. Batteries and hydrogen will have complementary functions in the field of energy storage. The aim will be to maximise synergies between these two technological solutions.

4.8. New digital technologies should help speed up developments in the battery sector, from accelerated discovery of materials to optimising cross-sector use of battery systems to support the energy grid.

4.9. Recycling, refurbishing and re-use make it possible to secure the upstream value chain. It is essential to support research and development on ecodesign. The EESC suggests that this should take the form of an 'important project of common European interest' (IPCEI). The aim is to develop expertise to optimise the recovery of batteries by redirecting them, if possible, towards refurbishment, a second life or even better recovery of their components, and to implement processes that are optimised from an environmental point of view, guaranteeing the safety of employees and leading to an

⁽¹²⁾ OECD, 2018, *OECD Due Diligence Guidance for Responsible Business Conduct*.

economic model that helps make this activity viable in Europe. This includes managing to implement competitive industrial processes that make it possible to produce battery grade materials through recycling with greater support for companies working in an integrated and closed-loop manner.

4.10. In line with the EU's 2050 carbon neutrality commitments (with the intermediate target of a 55 % reduction in GHG by 2030), the EESC proposes rapidly introducing maximum carbon footprint thresholds (July 2027 is too late given the objectives set by the European Council on 11 December 2020) for battery manufacturing and upstream material supply logistics, and increasing the resources allocated by the Commission to rapidly develop and implement the tools for assessing and monitoring the carbon footprint of the battery industry. Priority should be given to access to strategic battery materials from (urban or natural) mines situated on the market where the batteries are manufactured and recycled. These measures will help to simplify and minimise logistics flows. With regard to the manufacturing of batteries, a major factor in their carbon footprint, the regulation should promote energy-efficient processes and favour the use of decarbonised electricity sources.

4.11. The EESC considers it necessary to establish producer liability that is compatible with the promotion of ecodesign, and in particular with an incentive to design batteries that can make it possible to retrofit, remanufacture and reuse batteries. This need relates to the second life of batteries, which should be promoted. In this context, it is necessary to separate the end of life of the batteries from the end of life of the devices, thus not relegating batteries to the status of waste when the devices that carry them reach the end of their life. When the battery or the device it is part of reaches the assumed end of its life, it will be the producer's responsibility to demonstrate that the battery should have the status of waste. This must be demonstrated by an assessment or tests carried out on the battery and by demonstrating in a document that it is technically impossible, taking into account current technologies and the industries which could be outlets for them, to reuse the battery by means of retrofit or remanufacturing operations compatible with the conditions of these markets. Thus, the concept of 'end-of-use' should be introduced in addition to 'end-of-life' in order to promote the re-use, refurbishing or second life and recycling of batteries. This requires the new regulation to integrate these new stakeholders and activities.

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of the European Economic and Social Committee
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