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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

473RD PLENARY SESSION HELD ON 13 AND 14 JULY 2011

Opinion of the European Economic and Social Committee on 'The future of the labour market in Europe — in search of an effective response to demographic trends' (exploratory opinion)

(2011/C 318/01)

Rapporteur: **Mr GREIF**

In a letter dated 30 November 2010, Mikołaj Dowgielewicz, Polish State Secretary in the Ministry of Foreign Affairs, asked the European Economic and Social Committee, on behalf of the Polish presidency of the Council of the European Union, to draw up an opinion on:

The future of the labour market in Europe — in search of an effective response to demographic trends.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion with 120 votes in favour and 11 abstentions.

1. Conclusions

1.1 In this opinion, the EESC focuses on the following employment and labour market issues:

- a) systematic use of existing employment potential in all age categories as the basis for meeting demographic challenges;
- b) opportunities and needs in relation to making greater use of older people's employment potential, as well as the growing importance of the 'silver generation' for the economy as a whole;
- c) key aspects of the changes needed to create work that accommodates older people.

targeted growth policy and by increasing the number of quality jobs with compulsory social security contributions.

— Efforts to increase employment levels of older people based mainly on changes to pension systems, which result in less favourable terms for accessing schemes and for entitlements, in particular proposals to raise the statutory retirement age, are wide of the mark.

— Trends in the economic dependency ratio (the ratio of benefit recipients to working population) are far more important than demographic ratios (relationship between the number of older people and the number of people of working age) in determining future funding requirements for pension provision.

— If it proves possible over the coming decades to significantly improve the labour market integration of people of working age across the EU, then the increase in economic dependency can be contained.

1.2 By far the most effective strategy for managing population ageing in Europe is to make full use of available employment potential. This can only be achieved through a

1.3 Making full use of existing employment potential requires broad implementation of policies that promote participation. These should include making working conditions favourable for older people, expanding education and training, creating high-quality and productive jobs, ensuring efficient social security systems and adopting extensive measures for reconciling work and family life.

1.4 Demographic change also provides opportunities for the economy and employment. On the one hand, older people are becoming increasingly important as consumers, which creates employment opportunities for other age groups too. On the other hand, an ageing society also provides considerable employment potential on the supply side.

— The number and quality of jobs arising from older people's economic potential will very much depend on how active service-provision policies shape the 'silver economy'.

— Particularly in the health and care sector, but also in other sectors, it will be important to seize the opportunity of rising demand by offering employment with good conditions and fair pay, and by modernising and professionalising skills profiles, etc.

1.5 If the retirement age is to be raised, then it is necessary to ensure that people can work longer. This means creating jobs and designing them so that people can work until the statutory retirement age. This will require systematic reform to develop work that accommodates older people.

— It is not only a question of adapting jobs specifically to older workers, but also of organising work to accommodate ageing at every stage of a person's career.

— This requires a package of measures to ensure that people in all age categories really have a chance of finding employment and remaining in work over the longer term.

— Working conditions and the working environment must be adapted to accommodate workers of quite different ages. It is essential to combat discrimination and negative value judgments against older workers.

— A key element of all measures should be responsibility on the part of public authorities and companies, and individual willingness to work for longer, which also requires a positive attitude to lifelong learning and preventive health care.

1.6 The world of work must be radically adapted, with the social partners playing a key role at every level. In point 6.5 of this opinion the EESC presents a package of specific measures to promote work that accommodates older people. Obviously this should not put more pressure on older people or result in distress for people who are no longer capable of working.

2. Introduction

2.1 The EESC has already commented on demographic trends in numerous opinions, stressing that the labour market challenges associated with an ageing society call for integrated strategies. In those opinions, the EESC looked at the labour market situation of older people in various contexts, and at opportunities and needs in relation to making greater use of the employment potential of older people and other priority categories on the job market ⁽¹⁾.

2.2 As far as the implications of demographic trends for pensions are concerned, the EESC recently stated clearly that the frequently advocated move to funded pension schemes is not an appropriate response to an ageing society ⁽²⁾. This reduces neither costs nor risks. It does not achieve any cost savings, but generally increases costs or at best shifts the cost burden; and it does nothing to enhance security but creates dependency on capital markets and thus considerably increased risks for pensions. The EESC has also remained very sceptical about how raising the legal retirement age would help to address demographic challenges. It is far more important to bring actual retirement more into line with the current statutory retirement age.

2.3 In view of the demographic changes forecast (a standstill or decline in the number of people of working age), the EESC has also stated that a targeted growth policy and increase in high-quality jobs requiring social security contributions are the basis for addressing the challenges of an ageing society. This applies for both older and younger age categories. It will also determine whether pension provision can be safeguarded sustainably. Full employment and good incomes thus represent the best way of guaranteeing the pensions system.

2.4 The EESC has repeatedly emphasised the need here to draw on all unutilised employment potential (women with children, young people, school drop-outs, underskilled workers, people with disabilities, people with health problems, etc.), which includes mobilising the potential of older people.

⁽¹⁾ See EESC opinions on: *The situation of ageing workers* (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14120>), *Employment of priority categories (Lisbon strategy)* (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14141>), and *Strategies for extending the age of exit from the labour market* (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14156>).

⁽²⁾ See EESC opinion on the *Green Paper – Towards adequate, sustainable and safe European pension systems* (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14892>).

The EESC has also noted with regret that despite a significant rise in employment over the past ten years the number of older people in work has remained well below the targets set by the EU.

2.5 The EESC has also looked at spheres quite outside the labour market that are relevant to demographic trends in European societies (e.g. family policy and birth rates, migration and integration, intergenerational relations, etc.)⁽³⁾. This exploratory opinion does not consider these issues specifically. The aim is rather to address the following aspects of employment and labour market policy, in response to the request of the future Polish presidency of the Council:

- a) systematic use of existing employment potential in all age categories in an inclusive labour market;
- b) opportunities and needs in relation to making greater use of older people's employment potential, as well as the growing importance of the 'silver generation' for the economy as a whole;
- c) key aspects of the changes needed to create work that accommodates older people.

2.6 The EESC believes that while the implementation of the policy package set out in this opinion is mainly the responsibility of EU Member States, they may also benefit from cooperation at European level. Therefore, the EESC calls on the Member States to strengthen cooperation between the European Commission Group of Experts on Demographic Issues, the Employment Committee, and the Social Protection Committee, to ensure that both committees continuously benefit in their work from expertise on demographic trends, from analyses, and from national best practices in effectively integrating persons of all ages - and older persons in particular - into the labour market.

3. Better labour market integration: a key response to population ageing

3.1 The number of older people in the population is set to increase substantially over the coming decades in all the EU Member States. At the same time, a reduction is anticipated in the average number of people of working age in the EU. These factors combined mean that a substantial increase can be expected in the **demographic dependency ratio**⁽⁴⁾, which according to Eurostat will approximately double - from 26 % to 50 % - EU-wide by 2050.

⁽³⁾ See EESC opinion on *The role of family policy in relation to demographic change with a view to sharing best practices among Member States* (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions14900>).

⁽⁴⁾ The ratio of the number of people over 65 to the number of people of working age (15 to 64).

3.2 This large rise in the proportion of older people in the population is often unthinkingly equated with a corresponding increase in the burden on social security systems, to reach the conclusion that existing pension schemes will not be viable in the future. But demographic ratios alone say little about hard economic facts. The key factor in financing the social security systems is not the demographic dependency ratio, but rather the **economic dependency ratio**, i.e. the number of pensioners, people receiving incapacity benefit and unemployed as a proportion of the number of employed people financing transfers through their contributions and taxes. The growth in aggregate labour productivity is another key factor, making it possible to increase the size of the 'cake' to be shared between those in work and those not in work.

3.3 The misleading use of the demographic dependency ratio and frequent conflation of the number of people of working age and the number of people in employment does not reflect the actual situation and directs attention away from approaches that address the real issue. In fact, the economic dependency ratio is currently twice as high as the demographic ratio of people aged 65 and over to people of working age. The main reason for this is that by no means all people of working age have a job:

- over 23 million people in the EU are currently unemployed;
- many people of working age are already retired, mainly for health reasons;
- others are not integrated in the labour market for other reasons (training, care commitments, stay-at-home parents, etc.);
- there are also many cases of people with disabilities experiencing barriers to labour market participation, including discrimination and lack of accommodation to their needs.

3.4 The basic idea behind the economic dependency ratio is that it is not just age, but above all labour market trends that must be considered the key criteria in assessing the effects of demographic change in a country⁽⁵⁾. In this context, the EESC believes that it is essential to highlight more clearly the relationship between developments in the labour market and trends in the economic dependency ratio in order to find the right solutions to demographic challenges.

⁽⁵⁾ This association can be demonstrated using the economic dependency ratio calculator of the Vienna Chamber of Labour (AK-Wien): the ratio calculated in this model between the number of pensioners and unemployed on the one hand and the number of people in work on the other (economic dependency ratio) graphically illustrates the considerable implications of different labour market scenarios (e.g. employment rates) for demographic challenges. By considering real economic determinants, this gives a much truer view than does the ratio between the over-65 and 16-64 age brackets (demographic dependency ratio) alone.

3.5 Even if population ageing happens to the extent currently forecast, economic dependency trends will vary widely depending on labour market trends. Thus if it proves possible to substantially increase the number of people of working age in the working population EU-wide over the coming decades (bringing the employment level up to that of the current best-performing Member States), the increase in the economic dependency ratio will remain manageable, despite the notable ageing of society ⁽⁶⁾.

3.6 Thus the European Commission also noted some years ago that ultimately age was a much less relevant criterion in meeting demographic challenges than the actual employment status of those of working age:

'The active population is in fact much smaller than the age group 15-64. [...] This leaves considerable scope for increased employment in most Member States and, consequently, an opportunity for achieving a much more favourable balance between the population in employment and retired older people. [...] This illustrates the importance of raising employment levels in the EU. It is arguably the most effective strategy with which countries can prepare for population ageing (7)'.

3.7 In view of population ageing in Europe, the Commission also feels that systematically drawing on existing employment potential is by far the most effective strategy. Obviously it is also essential to further raise labour productivity in order to ensure improving living standards. Taking both requirements together, it becomes clear that the main response to the demographic challenge must be a targeted growth policy and increase in employment levels. The available pool of labour in the majority of the EU Member States is broadly sufficient. The main priority is to adequately encourage and support labour market integration.

3.8 However, the need to draw on existing employment potential pertains not just to older people, but to all age groups. Strenuous efforts should be made to improve the employment opportunities of all categories of disadvantaged people. The EESC has pointed out a number of times that managing demographic change requires a broad-based approach addressing a range of economic, social and political factors, which may include legal immigration as part of the response ⁽⁸⁾.

⁽⁶⁾ In Austria's case the demographic dependency ratio in 2008 was 25 %, compared with an economic dependency ratio of 61 %. It was forecast that by 2050, extrapolating from labour market conditions (participation rate) in Denmark, there would be a moderate increase in the economic dependency ratio, from 61 % in 2008 to 72 % in 2050, and a virtual doubling of the demographic dependency ratio, to 48 %.

⁽⁷⁾ Demography Report 2008 (SEC(2008) 2911, p.133).

⁽⁸⁾ See for example the EESC opinion on *Legal immigration in the context of demographic challenges* (rapporteur: Pariza Castaños) (<http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14361>).

3.9 It is clear to the EESC that making full use of existing employment potential means systematically pursuing policies and business practices that promote participation, so as to:

- prevent unemployment and exclusion from the labour market, particularly of older people, from arising during recessions (through appropriate anti-cyclical demand management);
- increase and improve opportunities to enter the labour market and job prospects for young people and those with poorer labour market prospects;
- guarantee comprehensive training, including continuing professional development (e.g. through a statutory right to training leave);
- reduce incapacity rates by offering high-quality company and inter-company health and employee protection, and comprehensive measures to promote health, sickness prevention and rehabilitation;
- break down barriers to employment for people with disabilities through more inclusive work places, e.g. through physical accessibility, accessibility of information technology and flexible working schemes, with the involvement of public funding where this is necessary;
- substantially step up efforts to support reconciliation of work and family life and to achieve a fairer sharing between partners of family obligations.

3.10 The European social partners concluded an autonomous agreement in March 2010 containing both proposals for measures addressed to the national social partners and recommendations for national authorities ⁽⁹⁾.

3.11 But this also means raising the participation rate of older people in the labour market by opening up and improving employment opportunities and systematically restructuring the market to create work that better accommodates older people. Obviously this should not put more pressure on older people or result in distress for people who are no longer capable of working. Retirement is a right enshrined in ILO conventions ⁽¹⁰⁾, and pensions should enable the retired to enjoy a decent quality of life.

⁽⁹⁾ European social partners: 'Framework Agreement on Inclusive Labour Markets', March 2010 (see related documents at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=744&furtherNews=yes>).

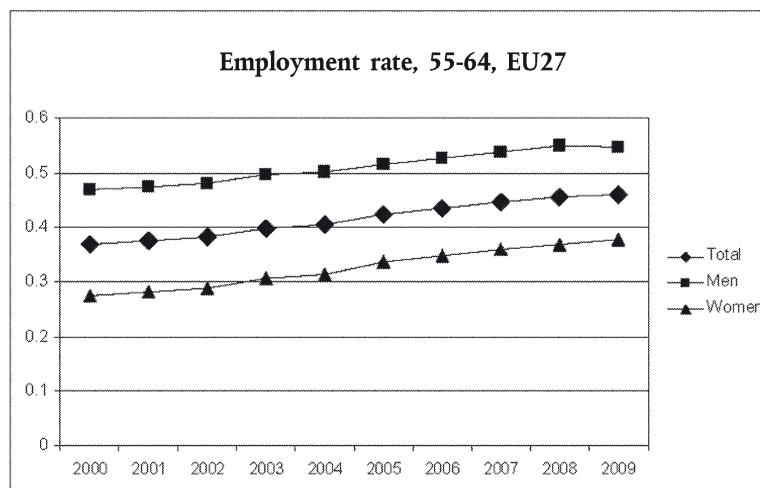
⁽¹⁰⁾ Convention C128 concerning invalidity, old-age and survivors' benefits mentions 65 as the age at which working life ends.

4. Older people in the EU labour market: current state of play

4.1 The employment potential of older workers (55-64 age bracket) continues to be underexploited throughout the EU. Figure 1 shows that considerable progress was made from a low starting point over the Lisbon strategy period. Employment rates of older workers rose by slightly less than 10 percentage points.

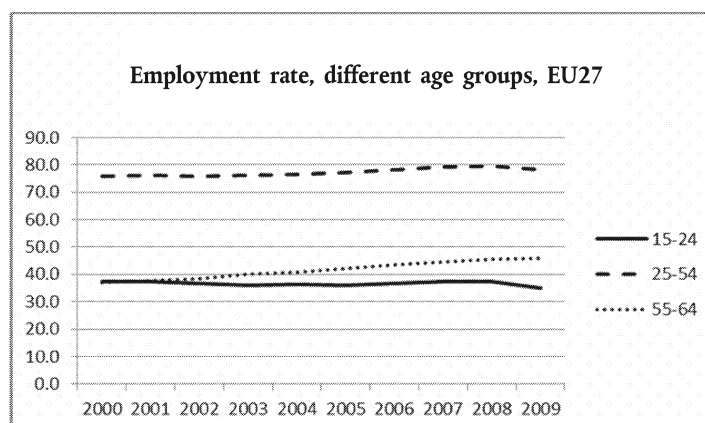
4.2 However, this fell well short of the target set (50 % by 2010). There was a slightly bigger improvement for women than for men. However, there was still a considerable gap between the sexes: even at the end of the period, scarcely more than one third of women aged between 55 and 64 were in employment (see Figure 1).

Figure 1:



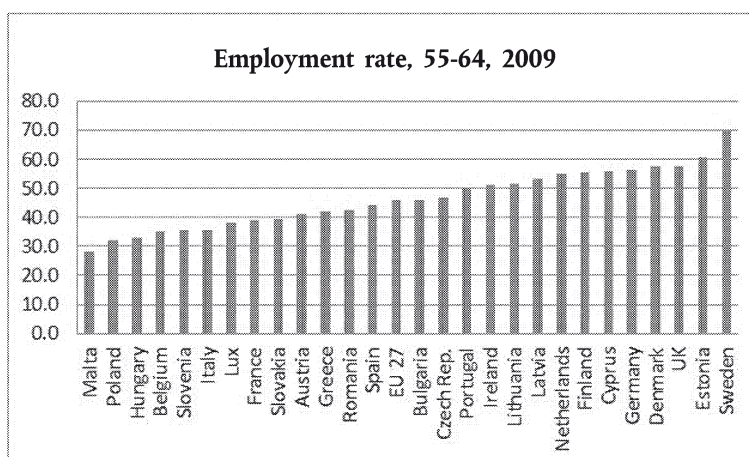
4.3 A comparison of employment trends in other age groups is also revealing. The number of older people in employment rises from the same level, whereas the number of young people in employment falls (see Figure 2). This is due mainly to the increasing duration of education. However, during the economic crisis year 2009 it was youth employment that fell dramatically. This marks a change compared with previous crises, which were 'overcome' primarily at the expense of older workers, underscoring the fact that problems in one sector of the labour market (in this case older workers) should not be resolved at the expense of other categories (young people).

Figure 2:



4.4 Figure 3 shows wide differences between the EU Member States: in Sweden, 70 % of older people are employed (equivalent to the Lisbon target for total employment). In other countries only around one third of people aged 55 to 64 are in employment. The strong performance of the three Nordic countries (Sweden, Denmark and Finland) should be highlighted. Otherwise, no correlation can be discerned between good performance and the traditional welfare state model in Europe. It seems that high rates of employment of older people are compatible with different institutional structures. In any event, the differences outlined give an idea of the level of employment potential that may currently be lying untapped in Europe.

Figure 3:



4.5 At first glance, the unemployment picture for older people does not seem to be worse than the average for the population as whole. The unemployment rate among older workers is much lower than the EU average for all workers and in many individual countries somewhat lower. But this only stands in contrast to the shockingly high youth unemployment levels. It should be noted, however, that these figures also reflect the fact that many older people who are not in work, but are fit for work, are not registered as unemployed but rather under various 'support systems'.

4.6 Nevertheless, it older people face a serious risk of long-term unemployment. That risk rises sharply with age. When older people lose their jobs they often remain unemployed until the end of their working lives. While one quarter of younger unemployed people have been without work for more than a year, this proportion increases with age: the rate for older people (55-64 age bracket) stands at around 50 %.

5. Utilising the employment potential of an ageing society: work for older people and work done by older people

5.1 Demographic change also provides opportunities for the economy and employment. On the one hand, older people are becoming more important as consumers, which creates employment opportunities for other age groups too. On the other hand, an ageing society also provides considerable employment potential on the supply side. In both cases the natural, market-led processes need to be politically and institutionally supported and steered.

5.2 Societies in which people live longer offer broad opportunities for developing new products and services. The 'silver market' has potential benefits for numerous sectors, from construction and housing to quality-of-life services (culture, leisure, tourism, sport, media, telecommunications) and health and social services.

5.3 Young and old people have different consumption and savings patterns. The shift in demand within society that this

represents will also have an impact on the future structure of production and employment. Demographic change can be expected to reinforce the already pronounced trend towards the development of a service economy. In addition to other sectors, health and care in particular will grow disproportionately. These sectoral changes will overlap with those happening for other reasons (e.g. the 'green transition'). To some extent the market will adapt to the shift in demand, but there is still a role for policy action to shape and direct these changes, especially a pro-active labour market policy, e.g. in training, information and employment services provided by labour market institutions.

5.4 The number and quality of jobs arising from older people's economic potential will very much depend on how active service-provision policies shape the 'silver economy'. Particularly in health and care, but also in the tourism and leisure sectors, it will be important to seize the opportunity of rising demand by offering employment with decent conditions and fair pay, and modernising and professionalising skills profiles. To encourage more people to choose careers in the health, social services and care sectors, employment must be made more attractive over the whole career span.

5.5 Professionalised social services can also be a means of achieving ambitious equality goals. An extensive range of social services (childcare places and care provision) helps to reduce the burden on carers (usually women) and enables their skills to be put to full use on the labour market.

5.6 Investment in social services helps not just to create new jobs, but also to revitalise regional economies. Ensuring broad and affordable access to high-quality services opens up further potential for employment. Initiatives in the non-profit sector, especially the social economy, have a particular role to play here. Local authorities are of key importance in this context, since they not only bear the main responsibility for social

services, but are also most familiar with local needs and conditions. The main issue is that most municipalities increasingly lack the financial resources to provide the necessary services.

5.7 On the supply side, it needs to be recognised that older and younger workers are not interchangeable: whereas younger workers tend to learn in a more flexible way, older workers offer more experience. Even if individual productivity decreases in certain respects (e.g. physical performance), this can be partially offset by changes in work organisation, appropriate further training, preventive healthcare measures and more effective deployment of workplace technologies.

5.8 The sectoral shift towards services may even improve the position of older people, since in many spheres physical effort is tending to become less important, while social skills are becoming more important. Companies should therefore not invest only in younger workers. The productivity of a business is not simply the sum of the productivity of each individual worker; maintaining the accumulated know-how based on in-house knowledge management and organisational structure is often more important than individual productivity. Efforts to make consulting, mentoring and coaching more professional are important here. The ultimate aim is that companies should at an early stage take account of demographic change in their human resources development, and optimally combine the strengths of workers of different age categories.

6. Adapting the workplace to accommodate older workers

6.1 If the retirement age is to be raised, then it is necessary to ensure that people can work longer. This means creating and designing jobs so as to ensure that people can more often work up to the statutory retirement age. It is not only a question of creating and adapting jobs specifically for older workers, but above all of organising work over the whole career span so as to avert risks and negative health effects early on. This benefits workers at every stage of their lives.

6.2 Although obviously it is important for workers themselves also to take responsibility for maintaining their own employability, it should be noted that key reasons for early retirement include health problems caused by physically and mentally demanding work, high work intensity, laying-off of older workers, as well as a lack of continuing training and dearth of (re-)employment opportunities. In addition, new forms of work organisation are increasingly limiting older people's options to continue working for the same firm in less demanding areas.

6.3 However, the employment rate of older people cannot be increased just by keeping them healthy and fit for work and making their labour attractive to employers. The actual jobs

available for older people must become more attractive. Thus job quality plays a key role in whether older workers return to the labour market or stay there.

6.4 Only a considered 'active ageing' policy, including broad opportunities to take part in further training, can bring about a sustained increase in the employment rates of older people. The main question here is what must be done to give older people a real chance of finding a job and remaining in it longer.

6.5 The EESC believes that systematic changes are needed to make working conditions favourable for older people, based on a package of measures including in particular:

- incentives for companies to create jobs that accommodate older workers and to stabilise employment among older workers (through measures to prevent older workers from being laid off early, as well as innovative schemes to keep them on in less demanding areas);
- a pro-active labour market policy to reintegrate older unemployed people into the labour market and reduce the risk of long-term unemployment; this also means allocating the necessary resources for a pro-active labour market policy;
- providing a full range of advisory and support services for job-seekers, as well as tailor-made placement support (e.g. state-subsidised employment, transitional support, non-profit-making social projects) and preventive and rehabilitation measures to support long-term reintegration;
- measures to ensure that people are physically and mentally able to remain in work longer, above all reducing performance pressure in companies and making working conditions favourable for older people (e.g. through incentives to extend employee and health protection, promoting in-house health programmes), while bearing in mind that the demanding nature of work may impose limitations here;
- measures to increase the inclusiveness of workplaces for older people with disabilities, e.g. through adaptations which can increase the physical accessibility and usability of information technology;
- measures to increase people's willingness to work for longer, which must include a positive attitude to lifelong learning and preventive healthcare;

- developing health-enhancing working time models that are negotiated between the social partners at sectoral and company level and apply over the entire career span (e.g. sabbaticals, training leave);
 - measures introduced by companies, through collective agreements or by law to achieve more participation of older people in continuing training (e.g. incentives to remedy the low level of participation in in-service training, especially among underskilled workers, provision of the necessary funding for a campaign to improve skills among the over-40s, and improving the legal framework for training leave);
 - awareness-raising measures in support of older workers (acknowledging their experience and the transfer to younger workers of the professional skills built up over their working lives);
 - broad-based social awareness-raising campaigns to combat stereotyping and prejudice against older workers and make 'ageing' a positive concept, bearing in mind the importance of combating age-based discrimination and negative value judgments about older workers;
 - advice and support for companies, particularly SMEs, in forward-looking human resource management and developing work organisation so as to accommodate older workers;
 - creating appropriate incentives for recruiting older people and keeping them in employment, without distorting competition;
 - creating socially acceptable incentives to stay in work longer, within the framework of legal provisions on the statutory retirement age, for all those who can find work and are fit to work;
 - where possible or desirable, developing innovative and attractive models to facilitate the transition from work to retirement within statutory pension systems (e.g. expansion of part-time options for older people).
- 6.6 Encouraging a longer working life calls for sharing of responsibility and efforts on the part of government, employers and workers themselves. This responsibility must be shouldered by all those involved. The social partners play an important role in all these efforts. Successful models in the Nordic countries and other Member States demonstrate that it is possible to create a functional labour market for older people with very stable employment and a high level of work capacity and activity on the basis of collective agreements or at company level with the involvement of the social partners and in a socially acceptable way.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'Enhancing digital literacy, e-skills and e-inclusion' (exploratory opinion)

(2011/C 318/02)

Rapporteur: **Ms BATUT**

On 24 January 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

Enhancing digital literacy, e-skills and e-inclusion

(exploratory opinion).

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion with 136 votes in favour and 2 abstentions.

1. Conclusions and recommendations

1.1 Unequal ICT access is primarily an extension of financial and social inequalities; there is an urgent need to develop growth and employment in order to secure a successful exit from the crisis.

1.2 For ALL citizens, having a critical grasp of the contents of all media tools means 1) being online; 2) knowing how to use the equipment; 3) being at home with technology; 4) being trained to use it; 5) being part of the e-society.

1.3 E-inclusion must follow a global approach and ensure everyone's independence, regardless of their position in society. The EESC believes that the EU and the Member States should guarantee digital accessibility through lifelong e-skills training for professional and/or personal reasons, and also for citizenship.

1.4 Access to infrastructure and tools must be seen as a fundamental right.

1.5 The EESC would like the EU, national and local authorities to use existing dialogue structures to meet with civil society representatives in order to identify real needs more accurately.

1.6 The quality, innovation, transparency and accessibility that can be expected from services of general interest (SGI) and the authorities in Europe and the Member States are the very foundations of e-inclusion.

1.7 Because businesses are broadly in touch with the digital world ⁽¹⁾ while 30 % of households had yet to be connected to the internet in 2010 ⁽²⁾, the EESC believes that the EU's role

must be to provide impetus and guidance, giving people equal opportunities, and that the EU could, without delay, introduce a harmonised approach for Member States covering protection to make practices and data secure. The EESC advocates coordination between the EU and its Member States to support the e-inclusion of:

— older people, by:

— making the European Year of Active Ageing (2012) an opportunity for the EU to enhance the role that ICT plays in linking generations, in order to allow the 'not so old' to stay active, and the old to avoid isolation and live in comfort;

— helping older people develop e-skills through local training and support;

— having accessible targets, equipment and software to generate interest and then need;

— developing local projects in the area of e-health, restoring collective memory and independence, for example at neighbourhood level, with a view to re-establishing social links;

— people with disabilities, by:

— enabling them to participate in society on a non-discriminatory basis by using ICT whose accessibility and user-friendliness is guaranteed;

— developing – through the Commission – a Design for All requirement vis-à-vis industry, designers and manufacturers, imposing an accessibility clause covering equipment and software in import markets, and adopting measures requiring the dissemination of IT in homes, on public and private transport, in construction, etc.;

⁽¹⁾ OJ C 116, 20.4.2001, p. 30; OJ C 77, 31.3.2009, p.60 and p. 63; OJ C 175, 28.7.2009, p. 92; OJ C 317, 23.12.2009, p. 84; OJ C 128, 18.5.2010, p. 69; OJ C 255, 22.9.2010, p. 116; OJ C 48, 15.2.2011, p. 72; OJ C 54, 19.2.2011, p. 58; OJ C 107, 6.4.2011, p. 44 and p. 58; OJ C 218, 23.7.2011, p. 130.

⁽²⁾ See Eurostat-STAT10/193, 14.12.2010.

- low-income earners, by:
 - supporting the production of accessible software, adapted to the needs of minority groups;
 - supporting free public internet services at urban hot spots and in deprived urban areas;
 - giving them the opportunity to learn and acquire skills for a job through e-learning;
 - facilitating use of open data 2.0 and open sources;
 - the educationally disadvantaged, by:
 - providing access to public funds for centres offering 'on-site facilitation' so that users are not left to tackle the computer alone;
 - requiring operators to provide affordable telephone and media access as a training support;
 - promoting the fun side of ICT to avoid discouragement: 'serious games', software with skilling content, use of social networks; and
 - providing support for local operators;
 - minorities, by:
 - supporting tailored multilingual online projects (e.g. health education, e-health, e-learning); and
 - giving them access to free public internet centres, e-learning and schooling.
- 1.8 In general, the EESC sees the need:
- to mainstream e-inclusion across all policies at EU and Member State level;
 - to complete network infrastructure quickly (isolated regions, broad band etc.);
 - to base public European, national and local ICT development policies on inclusion and non-discrimination from the outset;
 - to encourage use of equipment and software which is just out of date;
 - to provide resources to ensure e-inclusion of women;
- 1.8.1 to finance actions by:
- promoting the funding of universal access through national public subsidies and EU funds;
 - developing investment in public-oriented services (ESF, ERDF), securing the R&D budget at 3 % of European GDP, and reducing public budget cuts;
 - allocating a reserve fund to this vital challenge, to preserve knowledge and mitigate the effects of crises;
 - including the digital challenge as a priority (ESF) in local authority programmes and providing civil society organisations with the resources to support e-excluded groups;
 - adapting the additionality principle in respect of Structural Funds allocated to e-inclusion;
 - using, if need be, compulsory loans for major infrastructure work;
 - promoting PPPs (public-private partnerships) in an appropriate European framework;
 - promoting the principle of a Financial Transactions Tax (FTT) and allocating part of it to e-inclusion;
 - launching negotiations between 'commercial gaming' businesses and public operators (education), with a view to re-using their technologies once they have become outdated at a secondary level, at a lower cost;
 - promoting the development of microfinance for training projects;
 - promoting systems that give people direct assistance in accessing basic tools (hardware and software); and
 - evaluating progress in ICT over the last five years (jobs created) in order to define real needs with operators;
- 1.8.2 to facilitate the acquisition of skills by:
- creating a sectoral advisory service in order to establish a European reference framework;
 - setting up a European reference framework for training and new ICT or ICT-related careers and defining the criteria for granting diplomas recognised throughout Europe;
 - creating a multilingual European learning module for rapid acquisition of performance-enhancing skills and knowledge;

— using this European framework to raise the profile and salaries of ICT jobs and developing e-learning to take the profession forward effectively (updating IT jobs) in order to increase the number of IT practitioners and their upskilling;

— introducing an 'e-economy passport' as a requirement for setting up businesses;

1.8.3 to provide internet security for vulnerable groups by:

— defining basic internet content, and not leaving this entirely to the market (EU and Member States);

— defining 'anti-pollution' rules for websites, teaching cyber-security in schools;

— ensuring that all websites contain features which can help remind people about basic security precautions;

— ensuring that network user rights are established and respected; and to achieve this;

— establishing a digital users' code of rights which complies with the principles of the Charter of Fundamental Rights and Article 9 of the TFEU, and which at least ensures respect for their freedom of expression and information, the right to personal data protection, the right to be forgotten, and the right to see minors protected;

1.8.4 to provide access to jobs by:

— promoting the development of social and civil dialogue with the many existing structures on all the points raised, in order to improve awareness of needs and to transform e-skills into jobs and opportunities for economic, social and personal development; and

— promoting e-skills training for business employees so that they can work for longer and help increase their company's productivity.

1.8.5 In order to achieve inclusive education for everyone, the EESC urges the EU to:

— promote equal access to inclusive education in all schools;

— promote future e-inclusion from pre-school age, without discrimination;

— promote e-training for parents and teachers, and restructure working conditions for the latter;

— promote computer activities – obviously teacher-supervised - for children, especially those who are failing at school, particularly 'fun' activities ⁽³⁾, aimed at the controlled use

of images which spurs on new forms of learning and expression, particularly 'fun' activities (using smart phones in lessons, 'serious games', tablets, e-books, social networks, etc.);

— promote labour market access for everyone by providing sound, basic general and IT training.

2. Background

2.1 The Europe 2020 strategy's objective is to use smart, sustainable and inclusive growth to emerge from the crisis. The *Digital Agenda for Europe* ⁽⁴⁾ pinpoints as obstacles the lack of digital skills, the risk of low trust in networks, cybercrime, and missed opportunities in addressing societal challenges.

2.2 The EESC considers this objective to be absolutely vital. No citizen should suffer e-exclusion, although e-inclusion should first of all open the way to personal development, participation in social life and independence ⁽⁵⁾.

3. Definitions

3.1 E-inclusion

According to the Riga Declaration ⁽⁶⁾, e-inclusion concerns both ICT and the use of ICT to achieve wider inclusion objectives through the participation of all individuals and local authorities in all aspects of the Information Society.

3.2 The beneficiaries of the measures

People can be subdivided into categories depending on the support allocated to them. Nevertheless, e-inclusion must be a global measure. From a human perspective e-inclusion starts by avoiding stigmatising people by pigeon-holing them; from a social perspective it involves taking a collective approach; and from an industrial and commercial perspective it means applying the 'Design for All' concept, from development to end-of-use.

3.3 Digital literacy

By default, digital literacy is an essential tool – the only way of accessing what used to be culture in the wider sense, viewed as the link between people. Without this tool there is less opportunity to approach other people or gain new skills.

Culture (literacy), skills and inclusion cannot be dissociated and require a holistic, non-discriminatory approach to e-inclusion covering the whole of society.

⁽⁴⁾ COM(2010) 245 final/2, OJ C 54, 19.2.2011.

⁽⁵⁾ EU Ministerial Declaration, Malmö, Sweden, 18 November 2009.

⁽⁶⁾ EU Ministerial Declaration on *ICT for an inclusive society*, Riga, Latvia, 11 June 2006, point 4.

⁽³⁾ 'Edutainment'.

3.3.1 Being included means meeting the following pre-conditions:

- being online: e-accessibility is a key aspect;
- knowing how to use the equipment;
- feeling at home with technology: being trained, having e-skills that enable people to use all Mac, Windows, Linux, internet and mobile phone software, etc.;
- mastering the information needed for the critical assessment of all media support content, with a view to active citizenship.

3.3.2 The digitally excluded include older people, people with disabilities, some carers, and those with low incomes or standards of education, with various nuances. The 'older' population includes a percentage of educated people who have been using the internet since its inception, and in some Member States is an effective economic driver. The EESC believes that we need to ensure everyone's independence via digital technology, irrespective of their position in society, through targeted approaches combined with a broad-spectrum approach, which would be more economical and integrative.

3.3.3 The EESC holds the view that e-inclusion is far from stable or linear. Technology is developing continually, job insecurity and flexibility are growing, and careers are more fragmented. E-exclusion is often linked to superimposed causes. Training and updating skills are basic aspects of e-inclusion.

3.3.4 Businesses that have financial difficulties and lack the skills and/or time are affected. The EESC believes that e-inclusion requires forward planning in order to ensure that ICT developments keep pace as far as possible with trends in the causes of exclusion.

3.4 *E-skills for professionals*

Lifelong training is vital. Having experienced a strong uptake by the younger generations, IT qualifications⁽⁷⁾ suffer from a low profile and less attractive salaries. There is an urgent need to motivate future professionals with enhanced status, salaries and working conditions in order to address the shortfall in qualified workers and forms of adequate training and to include people in difficulty; ICT professionals bring users in their wake.

⁽⁷⁾ According to INSEAD, *The Business School for the World*, quoted by DG Enterprise, Mr Richier, hearing of 28.3.2011.

4. The means

4.1 *Universal access*

4.1.1 In 2002, in order to eliminate inequalities in ICT access and to promote e-inclusion, the EU introduced a universal service and users' rights relating to electronic communications networks and services⁽⁸⁾. Requesting an online public communications network connection implies having enough bandwidth for functional, affordable internet access. This has nothing to do with eliminating the market or fair competition, but with balancing economic objectives with meeting urgent social needs. As the EESC has frequently reiterated, the market is not an end in itself – its purpose is to improve the lives of citizens.

4.1.2 The quality, innovation, transparency and accessibility that can be expected of SGI in Europe and the Member States are the very foundations of e-inclusion. This is a matter, therefore, of social effectiveness over the long haul, a key element of 'performance' in terms of inclusion. That is the problem with this e-inclusion challenge: while, on the one hand, the social effectiveness of SGI and social services of general interest (SSGI), as well as long-term public initiatives, will be essential for achieving results in terms of inclusion, on the other this is a sector where it is vital to act fast. It is up to public authorities to endeavour to solve this problem.

4.2 *Universal, equal access*

4.2.1 Networks covering the whole of Europe, the development of broadband to boost high speed connections and the use of the digital dividend band⁽⁹⁾ have to be completed as soon as possible in order to guarantee universal service.

4.2.2 It can be seen that unequal access and use of ICT persist and reflect pre-existing economic and social inequalities. Those who enjoy e-inclusion are usually those who have the means to acquire the necessary logistics and skills.

5. Acquiring basic e-skills

Spreading e-literacy

Bringing the three factors, need + interest + means (financial and others) together introduces the target groups to digital literacy.

⁽⁸⁾ Directive 2002/22/EC.

⁽⁹⁾ OJ C 94, 18.4.2002; OJ C 110, 9.5.2006; OJ C 175, 27.7.2007; OJ C 224, 30.8.2008; OJ C 175, 28.7.2009; OJ C 128, 18.5.2010; OJ C 44, 11.2.2011; OJ C 54, 19.2.2011; OJ C 107, 6.4.2011, p.53.

5.1 Older people

5.1.1 Older people⁽¹⁰⁾, a growing segment of the population, use ICT the least:

- some are familiar with ICT: they need to update their skills. The EESC believes that, in order to help them reintegrate into the labour market or to stay on it, local authorities, working with businesses, through social dialogue, could offer training geared to these people;
- others have no previous ICT knowledge: they must overcome lack of interest, confidence and trust and get to grips with these tools for professional, family or social reasons. The EESC believes that it is up to technology and the 'experts' to adapt. People in this category should be offered 1) guidance, 2) user-friendly software, 3) equipment they can manage, 4) objectives which have been adapted in order to generate interest and then need, for instance through e-health projects, restoring collective memory at neighbourhood level, for example, re-establishing social links and independence.

5.1.2 ICT can be a lifeline for people who live alone. For example, providing widespread, reasonably-priced telephone/emergency notification systems triggered by simply pressing a button can be one of the key roles of social services of general interest (SSGI), saving people in difficulties. The role of online healthcare is set to grow⁽¹¹⁾; all the principles which the EESC would like to see respected as regards digital users are universal in character and apply to social and health care.

5.1.3 The European Year of Active Ageing (2012) and its innovation partnerships should be an opportunity for the EU to enhance the inclusive role played by ICT in linking generations (training), and allowing older people to avoid isolation and live in comfort.

5.2 People with disabilities

ICT can facilitate the participation of people with disabilities in society on an equal footing with others⁽¹²⁾. The issues are the same as for other groups: defining the objective, facilitating training and providing appropriate and accessible software and equipment, as well as accessible and easy-to-use machines and, in particular, intelligent transport systems⁽¹³⁾. The role played by e-literacy as a 'service of general interest' is highlighted with respect to people with disabilities. Providing support for each disability group can lead to better social inclusion. The role played by NGOs must be recognised and coordinated with that of public authorities. A universal design

approach, which to the extent possible takes the needs of all kinds of users into account, is preferable to specialised designs targeted at people with disabilities only.

5.3 Low-income groups

5.3.1 Unequal ICT access is an extension of financial and social inequalities: men/women, households/single women, towns/rural areas or islands, rich countries/less advanced countries. These must clearly be fought in order to achieve inclusion for as many people as possible.

5.3.1.1 Immigrants and members of other minorities are at an even greater disadvantage. Software is not produced that would be useful to them.

5.3.2 The EESC holds the view that setting up free public internet access at urban hot spots and access to open data 2.0 and open sources, would allow people to carry out job searches and communicate. Landlines remain useful as training supports. This is a role that the public authorities, operators and the third sector should share.

5.3.3 Access to infrastructure and tools must be seen as a fundamental right. Training and transfer of knowledge and expertise are extremely important for digital literacy at all ages and in all life situations.

5.4 Low-education groups

5.4.1 The EESC believes that people in this group need specialised support to understand the advantages of digital literacy, starting with the use of the telephone and the media.

5.4.2 Using the machine-teacher combination and starting with things that are fun avoids discouragement. The EESC believes that children who are failing at school could be helped to catch up by using smart phones, which could be seen as the new pencil. Basic skills can be taught by beginning with 'serious games', similar to brain games, for both children and adults, using software with skilling content.

5.4.3 In order to achieve e-inclusion, the EU needs a culture-enriched internet. Culture is the thing that Europeans are most likely to recognise themselves as sharing. The EU should use this cultural diversity in all Digital Agenda initiatives⁽¹⁴⁾. Digitising cultural objects can make it easier for the most disadvantaged to access knowledge that is a resource needed for social integration and personal development, particularly in a person's native language.

⁽¹⁰⁾ OJ C 44, 11.2.2011, p. 17; OJ C 77, 31.3.2009, p. 115; OJ C 74, 23.3.2005, p. 44.

⁽¹¹⁾ OJ C 317, 23. 12. 2009, p. 84; see EHTEL, European Health Telematics Association.

⁽¹²⁾ COM(2010) 636 final - United Nations Convention on the Rights of Persons with Disabilities/EU/23.12.2010.

⁽¹³⁾ OJ C 277, 17.11.2009, p. 85.

⁽¹⁴⁾ The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005 came into force on 18 March 2007; EP resolution of 5 May 2010 on a new Digital Agenda for Europe: 2015.eu.

5.5 Minorities

5.5.1 The EESC would like e-inclusion to be open to minorities, be they immigrant or non-immigrant, such as the Roma. They are not illiterate; they do not speak the language or share the culture of their host country. They do not have easy access to a computer. The women are often the least informed and at an even greater disadvantage.

5.5.2 IMI⁽¹⁵⁾, an online multilingual application that EU national authorities use to communicate easily, is an example which could serve as a basis for social applications to develop training for EU residents and citizens and thus give them access to e-learning.

5.5.3 The role of social networks could be significant, if properly controlled, for all the groups mentioned in this section. Moreover, internet cafes, which play a significant role in developing young people's interest in IT and e-skills, could be made more affordable – for example, local authorities could issue reduced-price coupons.

5.6 Businesses, too

5.6.1 SMEs can find themselves at risk of e-exclusion if ICT is not their main area of work. Lack of time to learn the skills, the weight of tradition, financial difficulties or an outdated approach to ICT management could affect the management of businesses, their process and their salaries. They may therefore be unable to benefit from cloud computing⁽¹⁶⁾, which offers IT management solutions. Since their productivity could be affected, the means to include them must be sought.

6. Developing everyone's e-skills to tackle social and societal challenges

6.1 Education and training⁽¹⁷⁾

6.1.1 Future inclusion begins at pre-school age.

Equal access to an inclusive IT education in all schools for all children – including those with disabilities, those who are isolated and those who come from disadvantaged families – would increase their independence in adulthood. Widespread, teacher-supervised use of 'serious games', tablets and e-books

and use of social networks could help include those children who have most difficulty, thanks to the new methods of learning available.

6.1.2 The qualifications and diplomas obtained and the choice of IT career path should be supported by a European reference framework for training relevant to the new IT-related careers. Some occupations are upskilled versions of old ones; others are not. An open European directory of digital skills could be established in order to define the conditions for issuing European diplomas to facilitate the mobility of those interested. The EESC believes that adopting measures that provide students with a high-quality socio-occupational status following IT studies should go some way towards stemming their disaffection with the field.

6.1.3 The European approach must be applied to all types of IT teaching at national, regional and local level, and include training of parents and teachers, whose working conditions must be reviewed.

6.2 Lifelong e-learning

6.2.1 Some of the groups concerned can be reached through targeted campaigns. For e-excluded groups, the transfer of experimental knowledge is important, and participatory methods, alongside theory, both contribute to the development of potential and provide an opportunity for integration. This is particularly important for the unemployed, workers, older people and socially excluded groups, who want to work and need to build on their employability and social skills.

6.2.2 Business actions

Obtaining an 'e-economy passport' after a standard ICT training course for the business environment could in the future be a requirement for setting up a business.

In-house ICT training for company staff should be introduced across the board by means of internal agreements, as it contributes to e-inclusion and allows staff to continue to work for longer and help increase their company's productivity.

6.2.3 Public authority actions

National and local ICT development policies must be based on inclusion and non-discrimination from the outset.

Using the Structural Funds: It is up to the authorities to define which innovative activities are important to society as a whole and can be supported in order to offer them to those concerned at the most affordable price.

⁽¹⁵⁾ IMI – COM(2011) 75 final of 21.2.2011 – Cooperation and Europe/Economic development and jobs, www.ec.europa.eu/imi-net.

⁽¹⁶⁾ **Cloud computing**: the use of IT technology to deliver products, services and management solutions in real time via the internet, either within a company (private) or externally (public) or in hybrid form. EESC opinion (TEN/452) under preparation.

⁽¹⁷⁾ e-Learning: the use of new multimedia technologies and the internet to improve the quality of learning by facilitating access to resources and services as well as remote exchanges and collaboration. (European Commission definition – e-Learning Initiative).

The EU and Member States should put forward a European framework to improve professional organisation of IT careers.

6.3 Working on content

6.3.1 The importance of content makes it impossible to leave the definition of training, education and culture to the market.

6.3.2 National public authorities should define basic content, facilitate distance learning courses and, with the EU, set the criteria for granting diplomas recognised throughout the EU. It is vital to listen to users in order to identify their real needs.

6.3.3 Adaptive multimedia content is vital to ensure a digital continuum for the user ('knowledgeable' internet), in accordance with disability access.

6.3.4 People whose languages are very seldom used outside their country are at a disadvantage when it comes to internet services. The EU and the Member States should ensure that their cultures are respected and that useful information is published in their languages.

6.3.5 The content of social networks is created by users. The tool can be used to attract anyone having difficulties with ICT, with due regard for users' rights.

7. Improving security to secure trust

A. People have to be very careful when using digital technology if they are unsure of themselves or the system⁽¹⁸⁾ and when comparative ignorance of cyber security prevents them from forearming themselves⁽¹⁹⁾. Excluded people or people experiencing e-exclusion are at even greater risk.

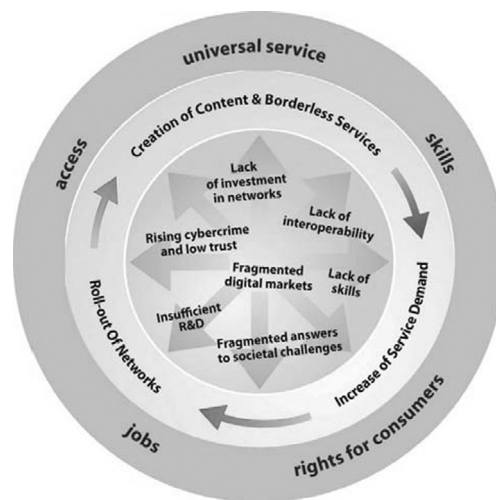
B. Using information technology changes people's and society's ways of thinking: for example, should transparency or intimacy be safeguarded? In general, any e-inclusion approach should take into account the fact that the tool itself involves a high degree of 'intrusion'⁽²⁰⁾ – authorised or unauthorised – into private life, and that if it is not used properly this could have devastating consequences for each user, especially vulnerable users. Stepping up the fight against abuse and e-crime should help bolster users' confidence.

⁽¹⁸⁾ OJ C 218, 23.7.2011, p. 130.

⁽¹⁹⁾ OJ C 107, 6.4.2011, p. 58, and COM(2010) 521 final.

⁽²⁰⁾ Alex Türk, president of the *Commission Nationale Informatique et Libertés* (National Commission for Information Technology and Freedoms), France, in 'La vie privée en péril, des citoyens sous contrôle' (Private life in peril, citizens under surveillance), published by O. Jacob, 2011; work of the Article 29 Working Party bringing together representatives of all independent national data protection authorities (Article 29, Directive of 24.10.1995).

C. A summary of challenges posed by the digital agenda and people's expectations is set out below in the schematic form of three concentric circles:



7.1 Users' rights

7.1.1 The EESC calls for measures that instil trust and provide security for all groups, the digital environment and online transactions, as provided for in the 7th Research and Development Framework Programme (RDFP7)⁽²¹⁾.

7.1.2 Ways of building features into websites which can remind users of simple precautions to take in order to protect themselves could be explored⁽²²⁾. Giving children short guides such as the European Commission's 'eYou Guide – to your rights online'⁽²³⁾ to study when they begin secondary school would play a very important part in helping young people, who are also vulnerable, to develop the instincts they need to use the internet safely.

7.1.3 The EESC believes that the public should be better informed about the role of the European Data Protection Supervisor (EDPS), as provided for under Article 16 TFEU, and of the Article 29 Working Party.

7.1.4 The EESC also believes that the dignity of users should be safeguarded through EU legislation⁽²⁴⁾ based on the principles of the Charter of Fundamental Rights in order to uphold:

- their freedom of expression and information, particularly in their native language;
- their right to protection of their private life and personal data (ID, health, etc.);

⁽²¹⁾ RDFP7 for 2007-2013 - Decision No 1982/2006/EC, 18.12.2006.

⁽²²⁾ Opinion 5/2009 of the Article 29 Working Party on online social networking, 12.6.2009, chapter 5, point 8: privacy-friendly default settings.

⁽²³⁾ www.ec.europa.eu/eyouguide.

⁽²⁴⁾ European Parliament resolution of 5 May 2010 on a new Digital Agenda for Europe: 2015.eu, point 29, '... reminds Member States that almost half of them have still not ratified the Council of Europe Convention on Cybercrime'.

— their right to be forgotten; and

— their right to see minors protected.

7.1.5 The EESC also recalls that there are already a number of national and international ⁽²⁵⁾ consumer charters that refer to the fundamental rights of digital users, with a view to these rights being guaranteed. The European Parliament has also called for one. The Committee would like discussions to be held as soon as possible with consumer organisations and the European social partners on the Code of EU Online Rights mentioned by the European Commission in its Communication on a Digital Agenda ⁽²⁶⁾.

7.2 The EP has called for a 'Fifth Freedom that enables the free circulation of content and knowledge'. The EESC believes that this freedom should ensure user security and intellectual property. Security is also required for financial and industrial data. Grids and 'cloud computing', which bring several digital operators into play at the same time, require specific methods of protection which must be made available to businesses, especially micro-businesses.

7.3 Accelerating e-government ⁽²⁷⁾ in order to facilitate administrative procedures could make them securer, especially for older people, bearing in mind that e-democracy can be inclusive but must not undermine democracy *per se*, and that its use must be subject to the principles mentioned above.

8. Creating jobs

8.1 Universal e-inclusion is supposed to increase employment and growth. The crisis, the demographic situation and rising unemployment and insecurity do not facilitate the development of skills, from either the employees' or the employers' perspective. Action against job insecurity and isolation is one of the conditions needed to allow people to obtain qualifications, especially in IT, in order to access an inclusive labour market ⁽²⁸⁾, because the gap between the qualified and unqualified is widening. It is absolutely vital for social dialogue, especially sectoral dialogue, ⁽²⁹⁾ and public policies to converge in order to increase and transform the e-skills of groups that are at a disadvantage on the labour market.

8.2 New kinds of jobs are of interest to groups who are learning IT in order to re-enter the labour market. Agencies responsible for employment in the Member States should be in a position to highlight them in the various sectors, in order to promote their recognition by the EU.

⁽²⁵⁾ DOC No: INFOSOC 37-08, March 2008 – Charter of Consumer Rights in the Digital World.

⁽²⁶⁾ COM(2010) 245 final/2, Action 4.

⁽²⁷⁾ Malmö Declaration, 2009.

⁽²⁸⁾ Framework Agreement concluded by ETUC-BUSINESSEUROPE, CEEP and UEAPME - 2010.

⁽²⁹⁾ Recommendation of the European Parliament and of the Council on the establishment of the European Qualifications Framework for lifelong learning (2008/C 111/01).

8.3 Labour inspection bodies, in all Member States, need updating.

8.4 The mainstreaming and synergy between EU measures will decide the success of e-inclusion in the EU. Most digital equipment owned by end users is imported into the EU, and Europeans are ignorant of the characteristics of its manufacture. However, from the public's point of view, accessibility depends on the technology of the equipment they have at home, especially in the case of disadvantaged groups, and especially for older people and people with disabilities. We need to promote extremely accessible design and functionality and software with adapted content as the assets of inclusive e-literacy, defined according to European approaches in compliance with international standards. We also need to include clauses in trade agreements.

8.5 This calls for investment in all areas, especially in public services. If Europeans do not do it, others will, and EU businesses will lose markets and jobs. The EU's current objective is to invest 3 % of GDP in R&D. The EESC believes that the EU urgently needs to put this into practice. All disadvantaged groups expect progress.

9. Financing the measures

9.1 The policies developed must ensure that today's e-included stay included. The budgets to be allocated to this vital challenge for the EU have to be developed over the long term, from the beginning (R&D&I) to the end of the chain (end users), with financial reserves that make it possible to smooth over the effects of crises. When national budgets no longer have room for manoeuvre as a result of cost-cutting, every additional 1 % can make a difference.

9.2 Inclusion of all e-excluded groups can be developed by creating a structured European market for appropriate support services, possibly in the form of task forces, which would have a scale effect.

9.3 Funding has to cover infrastructure for the entire territory of the EU, technological research and innovation, content, social innovation for excluded groups, e-learning, transforming skills into jobs, action by civil society and businesses, and national, regional and local authorities.

9.4 Cumulative support should remove the causes of exclusion, which are also cumulative, covering energy costs, premises, definition of content, development of suitable equipment, and definition of suitable teaching methods.

9.5 E-inclusion measures (management, measures, oversight) should be highlighted in the annual report published by the Commission and discussed with the social partners. Measures to direct the public towards e-inclusion opportunities should be widely disseminated.

9.5.1 Regional and local operators, at the frontline in terms of implementing national policies, should 1) place ICT high on their local agendas and make use of the ESF; 2) raise the awareness of leaders of social groups, regarding the digital needs of these groups; 3) raise the awareness of target groups, using local resources such as local television; 4) consult these target groups about their needs by holding meetings with organised civil society representatives.

9.5.1.1 The EESC deplores the fact that EU and national social and civil dialogue is not specifically structured around the e-society, which has a far-reaching impact on lifestyles, whereas disadvantaged groups need long-term stability, consistency, guarantees, and decentralised action.

9.6 Businesses should be able to develop through e-skills and to raise the awareness of developers and manufacturers regarding their own needs and so that consideration is given to disabilities of all kinds (Design for All, including e-accessibility).

9.7 *Financing methods*

9.7.1 The European Social Fund (ESF): For the 2014-2020 period, the Commission (Key Actions 11 & 12) intends to allocate ESF funds to Member States to meet e-inclusion objectives. The EESC considers that it is also necessary to seek all synergies between budget lines.

9.7.1.1 The EESC questions the relevance of the additionality principle for the allocation of Structural Funds when it comes to such a crucial future issue, at a time when many public entities are in serious financial difficulty, and it is no longer possible to put off the steps that have to be taken to reduce the digital divide. The EESC calls for direct allocation options to be explored.

9.7.2 In order to achieve e-inclusion, the EESC proposes that new funding methods be sought:

— between private and public operators, for ICT in general, and with 'commercial gaming' businesses (whose takings are extremely high), in order to re-use their state-of-the-art technology at a secondary level, and therefore at a lower cost;

— for e-infrastructure and other infrastructure, in the framework of the Commission's 'Europe 2020 Project Bond Initiative to fund infrastructure', if it materialises ⁽³⁰⁾;

— through participation aimed at e-learning for access providers, operators and equipment suppliers;

— by means of a European financial transaction tax (FTT) ⁽³¹⁾, part of which could go towards e-inclusion.

9.7.3 In all cases, monitoring ⁽³²⁾ the use of funds will be crucial to the effectiveness of support. The social partners will have to be involved in different types of monitoring. The ESF already has monitoring committees. PPPs, which would be possible in an appropriate European framework, could also do with new ways of monitoring the final cost for taxpayers and users, in line with rules on SGI, services of general economic interest (SGEI) and SSGL. They would only be possible in an appropriate European framework ⁽³³⁾.

9.7.4 The EESC believes that it is not enough to ensure widespread access and adapt the transmission speeds of universal service to technological developments, and reiterates its earlier recommendations (CESE 1915/2008):

— to give attention to the social exclusion facing disadvantaged users groups who lack means and skills, as well as to geographical exclusion, and expanding universal service in order to ensure availability for all users, regardless of their situation;

— to facilitate the financing of universal service via national public subsidies and EU funds, which is the only alternative for countries where operators would be unable to bear the financial burden of universal service ⁽³⁴⁾;

— to support e-inclusion projects, especially microfinancing for local training projects, public internet access points and the establishment of interactive internet kiosks in public areas offering free internet access; and

⁽³⁰⁾ This consultation is open until 2 May 2011.

⁽³¹⁾ EP, Podimata report on a financial transaction tax – adopted by 529 votes to 127 with 18 abstentions (9.3.2011).

⁽³²⁾ OJ C 132, 3.5.2011, p. 8.

⁽³³⁾ OJ C 48, 15.2.2011, p. 72.

⁽³⁴⁾ OJ C 175, 28.7.2009, p. 8.

- to encourage Member States to provide financial support for families or people who would find the cost of basic equipment (computer, software, modem), access and service prohibitive.

Brussels, 13 July 2011.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

Opinion of the European Economic and Social Committee on ‘The Eastern Partnership and the eastern dimension of EU policies, with a particular emphasis on the EU’s agricultural policy, food safety, undisturbed trade, greater cooperation and development aid, and strategic partnership’ (exploratory opinion)

(2011/C 318/03)

Rapporteur: **Seppo KALLIO**

On 30 November 2010, the future Polish EU Presidency decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

The Eastern Partnership and the eastern dimension of EU policies, with a particular emphasis on the EU’s agricultural policy, food safety, undisturbed trade, greater cooperation and development aid, and strategic partnership

(exploratory opinion).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 21 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 149 votes to 1.

1. Conclusions and recommendations

1.1 The EESC stresses that the objectives of the partnership countries and their readiness to undertake political and economic reforms are important in the negotiations on association and free trade agreements with the European Union.

1.2 The EESC regards as an important question the extent to which partnership countries have the ability or political will to undertake the economic and social reforms required by these agreements.

1.3 The EESC believes it is crucial that the association and free trade agreements aim at reconciling the interests of the partnership countries and the EU so that future progress benefits all parties.

1.4 In the Committee’s view, the EU’s negotiation strategy must take greater account of the position of the agricultural sector and the significance of agricultural policy for cooperation between the EU and the partnership countries. The agriculture and food sector must play a more concrete role in cooperation agreements between the EU and the partnership countries.

1.5 The EESC stresses that until now the position of agriculture and agricultural policy has been non-existent in the Platform on Economic Integration and Convergence with EU Policies. Agriculture, food production and agricultural policy must be included among the subjects discussed.

1.6 The EESC is strongly of the view that agriculture is an extremely important sector for the economic, social and regional development of the partnership countries. Meeting

the objectives set will require favourable agricultural development. Investing in agriculture and developing the sector are also key conditions for reducing poverty in rural areas.

1.7 The EESC regards as important the development of the competitiveness of the partnership countries’ agricultural products and foodstuffs as well as the development of food safety and the quality of food. Observing the regulations and standards set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, (SPS Agreement), has proven to be a major problem in ensuring market access for foodstuffs from the partnership countries. Ensuring food safety in EU markets requires adherence to quality criteria. In order to overcome these problems, the partnership countries need technical and financial support and advice.

1.8 The difficulty of partnership countries in meeting the WTO SPS Agreement’s foodstuff regulations and standards has been identified as a key bottleneck in the trade of agricultural products. However the Commission must whenever and wherever possible seek to negotiate mutual recognition in those cases where the Eastern Partnership countries already have separate existing and effective SPS standards in place, even should these not be strictly compatible. Equally both the EU and these countries must also exercise maximum vigilance to ensure that, once Deep and Comprehensive Free Trade Agreements (DCFTAs) come into effect, parties from third countries are not able to find ways to import illegal or substandard foodstuffs – or other recognised threats to human, animal and plant health – into the EU through the back door. The EESC proposes that the subject of SPS become a new special point under the flagship initiatives.

1.9 The EESC stresses that the transition to a market economy requires a change of mindset, development of legislation and institutions as well as comprehensive technical capabilities in adapting the methods and practices of primary production, processing and external trade.

1.10 In the Committee's view, cooperation must be strengthened especially in the areas of training and research, where joint research projects, visits and seminars are important in developing mutual understanding and operational models.

1.11 The EESC also emphasises that it is in the shared interest of the EU and partnership countries to prevent the damaging environmental effects of fertilisers and pesticides, in both soil and water systems. Ensuring the nutrient cycle is also an important development objective.

1.12 The EESC believes that cooperation between the EU and partnership countries on energy matters is also very important for agricultural development.

1.13 The EESC emphasises that observance of fundamental labour rights approved by the International Labour Organization (ILO) is a key element of respect for human rights. It is important that internationally approved labour standards are adhered to in the deep and comprehensive free trade areas being created between the EU and the partnership countries.

1.14 The EESC believes that there should be considerable additional support for food sector organisations from the Eastern Partnership countries. Organisations must be involved extensively in the civil society forum. This also concerns a stronger role for the EESC and balanced participation in this important work of the organisations it represents.

1.15 The EESC believes that the EU and the governments of the partnership countries must support and encourage the building of organisations' capacities and their participation in the preparation of the Eastern Partnership strategy and the development of processes so that a free civil society can make a strong contribution to the development of cooperation in agriculture.

2. Background

2.1 The European Union has an interest in seeing stability, better governance and economic development at its Eastern borders. The European Neighbourhood Policy has been successful in forging closer relations between the EU and its neighbours. The Eastern Partnership policy, which was approved in Prague in 2009, should go further. Our partners⁽¹⁾ in Eastern Europe and the Southern Caucasus all seek to intensify their relations with the EU. The EU strongly supports these countries in their efforts to come closer to the EU. Essential reforms are being strongly promoted through the Eastern Partnership, which is part of the European Neighbourhood Policy, because the partnership countries currently suffer from significant shortcomings in terms of political objectives and the practical implementation of democracy.

⁽¹⁾ The Eastern partners are the countries of Eastern Europe and the South Caucasus covered by the European Neighbourhood Policy: Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus. COM(2008) 823 final: Communication from the Commission to the European Parliament and the Council: Eastern Partnership.

2.2 According to declaration by the European Council⁽²⁾, the Eastern Partnership will bring about a significant strengthening of EU policy with regard to the Eastern neighbouring and partnership countries by seeking to create the conditions for political association and further economic integration between the European Union and its Eastern partners.

2.3 The objective of bilateral negotiations is to conclude an association agreement with each country, a key element of which is a Deep and Comprehensive Free Trade Area (DCFTA⁽³⁾)⁽⁴⁾.

2.4 The objectives of the partnership countries and the political willingness to conclude agreements with the European Union are important for the progress of negotiations. The key question is to what extent the partnership countries have the ability or political will to undertake the economic and social reforms required by these agreements.

2.5 Partnership countries have committed themselves in the Prague declaration to political and economic reforms. Democracy, good governance and promoting the rule of law, rooting out corruption as well as respect for human rights and ensuring the participation of civil society are important. The starting point for economic reforms is the application of market economy practices and bringing rules and regulations into line with EU legislation⁽⁵⁾.

2.6 The multilateral path of the Eastern Partnership supplements bilateral relations by establishing cooperation, open dialogue and exchange of best practices and experiences. Cooperation is developed through thematic platforms and certain flagship initiatives⁽⁶⁾ as well as through the civil society forum⁽⁷⁾. The convergence of the agricultural sector and agricultural policy are dealt with by the Platform on Economic Integration. The role of agriculture and agricultural policy has until now been non-existent. They must be included among the subjects discussed.

⁽²⁾ Council of the European Union: Declaration of the European Council on the Eastern Partnership, Brussels, 20 March 2009, 7880/09, CONCL 1.

⁽³⁾ DCFTA – Deep and Comprehensive Free Trade Area.

⁽⁴⁾ Alexander Duleba & Vladimir Bilčík: Toward a Strategic Regional Framework for the EU Eastern Policy, Searching for Synergies between the Eastern Partnership and the Partnership for Modernization with Russia, Bratislava 2010.

⁽⁵⁾ Council of the European Union: Presidency conclusions, Brussels European Council, 19/20 March 2009, 7880/09, CONCL 1.

⁽⁶⁾ The flagship initiatives are as follows (http://www.eeas.europa.eu/eastern/initiatives/index_en.htm):

- a) Integrated Border Management Programme
- b) Small and Medium-size Enterprise (SME) Flagship Initiative
- c) Regional energy markets and energy efficiency
- d) Prevention of, preparedness for, and response to natural and man-made disasters
- e) Flagship initiative to promote good environmental governance
- f) Diversification of energy supply; the Southern Corridor.

⁽⁷⁾ Implementation of the Eastern Partnership: Report to the meeting of Foreign Affairs Ministers, 13 December 2010.

2.7 Agriculture and food production are vital industries in all Eastern Partnership countries. Their share of GDP is high and they employ a considerable number of people. The strong growth of agricultural and food production is a condition for growth of the entire economy and for reducing poverty at the same time.

2.8 This opinion:

- a) stresses the need to spell out the EU's strategic approach to the Eastern Partnership countries, including in the area of agricultural policy,
- b) examines implemented or ongoing agricultural sector projects supporting Eastern Partnership objectives, and
- c) draws attention to the fact that agricultural issues are linked to many EU policy areas and to their objectives in the partnership policy.

2.9 The EESC suggests that the EU negotiation strategy should take account of the importance of agricultural policy in cooperation between the EU and the partnership countries and the position of the agricultural sector in the development policy of the partnership countries.

2.10 The partnership countries are important producers of grain, livestock products, vegetables and roots as well as fruits and grapes. Ukraine is one of the most important grain producers in the whole world. In 2008, it was the eight biggest producer and seventh biggest exporter. While productivity is improving, the annual crop yield could still rise considerably. Whereas Ukraine's annual yield varies between 40 and 50 million tonnes, the annual grain crop of the five other partnership countries comes to a total of some 15 million tonnes.

2.11 The EU-27 is the largest trading partner of Ukraine, Armenia, Azerbaijan, Georgia and Moldova ⁽⁸⁾ and the second biggest trading partner of Belarus ⁽⁹⁾. Over half of exports from Moldova and just under 50 % of exports from Armenia and Azerbaijan go to EU countries. In addition, agricultural products play a very important role in the Eastern Partnership countries' trade with the EU.

3. Strategic elements of agriculture and agricultural policy

3.1 The EESC stresses that agriculture is an especially important sector for the economic, social and regional development of the partnership countries. Improving food safety is also a key social objective for those countries. There is a desperate need for technologies and for production, processing and marketing expertise alone. Another objective of the partnership countries is to develop the quality and competitiveness of agricultural products and foodstuffs.

3.1.1 Another strategic element to consider is rural development policy, as a second pillar of the CAP, which makes it possible to use EU funds to improve the economic and social situation of rural areas and populations. It is not just a matter of farm production meeting EU requirements but also of safeguarding jobs and habitability in rural areas, in accordance with their culture and environmental measures to ensure sustainable rural development.

3.2 With a market of 500 million consumers, the European Union is the largest trading area in the world in terms of its purchasing power. The proximity of the markets provides the partnership countries and the EU with the possibility to boost trade and thus the conditions for economic growth.

3.3 The objective of the EU's agricultural and trade policy is to ensure the stability of the food markets in changing conditions. The policy pursued should ensure high-quality products at fair prices for European consumers. It is important that the policy creates stability for the markets, which provide for consumer needs while guaranteeing a fair income for farmers.

3.4 Maintaining food safety is one of the central objectives of the EU's agricultural and food sectors. Preventing animal and plant diseases and close monitoring of residues that are harmful to health ensure that foods are safe for consumers. These border control measures also apply to foods imported into the EU from partnership countries.

3.5 The EESC believes it is crucial that the association and free trade agreements aim at reconciling the interests both of the partnership countries and the EU so that future progress benefits all parties.

4. Starting points for the free trade negotiations and key questions

4.1 The negotiations on the free-trade area cover a wide range of trade-related issues: tariffs, services, customs formalities, regulations and standards set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), public procurement, geographical indications, trade defence instruments and technical border protection questions ⁽¹⁰⁾.

4.2 The negotiations with Ukraine on the deep and comprehensive free trade area (DCFTA) have been under way intensively for two years now. The negotiations started after Ukraine had officially become a member of the WTO in 2008 ⁽¹¹⁾. There has yet to be a breakthrough in the negotiations but this goal may be achieved in 2011.

⁽⁸⁾ EU: DG TRADE: Statistics.

⁽⁹⁾ European Commission: trade, bilateral relations, countries, Belarus.

⁽¹⁰⁾ See footnote 6.

⁽¹¹⁾ 4th Joint Progress Report: Negotiations on the EU-Ukraine Association Agreement, Kiev, 4-8 November 2010.

4.3 The start of equivalent negotiations on a free trade area requires WTO membership. Efforts are currently under way to launch negotiations with Moldova, Armenia and Georgia as quickly as possible. Moldova has indicated a willingness to push ahead with the negotiations quite quickly.

4.4 Azerbaijan is not yet a member of the WTO which means that free trade negotiations still cannot begin. In addition, the political conditions do not exist for free trade negotiations with Belarus.

4.5 Meeting the regulations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) has proven to be a major problem in ensuring market access for agricultural products and foodstuffs. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) in addition to other EU environmental and health standards require Ukraine and the other partnership countries to carry out significant development activities. For this reason, the partnership countries need technical and financial support and advice.

5. Developing the agricultural sector in the partnership countries

5.1 The Eastern Partnership programme, which was agreed in Prague on 7 May 2009, raises to a new level financial cooperation between the EU and the six partnership countries. The EU has earmarked EUR 600 million to cooperation for the 2010-2013 period. Funding is channelled through the European Neighbourhood Policy and Partnership Instrument (ENPI) ⁽¹²⁾.

5.2 For the 2007-2011 period, there are 10-12 specific projects to develop agriculture and food safety ⁽¹³⁾. Many projects have been small. The project to upgrade Moldovan wine production has been the biggest. It is financed together with the European Investment Bank. The project began in 2010.

5.3 About half of the projects seek to improve food safety in the partnership countries by developing know-how, *inter alia*, in SPS activities. A few projects are geared towards developing the management and planning of agriculture. In 2009, Georgia was allocated just under EUR 2 million to improve the food safety of children at risk.

5.4 In the association negotiations with Ukraine both parties have stressed, among other things, the importance of promoting the competitiveness of agricultural production and the objective to take account of the quality elements of food ⁽¹⁴⁾. In practical terms, EU support in this sector should be geared towards developing institutions, advice and training.

5.5 It has been found in practice that the partnership countries undergo a long process to move from a planned to a market economy. There should be an effort to promote this process and consideration should be given to it. In addition to a change of mindset, the transition requires development of legislation and creation of institutions as well as technical capabilities in adapting the methods and practices of primary production, processing and external trade. Partnership cooperation and EU programmes should create the conditions for diversifying agricultural cooperation and improving trade conditions.

5.6 Particular subjects have been designated as development objectives for the EU and the partnership countries, which have proven to be crucial in the bilateral negotiations. The themes and subjects of these areas are known as flagship initiatives. Since difficulty in meeting the regulations and standards set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) has been identified as a bottleneck in the trade of foodstuffs, this subject should be included in the flagship initiatives.

6. Taking account of environmental factors and the social impact

6.1 Agricultural production and the food industry have a significant impact on the local environment. The choice of cultivation methods affects the quality of the soil and surface and ground water in particular. It is in the shared interest of the EU and partnership countries to prevent the damaging environmental effects of fertilisers and pesticides, in both soil and water systems. Ensuring the nutrient cycle is also an important development objective.

6.2 What happens in global energy markets and in the energy management of each country is an important factor in the development and success of agricultural production. Yields depend on the availability and price of inputs requiring energy, such as fertilisers. At the same time, production of renewable energy has an impact on food prices, because some bio-energy can be produced in farming areas. Bilateral cooperation between the EU and the partnership countries on energy matters is therefore very important for agricultural development as well.

6.3 In interaction between the European Union and the partnership countries, consideration should be given to the role of the agricultural sector in developing rural areas in the partnership countries. Without favourable regional development, poverty differences among the various regions will reach critical levels.

6.4 A key element of human rights is the observance of the fundamental labour rights adopted by the International Labour Organization (ILO). It is important that these adopted labour standards are adhered to in the free trade area between the EU and the partnership countries.

⁽¹²⁾ European Commission, External Relations Directorate General, European Neighbourhood Policy; Vademecum on Financing in the Frame of the Eastern Partnership, 24 September 2010.

⁽¹³⁾ EAP Community, www.easternpartnership.org.

⁽¹⁴⁾ European Commission – DG RELEX: list of priority areas for the EU-Ukraine Association Programme in 2010.

7. Development of administrative and other forms of cooperation

7.1 Implementing the Eastern Partnership, the association agreements, the deep and comprehensive free trade area and other forms of cooperation requires considerable interaction and cooperation among political decision-makers, authorities and experts as well as international organisations, not to mention socio-economic and civil society organisations. This should be taken into account in the implementation of the Eastern Partnership programme.

7.2 Interaction between EU and partner countries' citizens, in particular young people, needs to be recognised as a promoter of change. The EU has recognised the value of cultural cooperation and inter-cultural dialogue as an integral part of external policies ⁽¹⁵⁾.

7.3 Cooperation can be developed especially in the area of training and in research where joint research projects, visits and seminars are important in the development of mutual understanding and operational models.

8. The role and position of organisations must be strengthened

8.1 Particular attention should be paid to the involvement of civil society organisations in cooperation between the EU and the partnership countries. The EESC proposes support for the further development of the activities of civil society organisations and for strengthening the Eastern Partnership Civil Society Forum.

8.2 The role and status of civil society in the Eastern Partnership countries have been weak. In order to develop democracy, it is essential that the role of free organisations be

strengthened. The EESC has already drawn up opinions on strengthening and supporting the role of organisations and civil society in the countries in question. The Committee drew up an opinion ⁽¹⁶⁾ on the subject under the Czech presidency in spring 2009.

8.3 Participation of civil society has been far too limited and badly organised. One key element of the Eastern Partnership policy must be the guidance and support of a wide range of organisations so that organisations are able to provide significant added value in improving and enhancing cooperation between the EU and the partnership countries.

8.4 The position and capacity of organisations in the agricultural sector are also relatively weak. In order to develop the industry and strengthen EU cooperation, agricultural sector organisations must be developed by improving training and promoting skills, both nationally and in connection with maintaining EU ties and implementing the Eastern Partnership.

8.5 In order to promote the Eastern Partnership programme, agricultural and food sector organisations must play a significantly broader role in the various stages of the process. The complexity of the food supply chain creates additional challenges both for workers, industry, research, guidance and management and for producers. Supporting the activities of all parties and boosting the capacities of organisations are basic conditions for ensuring that agricultural cooperation between the partnership countries and the EU can produce sustainable results which are beneficial to both sides. It is vital that joint activities be stepped up among the EESC, EU-level organisations and national organisations.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁵⁾ See footnote 2.

⁽¹⁶⁾ O.J. C 277 of 17.11.2009, p. 30-36 'Involvement of civil society in the Eastern Partnership'.

Opinion of the European Economic and Social Committee on 'Financial education and responsible consumption of financial products' (own-initiative opinion)

(2011/C 318/04)

Rapporteur: **Mr TRIAS PINTÓ**

On 20 January 2011 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Financial education and responsible consumption of financial products.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 142 votes to 6 with 4 abstentions.

1. Conclusions and recommendations

1.1 Over the past few years, growing complexity and lack of transparency in the financial system have made it increasingly difficult to understand financial products.

1.1.1 The EESC recognises that the European Commission and the OECD have responded to this situation and are taking action to deal with the shortcomings of the financial system. The Committee therefore calls on the financial industry to apply the new legislation properly and to self-regulate in order to foster appropriate and honest practices, remedying the previous conduct of some financial institutions, and making it easier to access transparent financial products: consumers should know exactly what they are signing up to and should be able to compare the market easily.

1.2 Improvement of regulation, supervision and transparency of the financial system to increase consumer and investor protection for financial products is essential, but this does not absolve Europeans from their responsibility to improve their financial awareness throughout their lives. Informed decision-making will help to ensure the responsible consumption of financial products. The aim should be to create a 'virtuous triangle' linking financial education, market regulation and consumer protection.

1.3 Financial education should be seen as a comprehensive policy in which all stakeholders work together: public administrations, the financial industry, businesses, trade union organisations, consumer associations, the education system, and in general terms, all Europeans as consumers of financial products. Nevertheless education and training should be carried out by bodies free of any conflict of interest.

1.4 In the context of an education system which should encourage Europeans to develop their critical faculties, financial education should continue throughout people's lives. The EESC calls for financial education to become a compulsory subject on the school curriculum, and this education should be

followed up in training and retraining programmes for workers. As a subject, financial education should encourage responsible management of financial affairs (saving, use of credit cards, borrowing, etc.) and promote socially responsible financial products. The EESC supports the steps taken by the Commission to regulate the financial commodities market with a view to increasing transparency, enhancing the quality of information and improving supervisory mechanisms.

1.5 Financial education that is accessible to everyone will benefit society as a whole. Financial training projects should be targeted as a priority at the sections of the population that are at risk of financial exclusion. The financial industry itself has an obligation to be actively involved in programmes focusing on both microfinance and education, and in the provision of access to basic financial services.

1.6 The EESC wishes to point out that current financial education programmes have limited reach. The Committee therefore stresses that while identifying the training needs of consumers of financial products and drawing up ad hoc proposals does have its benefits, it is just as important to evaluate the suitability of all the various different education programmes and the extent to which the means of accessing these programmes are effective, and to ensure that all stakeholders work together in this task.

1.7 Financial education is clearly key to maintaining confidence in the financial system and ensuring the responsible consumption of financial products. It is therefore absolutely essential from now on that all relevant stakeholders - public and private - join forces to ensure that financial education has the strategies and resources it deserves, and to put right the lack of coordination and synergies between current initiatives (at international, EU and Member State level).

1.8 The EESC is aware of the European Commission's limited remit as far as education is concerned, but would argue that financial education is more than just education for the sake of it: it is also about empowering people, addressing social exclusion and promoting responsible consumption.

1.9 Lastly, the Committee stresses that the needs of financial-product users must be a priority issue at high-level international meetings such as the G-20 summits. It therefore calls for the setting-up of a group of experts in consumer financial protection.

2. Financial culture and the role of consumers

2.1 The financial culture of deregulation and self-regulation, together with financial creativity, the sophistication of new instruments and a general lack of transparency in the system, have not only played a key role in causing the serious economic and financial crisis we are experiencing today, they have also hampered Europeans' understanding of this already inherently complex and globalised market, which is swamped with a vast range of financial products.

2.2 In a knowledge-based society, which should be buttressed by an education system that encourages people to think critically, financial education is a strategic tool which should go hand in hand with the new process of regulating the financial system. For a more robust, safe and transparent financial system, it is absolutely crucial to ensure we have responsible consumers who are actively involved in improving their financial awareness.

2.3 The idea of the 'responsible consumption of financial products' is gaining ground: it encourages people to distinguish between what they desire and what they actually need. The concept of 'responsible saving' is also becoming more popular. It involves thinking long-term and supporting socially responsible products⁽¹⁾ – products which perform better against environmental, social and corporate governance criteria.

2.4 The aim should not only be to pass on knowledge and skills (financial education), but also to ensure people are sufficiently financially literate to be able to take the right decisions on managing their personal finances in the real world (financial empowerment).

2.5 Ultimately, a significant proportion of the decisions people make in their lives have a financial element, which has a direct impact on their personal lives and families: from seeking student funding to planning a pension for retirement⁽²⁾.

2.6 In addition, considering the current international economic crisis, European citizens' growing interest in sustainability and employers' approach to environmental, social and

corporate governance issues (ESG criteria), there is a need to provide more information on how individual consumers can incorporate ESG criteria in their financial decision-making.

2.7 The EESC therefore believes that ensuring all segments of the population are sufficiently financially aware throughout their lives is crucial for maintaining confidence in a well-regulated financial system, and for ensuring its development and stability. Financial education will allow consumers to make informed decisions, and promote the **intelligent consumption** of financial products. This issue is becoming a common objective for governments, regulators and supervisory authorities.

2.8 Financial institutions also have a key role to play. This means the financial industry giving society a commitment to guaranteeing honesty and transparency in its customer service provision, acting unequivocally in the customers' interests.

3. Financial education schemes

3.1 Financial education is the process through which consumers improve their understanding of financial products, financial risks and the opportunities presented by the market, so that they can make informed decisions on their finances. Making financial education widely accessible will benefit society as a whole, reducing the risk of financial exclusion and encouraging consumers to plan ahead and save, which would also help to prevent people getting into excessive debt.

3.2 To promote financial awareness among consumers, various different initiatives – known as financial education schemes – have been set up by supervisory bodies, financial institutions and other players in civil society.

3.3 This concept is not new – the OECD⁽³⁾, the European Commission⁽⁴⁾ and ECOFIN⁽⁵⁾ have all sought to address the issue.

3.4 The most significant measures taken by EU institutions in this area have been the implementation of a large section on financial education as part of the consumer education project Development of online consumer education tools for adults (DOLCETA), and the establishment of the Expert Group on Financial Education (EGFE) by the Commission in October 2008. The EGFE meets regularly to examine the different strategies for rolling out financial education programmes, encouraging public-private cooperation to improve the way programmes are implemented.

⁽¹⁾ EESC Opinion on Socially responsible financial products, OJ C 21/06, 21.1.2011, p.33.

⁽²⁾ See the Commission document: Green Paper – Towards adequate, sustainable and safe European pension systems COM(2010) 365 final.

⁽³⁾ In July 2005. The OECD also ran a project on Financial education in 2009.

⁽⁴⁾ The European Commission published eight basic principles for the provision of high-quality financial education schemes in its Communication on Financial Education – COM(2007) 808 final.

⁽⁵⁾ Conclusions of May 2008.

3.5 Improvements in financial education are required due to the complexity of new financial instruments, demographic changes ⁽⁶⁾, and the new European legal framework ⁽⁷⁾.

3.6 There is also the fact that generally people do not have a good enough grounding on financial issues. To improve financial education, Europeans need to be made aware of the need to improve their understanding of financial issues. The EESC therefore calls for national financial information campaigns to be stepped up.

3.7 The EESC is committed to ensuring that all Europeans (children, young people, the elderly, people with a disability and other groups) have effective access to financial training programmes, covering the appropriate subjects at each stage, taking into account the objectives and interests of each group. In tandem with key issues such as financial planning, savings, debt, insurance and pensions and the specific way in which this information is imparted, effective channels should be established to make such training accessible to relevant sections of the population in schools, in the workplace, through consumer groups, websites, specialised publications, the media, etc.

3.8 Children and young people are the priority target group for the programmes, but financial education is taught as part of the curriculum in schools in only a small number of Member States ⁽⁸⁾. The EESC stresses that if this situation continues, objectives on financial education will not be met.

3.9 The EESC therefore calls on the European Commission and other institutions to improve information on and awareness of Socially Responsible Investment (SRI) in the different Member States, as part of their current initiatives on financial education.

3.10 The financial education schemes which are currently in operation in countries such as the UK (general financial advice scheme), France (Institute for financial education), Spain (Financial education plan 2008-2012) and Austria (the 'Initiative Finanzwissen' [financial education initiative]), are well-designed. However, they are not widely publicised, their implementation strategies do not have sufficient reach, and public awareness of the training resources provided by these institutions is low.

3.11 The EESC stresses that more research is needed to evaluate the suitability of the educational material, the means of accessing it, and the process of measuring improvements in

financial skills over the long term, especially regarding the impact which this subject has on the education of children and young people.

4. New consumer financial behaviour

4.1 Demographic, socio-cultural and technological factors have given rise to new forms of financial behaviour. Consumers are now looking for tailored products and more professional customer service; they are asking for more information, taking an interest in where their money is being invested ⁽⁹⁾, and taking a sceptical approach.

4.2 Increasingly, clients are breaking the ties of loyalty which had kept them with a particular financial institution: they now use a number of different banks, seeking a branch nearby or online access, good service and a good return on their investments.

4.3 The key to keeping clients is managing information correctly, in order to monitor patterns of behaviour and, in line with the client profile, provide appropriate information. For their part, consumers must compare the information they receive and fully understand what they are signing up to.

4.4 Consumer groups recommend taking a set of factors into account when dealing with financial institutions – customer service, quality of service, level of specialisation in particular products – rather than getting caught up in the flurry to find the best rate on the market. Financial education will ensure that consumers are attuned to the risk of unscrupulous financial operators.

5. Boosting transparency to improve consumer protection and win back consumer confidence

5.1 Measures on financial education should go hand in hand with comprehensive regulation of the financial markets and effective improvements in protection for consumers of financial products. Nevertheless, regulation of the financial markets does not absolve Europeans from their responsibility to update their financial skills throughout their lives.

5.2 Transparency is crucial when interacting with consumers, and it is also key in the process of winning back consumer confidence in the financial services industry.

5.3 Transparency of information is ensured through reports and publications, responsible advice, leaflets, information sheets, guides, new ways of making enquiries, presentations of products and financial services, etc. Small print, unfair terms in contracts and misleading advertising should all be eliminated.

⁽⁶⁾ Increased life expectancy is particularly relevant here: older people need to be made aware of the new financial instruments and all adults should be obliged to plan for their future more effectively.

⁽⁷⁾ The framework was established on the basis of the Financial Services Action Plan, which the European Commission launched at the end of the 1990s.

⁽⁸⁾ In 2012, the Pisa report will assess for the first time the financial literacy of 15-year-olds in 19 different countries.

⁽⁹⁾ In recent years demand has been growing for socially responsible financial products that use socially responsible criteria to decide where investments are made.

5.4 Banks are often a source of worry for consumers because of poor communication, the criteria for speaking to staff at the branch, and the documents themselves, which are generally incomprehensible to the lay reader. To address this situation, the banks need to employ qualified staff who keep their clients updated, initiate a dialogue with them, and use the client's language.

5.5 As regards the marketing of financial services and products, information requirements have been strengthened. There is now a duty to notify the consumer accurately of the terms and conditions of the contract and the implications that these will have, sufficiently far in advance before an offer is accepted.

5.6 It is particularly important that the risks inherent in each transaction be stated and an attempt to share these risks made. The risk entailed by financial products has increasingly shifted towards the consumer in recent times. Where electronic banking is concerned, full access to the most relevant information must be guaranteed.

5.7 Specifically, European directive 2007/64/EC on payment services has ensured greater access to information. The Markets in Financial Instruments Directive (MIFID) ⁽¹⁰⁾ establishes the information which needs to be supplied when investment services are provided, and applies to all stages of the contract: pre-contract, at the time the contract is signed, and post-contract. The Directive also requires financial institutions to step up investor protection and offer their clients products which are suited to their particular investment profiles (taking into account risk and socio-cultural factors).

5.8 Directive 2008/48/EC, on consumer credit agreements, also helps to protect consumer rights. This Directive establishes the principle of a 'responsible loan', with the lender taking responsibility for providing advice, and the need to assess the current and future solvency of the consumer in line with the information provided by the latter and details extracted from databases.

5.9 Looking to the future, an important Community tool for boosting public confidence will be the Single Market Act ⁽¹¹⁾, which contains a chapter on the plan for measures aimed at ensuring consumer protection in the field of retail financial products, focusing in particular on the transparency of bank fees and the current lack of protection for consumers taking out mortgages.

6. Promoting best banking practice

6.1 Financial deregulation over the last few decades has meant that the banking market and the capital market have become increasingly interlinked. This has increased the risk of the rights of clients in commercial banks being left unprotected.

6.2 Consumers have therefore complained about the lack of information provided in the marketing of financial products, particularly for new, sophisticated products.

6.3 The European Commission ⁽¹²⁾ highlights the following key problems that consumers have with their bank: shortcomings in pre-contract information, unreliable advice, lack of transparency on bank charges, and difficulties in changing to another bank.

6.4 To deal with these problems, the European Commission has launched a self-regulation initiative for the banking industry to improve access to information on bank charges, and ensure that these charges are easier to understand and compare. The EESC welcomes this important project for harmonisation, which should lead to a more standardised system that will make it easier to compare different products. The Committee also points out that to ensure this project is successful, consumer organisations need to be involved in developing the process.

6.5 It is clear, however, that financial institutions are reluctant to give their clients access to other banks' products if these are less profitable. Launching new products irrespective of the demand for these products is just one of the mistakes that have been made in the area of joint investment.

6.6 To summarise then, there is a mismatch between the need and the product sold, which is driven by a management model in which supply reacts to demand, and profits are gained from a growing knowledge gap – given the information asymmetry – between the sellers and buyers of financial products. The EESC proposes establishing strict, binding codes of conduct for staff at financial institutions, which should reduce the potential conflict of interest between giving advice and marketing products. Financial institutions should bear the burden of proof as regards their compliance with the codes of conduct.

6.7 Financial intermediaries (including not only banks, but also insurance brokers, stockbrokers, etc.) should, whilst adhering strictly to the regulations in force, adopt best practice to protect the consumers of financial services, by improving the quality of information (clear, precise, tailored to needs, understandable and comparable with other products), policies that support financial training of savers and investors, and professional advice (reliable and honest) which supports consumers in their choice; there should be an independent ombudsman to defend and protect the rights and interests of purchasers of financial products.

⁽¹⁰⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, OJ L 145/1, 30.4.2004.

⁽¹¹⁾ COM(2011) 206 final.

⁽¹²⁾ Data collection for prices of current accounts provided to consumers, European Commission, Brussels 2009.

6.8 To consolidate this new scenario, the EESC highlights the need to ensure that financial intermediaries are better qualified to fulfil this essential educational role. Financial intermediaries face a two-fold challenge: firstly, to have a better understanding of the products they sell, and secondly, to be able to convey this information effectively to the product's user.

7. Promoting financial inclusion

7.1 The EESC is aware that financial inclusion must be seen against the backdrop of people's full social inclusion. Guarantees of jobs, social protection, etc., will clearly make financial education initiatives more viable.

7.2 Various studies⁽¹³⁾ have highlighted the general lack of understanding of financial issues, and the correlation between this level of understanding and how well-educated a person is and his/her socio-economic status. Many people have difficulties in managing their financial affairs and understanding the risks that go with their investments. And very few people have contingency plans if their personal circumstances change unexpectedly (unemployment, accident, divorce, death of husband or wife).

7.3 In a number of countries, only 30 % of the adult population is capable of calculating simple interest and only 44 % have a basic understanding of how the pensions system works⁽¹⁴⁾.

7.4 Around 80 million Europeans - 16 % of the total population - live on the poverty line. Encouraging society to support inclusion policies was one of the objectives set by the EU in 2010 for the European Year for combating poverty and social exclusion, which put the emphasis on collective and individual responsibility.

7.5 Financial inclusion supports the process of social inclusion. It is therefore important to promote initiatives that foster the financial inclusion of sections of society that are at high risk of exclusion (women, the unemployed, people with disabilities, the elderly, the poor, etc.), by ensuring universal accessibility and developing financial products and services that are tailored to these groups.

7.6 In the current social and economic climate, the emphasis should be on financial education that helps people plan for their retirement, given the huge shift towards public contributory pension schemes, which provide earnings-related benefits. Furthermore, in order to boost the empowerment of working women, specific financial training programmes should be offered to women starting working life.

⁽¹³⁾ See Braunstein & Welch, 2002; Mandell, 2008; FINRA Investor Education Foundation, 2009.

⁽¹⁴⁾ According to José Gómez Yubero in his article on Financial education: from information to knowledge and informed financial decision-making.

7.7 Measures for improving consumers' understanding of financial issues need to be targeted as a priority on the sections of the population that are least protected and are in danger of suffering from financial exclusion or of suffering as a result of certain speculative behaviour.

7.8 The EESC highlights the fact that financial institutions should take on the role of facilitating access to banking services for the poor, to prevent financial exclusion. Programmes for granting microcredit⁽¹⁵⁾ therefore need to be fully integrated into the credit offer of financial institutions. The unemployed, young people finishing their studies who need a loan, entrepreneurs, immigrants, people with disabilities⁽¹⁶⁾, etc. can all benefit from microcredit and they need to be guaranteed access to this resource.

7.9 Programmes focusing on both microfinance and education have had excellent results – given that education brings competitive advantages – in comparison with other initiatives that focus solely on microfinance.

8. The future of financial education

8.1 The EESC is fully aware of the European Commission's limitations as far as education is concerned,⁽¹⁷⁾ but would argue that financial education is more than just education for the sake of it: it is also about empowering people, addressing social exclusion and promoting responsible consumption.

8.2 The Committee calls on the Commission to give serious consideration to developing legislative measures obliging the Member States to promote financial education in an effective manner.

8.3 Looking to the future, there is a broad consensus among bodies and institutions – possibly the most relevant in terms of financial education are the OECD's International Network on Financial Education (INFE) and the European Commission's Expert Group on Financial Education (EGFE) – on the material and methods which are most appropriate for financial education. The EESC agrees fully with these proposals, and therefore calls on governments and financial institutions to provide sufficient resources to promote their initiatives:

- Implement common methodology to assess people's level of financial literacy and inclusion.
- Ensure there is more financial education on the curriculum in schools. Implement international methodology to assess the efficiency and effectiveness of schemes in schools.

⁽¹⁵⁾ The UN General Assembly made 2005 the International Year of Microcredit.

⁽¹⁶⁾ As is the case in France, microcredit should not only support entrepreneurship but also be seen as a tool for meeting other needs of people on a low income.

⁽¹⁷⁾ According to Article 165 of the Treaty on the Functioning of the European Union, the Member States are responsible for legislating on education.

- Draw up national strategies on financial education, with appropriate processes for monitoring and impact assessment.
 - Strengthen financial inclusion strategies. Step up efforts to target specific groups (young people, women, immigrants, people on low incomes).
 - Protect consumer rights on financial products.
 - Strengthen cooperation between the European Commission, the OECD and national governments to exploit potential synergies and avoid duplication of work.
 - Organise a European day for financial education, for example, endorsed by the EU presidency at the time.
 - Promote an annual conference on financial education, with the involvement of recognised experts.
 - Set up a system at EU level to ensure the best initiatives on financial education and best practice are given public recognition (e.g. a prize).
 - Promote the ‘financial driving licence’.
 - Organise regular inter-governmental meetings on financial education schemes in progress and include these considerations in the national political agenda (these meetings should not only involve describing the actions which are being carried out but also assessing their impact).
- 8.4 The EESC would like to add the following suggestions which bring together initiatives to improve people's financial skills and measures to increase consumer protection in the field of financial products:
- Set up an independent body to provide advice free of charge to consumers on financial products, and on how to incorporate ESG criteria in their financial decision-making: this body could give advice either face-to-face or via a phone hotline.
 - Regulate the role of financial intermediaries and public officials in financial education, to improve access to financial information and ensure it is easier to understand⁽¹⁸⁾. Monitoring mechanisms should be put in place to guarantee the impartiality of their behaviour.
 - Set up a European agency to protect the consumers of financial products, supervise banking practices (especially the accessibility, transparency and comparability of financial products) and combat fraud. This agency should have the power to impose sanctions.
 - Make it compulsory for the financial industry to provide material that informs the consumers of financial products about their rights and the steps to take if they disagree with a proposal or decision made by a financial institution.
 - Include warnings in the information provided with financial products (similar to the warnings that come with medicines) on any secondary or potentially adverse effects and the secondary effects of the product, together with key points on the conditions of the contract.
 - Set up an EGFE in each Member State. The expert group should have a financial education strategy designed to consolidate the plans proposed, and should involve a range of representatives from organised civil society.
 - European Commission support to design a coherent financial education strategy (for the national authorities of the Member States that have not yet done so). The Member States that have made the most progress in this area should be used as the benchmark.
 - Produce a budgetary plan for each national financial education strategy, setting out who will fund financial education plans and with what resources.
 - The European Commission should increase its sponsorship of financial education initiatives in the Member States, on the basis of good practice that is identified.
 - Promote the widespread use of national social security accounts, so that all employees are informed, once a year, about the pensions they would receive when they retire.
 - Promote financial products tailored to young people (from the age of 14, in other words, before young people can leave school and start working) and give them regular updates on the characteristics of these products and how they work.
 - Encourage the toy industry to develop educational toys involving financial concepts.
 - Broadcast short TV and radio programmes (10-15 minutes long) on basic financial issues (loans, mortgages, insurance, etc. and basic concepts such as profitability and risk), create multimedia initiatives and promote financial education through social networks.
 - Make better use of consumers' associations and other independent organisations from organised civil society to disseminate and implement government initiatives in the field of financial education.

⁽¹⁸⁾ Whilst respecting the natural training role that falls to the education system.

8.5 Lastly, the EESC stresses that the needs of financial-product users must be a priority issue at high-level international meetings such as the G-20 summits. Consumers International⁽¹⁹⁾ calls for an expert group to be set up on consumer financial protection which would report to the G-20, to guarantee access to stable, fair and competitive financial services.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁹⁾ Consumers International represents 220 consumer organisations in 115 countries.

APPENDIX I

Financial education programme outline ⁽¹⁾

Products	Topics and target groups	Means of imparting the information
Savings and liabilities (savings accounts, pay slips)	Learning how to save (children and young people)	Schools
Investments and assets (consumer loans and mortgages)	Starting work (young people)	Workplaces
Payment methods (debit and credit cards)	Starting to live independently (young people)	Retirement homes
Other financial products (insurance, pensions)	Starting a family (adults)	Employers associations and trade unions
Services (transfers, advice, charges)	Preparing for retirement (older people)	Consumer associations and NGOs
	Managing money in a micro-business (entrepreneurs)	The media
		Internet

⁽¹⁾ This outline programme should serve as an example - it is certainly not exhaustive and should not be limited to the above.

Opinion of the European Economic and Social Committee on 'Intellectual property rights in the music sector' (own-initiative opinion)

(2011/C 318/05)

Rapporteur: **Mr GKOFAS**

On 17 January 2008, the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on:

Intellectual property rights in the music sector

(own-initiative opinion).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 May 2011.

At its 473rd plenary session of 13 and 14 July (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 119 votes to 51 with 42 abstentions.

1. Conclusions and recommendations

1.1 Background

1.1.1 The protection of copyright and the related rights of performers in the music industry, concerning non-material products that are increasingly marketed and distributed in the form of digital files, is a subject that affects civil society in a very direct way.

1.1.2 The present opinion addresses five main points. The **first** concerns defining and identifying the rights and obligations of copyright holders and collecting societies in the music industry, and also the obligations arising from the buying or selling of intellectual property rights and related rights. The **second** is remuneration, in particular remuneration for use by third parties (consumers) of intellectual property rights or related rights. The **third** point is the way in which remuneration is fixed, and the meaning of public performance and what constitutes a public performance. The **fourth** point concerns the penalties that should be imposed on users for illegal use of this right. The **fifth** point is the structure and functioning of the collecting agencies or societies representing copyright-holders in certain Member States.

1.1.3 The EESC is concerned about the lack of harmonisation between Community law and national laws, and the differences in individual countries' laws; the risk is that the necessary balance between the public's access to cultural and leisure content, free movement of goods and services and the protection of intellectual property rights will not be fully struck.

1.1.4 The starting point for preparing a regulation to harmonise the Member States' legislation in this controversial area should be for the EU to vote on and adopt certain basic 'fundamental principles', in keeping with existing international conventions and in particular the Berne Convention for the Protection of Literary and Artistic Works, without prejudice to users' rights and taking the EESC's proposals into account.

1.1.5 The EESC would recommend harmonisation of Member States' legislation on those points that pose problems for civic life and affect it directly, so that acquired and constitutionally protected rights are not endangered by either literal or erroneous or partial interpretations of the law that prejudice consumers and users. Controversial points arising from the legal interpretations of terms used by the various legislators must be dealt with by the Commission, and the EESC believes it is its task to bring them to the negotiating table in order to achieve a fair outcome. The protection of authors and performers should not become a barrier to the free movement of works; it should also ensure that consumers have free access to and use of electronic content, based on amendments to the relevant provisions, so that the same rights are upheld on- and off-line that respect intellectual property.

1.1.6 The EESC recommends that a single legislative framework be established for: a) granting licences for the representation of copyright holders, b) framing agreements on the exploitation of authors' copyright, and c) the use of mediation in the event of differences or disagreements. This could help users of content and consumers, together with copyright holding authors and other right holders, to resolve disputes concerning the use of a work. It requires the establishment at national level of a single arbitration body for resolving disputes between copyright holders and users of content.

1.1.7 The EESC believes that this objective can be achieved by creating a single independent national body, which in addition to the above-mentioned duties would also be responsible for ensuring transparency regarding the full payment to copyright holders of payments collected by the collecting societies, in the event that this does not occur, with safeguards under European law, leaving Member States legislative latitude with respect to the establishment, organisation and running of the relevant body. This body would be empowered to ensure: a) strict application of existing Community or national legislation to achieve the above goal, b) establishment of full transparency in the collection and payment of remuneration for the use of copyright, and c) measures to combat tax evasion in connection with payment of public taxes arising from the use of works.

1.1.8 To maintain the trust of right-holders and users and facilitate cross-border licensing, the EESC considers that the governance and transparency of collective rights management needs to improve and adapt to technological progress. Easier, more uniform and technologically neutral solutions for cross-border and pan-European licensing in the audiovisual sector will stimulate creativity and help the content authors, producers and broadcasters, to the benefit of European consumers.

1.2 *The effectiveness of digital rights management (DRM)*

1.2.1 In addition, the EESC supports the promotion and improvement of legal services – such as Deezer, the first internet site to allow free and legal access to music, or Spotify, which allows the legal streaming of music via the internet and is financed via advertising – and believes that this medium should be allowed to continue to flourish alongside the legislative process.

1.2.2 Education and awareness campaigns, particularly for the young, should be included among the measures to be taken.

1.2.3 The EESC urges the Commission to flesh out the principles contained in its Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services.

1.2.4 The Committee urges the Commission to adopt as soon as possible the proposal for a framework directive on the collective management of rights as set out in the Digital Agenda.

2. Introduction

2.1 Authors and performers draw their income from revenue from the use of their artistic works throughout the world. Collecting societies, operating in all artistic sectors, collect revenue from the use of works throughout the world on behalf of the authors.

2.2 The size and power of these collecting societies vary from one Member State to another: some companies have limited scope, while others are so powerful that they are, in

some cases, able to become de facto monopolies. The services they provide for artists also vary in accordance with these parameters.

2.3 It would be fair to ask, as the European Commission already has, whether in its complexity the current system is efficient enough and whether it safeguards the interests of both right holders and users of content and citizens as final consumers.

2.4 Would it be useful to look beyond the 'simple' technical harmonisation of copyright and related rights? How might it be possible to improve the national management of copyright and overcome the problems caused by the current fragmentation of private copying levies, to give just one example? How can the efforts to improve legislation be reconciled with the effective cross-border management of collective rights? Legislation is needed in these areas.

2.5 The complexity of the situation and the sensitive nature of this subject for civil society have led the Committee to address the issue and examine it from all possible angles.

2.6 Indeed, the ignorance, if not indifference or even hostility, of the public towards the concept of intellectual property rights makes it necessary for civil society to react.

2.7 The current framework for the protection of copyright (not moral rights) and certain related rights of performers and producers in the music industry is governed by a series of directives, including European Parliament and Council Directives 2006/115/EC and 2006/116/EC of 12 December 2006, and European Parliament and Council Directive 2001/29/EC of 22 May 2001. Their primary aim is to facilitate the free movement of goods and ideas under conditions of healthy competition and to establish balance, as well as to combat piracy. All harmonisation of copyright and related rights is based on a high level of protection, as these rights are crucial to intellectual creation. Such protection helps to protect and develop creativity in the interest of authors, performers, producers, consumers, content users, culture, industry and the general public. Intellectual property has therefore been recognised as coming fully under property rights and is protected by the European Charter of Fundamental Rights: the creative and artistic work of authors and performers requires sufficient income to provide a foundation for further creative and artistic work, and only proper legal protection of right holders can provide an effective guarantee of such income.

2.8 Some countries have extremely repressive laws forbidding any form of copying or exchange of files protected by intellectual property rights, regardless of whether this takes place for private or commercial purposes (¹).

(¹) The penalties are the same whether it is a case of counterfeiting for commercial purposes or of private use.

2.9 European consumers, whose organisations have condemned their exclusion from the negotiations on these matters as an untransparent and anti-democratic act, have warned that police control over all internet exchanges and communications must not be introduced under the pretext of combating piracy, undermining the right to privacy in correspondence and the circulation of information. The Committee would also like to be informed about the discussions and proposals currently on the table, and to express its views.

3. Specific comments

3.1 Intellectual property: precisions and distinctions

3.1.1 It is of the utmost importance to be able to understand and define copyright and related rights. Both types of right fall under the umbrella concept of intellectual property. The concept of intellectual property was established internationally with the Convention of 14 July 1967 that set up the World Intellectual Property Organization and has subsequently been incorporated into Community legislation, in particular by means of Directive EC/115/2006, and is consequently a concept that is consolidated as part of the *acquis communautaire*.

3.1.2 The EESC considers that if authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this work. The investment required to produce products such as phonograms, films or multimedia products, and services such as 'on-demand' services, is considerable. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment.

3.1.3 The EESC calls for the harmonisation of certain aspects of copyright and related rights. The various reports on the implementation of the directives, and the case-law of the Court of Justice in this area, must be taken into account for the purposes of this harmonisation.

3.1.4 The EESC welcomes the recent proposal for a directive on certain permitted uses of orphan works [COM(2011) 289 final], the content of which it will discuss in a forthcoming opinion.

3.2 Remuneration

3.2.1 The remuneration of music industry authors who hold a copyright (as an asset) is probably one of the most problematic issues for the majority of Member States in relation to transactions between collecting societies and users: most of these have been resolved by Court of Justice case-law.

3.2.2 The EESC considers it necessary to recommend that the principle of equality for all citizens before the law be applied, as well as the principle of proportionality, with respect both to the intellectual property of authors and other right holders and the rights of content users and final consumers. Intellectual property rights in Europe are now

protected by the World Intellectual Property Organization's 'Internet Treaties', which were ratified by the EU and the Member States in December 2009. In principle, this harmonises the laws that apply, although various national statements made at the time shed doubt on the utility of a unified approach at EU level. These treaties call for a ban on copying and counterfeiting for commercial purposes, as does the directive on copyright and related rights in the information society.

3.3 Definition of remuneration and public performance

3.3.1 Particular consideration must be given to determining when remuneration is owing for use of music, what constitutes a public performance, and when 'exploitation' is a more appropriate term than 'use'.

3.3.2 The EESC considers that a clear distinction should be made between commercial exploitation and private use, when it comes to the purpose of use and the penalties imposed. In practice, the charges applied by the collecting societies, agreed with the associations representing the various user sectors, already cover the different uses that public establishments make of music, and those where music plays an essential role, such as discotheques, do not pay the same amount as those where music plays a secondary or incidental role, such as hairdressers or department stores.

3.3.3 The EESC believes that remuneration for 'secondary exploitation', covered by the Berne Convention, is fully justified because the owners of the broadcasting establishments, of the television or radio broadcasts, are secondary exploiters of the works included in the primary broadcasts, on the basis of which such works and performances are 'publicly communicated' in the above-mentioned places.

3.3.4 There is a need to reform the current system of copyright remuneration as a payment for reproduction for private use so as to improve transparency in the calculation of the 'equitable remuneration', and in collection and distribution of royalties. Remuneration should reflect and be based on the actual financial loss suffered by copyright holders as a result of private copies.

3.3.5 In order to facilitate the granting of cross-border licences, the EESC considers that the contractual freedom of right holders must be upheld. They should not be obliged to grant licences for European territory as a whole, or to set the level of licence fees by contract.

3.3.6 The EESC advocates promoting more innovative negotiating models, providing access to content in different forms (free, premium, freemium) according to the viability of supply and the expectations and attitude of final users, thereby striking a fair balance between the remuneration of the right holders and access by consumers and the general public to content.

3.4 Sanctions and penalties

3.4.1 The EESC takes the view that protecting works is of fundamental importance for the economic and cultural development of the Union, particularly in the light of new economic and technological developments, in order to safeguard the creative and artistic work of authors and performers. A system of sanctions has been established for this purpose, meeting the requirements of effectiveness, dissuasiveness and proportionality as set out in Court of Justice case-law.

3.4.2 The EESC considers that the use of a number of intellectual works, which is permitted only as an exception to the exclusive rights of copyright-holders, with limitations for users, should be seen as a positive and universal citizens' right. Similarly, the terms of use are not entirely clear or legally defined and consumers come up against the current legislation as regards establishing permitted usage.

The defence of intellectual property under criminal law is an essential guarantee in defending and ensuring social, cultural, economic and political order in advanced countries.

The EESC is opposed to the use of criminal-law sanctions against users who are not motivated by profit.

3.4.3 The Amsterdam University Institute for Information Law carried out a study for the European Commission's Internal Market Directorate on the application and effects on Member States' laws of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society ⁽²⁾. The chapters of the second part relating to the application of the directive in the EU's other Member States reveal that only six of the 26 states studied provide for a custodial sentence.

3.4.4 The EESC asks and recommends that a fourth paragraph be added to Article 8 of Directive 2001/29/EC stipulating that with respect to legal protection against violations of the rights and obligations arising from the said directive, the use by users and consumers of content, for which those who have publicly broadcast it have not paid the intellectual property rights fees in advance, will be decriminalised. Where it is made publicly available, this will be subject only to civil liability and the resulting penalties, i.e. compensation in proportion to the royalties owed to the holders of the copyright and related rights. Criminal sanctions for infringements of copyright should apply only in clearly defined cases of organised criminal violations of commercial laws and unlawful commercial exploitation of intellectual property rights. In any case, the implementing measures must uphold the fundamental rights of consumers.

⁽²⁾ Study published in February 2007.

3.5 Structure and operation of the collecting societies and agencies

3.5.1 It should be stressed that the existing directives at issue are characterised by a complete absence of protection for consumers, whose fortunes depend on provisions made by collecting societies, which are not subject to any real control. The EESC calls for the legal framework to recognise, protect and guarantee the rights of citizens and consumers and equality for all citizens before the law when it comes to the protection of users and consumers vis-à-vis authors and holders of related rights, in accordance with the laws of intellectual property and especially the Commission recommendation of 18 May 2005.

3.5.2 The EESC calls for the addition of a fifth paragraph to Article 5 of Directive 2006/115/EC, stipulating that collecting societies that are issued licences for collecting royalties and representing copyright-holders should not be commercial companies but bodies with non-profit-making status, in the form of an association made up of the holders of copyright and related rights.

3.5.3 The EESC calls for a sixth paragraph to be added to Article 5 of Directive 2006/115/EC to the effect that collecting societies or agencies should be supervised by an independent body at national level (single national management body). This could be the body responsible for issuing their licences to collect royalties for performers. In other words, the body that issues licences could be the body that carries out the supervision.

3.5.4 The EESC calls for a seventh paragraph to be added to Article 5 of Directive 2006/115/EC stipulating that copyright-holding authors and performers have the right to cede their copyright ownership and to transfer leasing or franchising rights to more than one existing or newly founded collecting society or agency. In this case, there will be more than one collecting society, and therefore a risk that: a) artists' remuneration is collected more than once by different collecting societies or agencies, resulting in b) a risk that the user may end up concluding contracts and collaborating with a number of collecting societies or agencies rather than with just one, and c) that payment may be made twice for use of the same work. The body that grants licences to the collecting societies or agencies should be responsible for determining the distribution among the authors and holders of related rights of the remuneration collected from users by them. Current software technology should be installed in the places concerned where works are performed to enable details to be kept of sound recordings (author, performer, duration, etc.) when they are made, so that the user will pay to use the rights for the work in question and the payments made can be proportionate. The above-mentioned body would also be responsible for ensuring that remuneration for the work as a whole is not collected more

than once. Member States with no such body for issuing licences to collecting societies or agencies should provide for one to be set up under their national law.

3.5.5 The Committee calls for an eighth paragraph to be added to Article 5 of Directive 2006/115/EC stipulating that collecting societies representing performers must draw up a budget and a nominal financial statement on the management and distribution of remuneration collected on behalf of copyright-holders, and provide any other information needed to demonstrate that the income concerned has been paid to the copyright-holders and that that income has been declared and taxed by the fiscal authorities of the Member States. The accounts of agencies that collect royalties and pass them on to

copyright-holders should be approved by an independent auditor, whose report must be published. They must also be subject to regular oversight by an authorised authority, such as a panel of auditors or an independent public authority.

3.5.6 The EESC calls for a ninth paragraph to be added to Article 5 of Directive 2006/115/EC to the effect that in the event of a collecting society not paying the royalties it has collected to the copyright-holders or not complying with the provisions of paragraphs 5 and 7 of the article in question, the licence-issuing body will first withdraw the licence and then, depending on the seriousness of the infringement, initiate proceedings in the national courts.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following sections of the section opinion were amended to reflect amendments adopted by the assembly but received more than one quarter of the votes cast (Rule 54(4) of the Rules of Procedure):

a) Point 1.1.8

1.1.8 There is questionable transparency in the management of revenues collected by collecting societies in a cross-border context. Indeed, authors, the holders of related rights, those obliged to pay rights and also consumers are not always aware of what exactly is being collected or of who will receive the revenue collected via the collecting society system.

Outcome of the vote on the amendment:

Votes in favour: 113
Votes against: 61
Abstentions: 23

b) Point 3.1.1

3.1.1 It is of the utmost importance to be able to understand and define copyright and related rights of performers. Both types of right fall under the umbrella concept of intellectual property. There is common ground inasmuch as intellectual property is made up of copyright, which belongs to the authors, composers and lyricists of a work, and related rights, which belong to the artists and performers of the works.

Outcome of the vote on the amendment:

Votes in favour: 116
Votes against: 55
Abstentions: 27

c) Point 3.1.3

3.1.3 The EESC calls for the harmonisation of certain aspects of copyright and the related rights of performers. This is necessary in the context of communication and information, e.g. when a sound recording (phonogram) enters the public domain. To ensure legal certainty and protection of the above-mentioned rights, Member State legislation must be harmonised, for instance with respect to the definition of something in the public domain as a source of income, providing authors with revenue, all of which ensures the smooth running of the internal market.

Outcome of the vote on the amendment:

Votes in favour: 108
Votes against: 57
Abstentions: 31

d) Point 3.2.1

3.2.1 The remuneration of music industry authors who hold a copyright (as an asset) is probably one of the most problematic issues for the majority of Member States in relation to transactions between collecting societies and users.

Outcome of the vote on the amendment:

Votes in favour: 88
Votes against: 71
Abstentions: 34

e) Point 3.3.2

3.3.2 The EESC considers that a clear distinction should be made between commercial exploitation and private use, when it comes to the purpose of use and the penalties imposed. Any use or performance or presentation of a work should be considered public when the work is made accessible to a wider group than the immediate family or social circle, regardless of whether the people in the wider circle are in the same place or elsewhere, or to an audience not present at the place of the presentation; this definition must include all broadcasts and rebroadcasts of a work to the public using wired or wireless devices, including television broadcasts.

Outcome of the vote on the amendment:

Votes in favour: 103

Votes against: 53

Abstentions: 27

f) Point 3.3.3

3.3.3 The EESC believes that it should be made absolutely clear that public use means the exploitation of a work for profit and as part of a business activity that requires or justifies that use (of a work, sound, image or combined sound and image).

Outcome of the vote on the amendment:

Votes in favour: 100

Votes against: 58

Abstentions: 28

g) Point 3.3.6

Since equitable remuneration should by its very nature incorporate proportionality, which is often applied in practice, we need to distinguish between business activities where performing or using works is the main activity and source of income (concert or show organisers, cinema, radio, television, etc.) and other business activities, where performance of the work has no bearing on business (e.g. a taxi driver listening to the radio while carrying a fare-paying passenger) or has a secondary bearing on the main business activity (background music in department store lifts, restaurants, etc.). Fees should therefore be applied on a scale ranging from cost-free use to full payment, depending on the work's effective contribution to business activities. A clear application of these distinctions exists in some countries, such as France, which apply different charges to show organisers and the broadcasters of works on the one hand, and to cafes and restaurants on the other hand.

Outcome of the vote on the amendment:

Votes in favour: 106

Votes against: 62

Abstentions: 27

h) Point 3.3.7

3.3.7 The EESC calls for an eighth paragraph to be added to Article 11 of Directive 2006/115/EC stipulating that in the absence of an agreement between copyright-holders Member States may fix the level of equitable remuneration, with legislative provisions to establish that equitable remuneration. This paragraph should state that a committee is to be set up to resolve disputes between copyright-holders and users; both sides would be obliged to refer to the committee and negotiations should lead to an agreement between copyright-holders and performers on the one hand and users and consumers on the other, setting the sum of the equitable payment for the entire royalty. Recourse to this committee to resolve disputes requires collecting societies to have entered into a prior written agreement to represent copyright-holders and performers in relation to given works. Collecting societies would not be eligible to make any collection on behalf of a copyright-holder with whom they do not have an agreement supported by a document (bearing a certified date) for each work or sound recording for every individual copyright-holder. Any presumed authorisation, where the fact of collection is taken to imply authorisation, is unacceptable. The committee should be made up of one user representative, one copyright-holders' representative and one representative from each side of industry or, at European level, one EESC member on behalf of the social partners.

Outcome of the vote on the amendment:

Votes in favour: 116

Votes against: 57

Abstentions: 23

i) Point 3.4.1

3.4.1 The EESC takes the view that protecting works is of fundamental importance for the economic and cultural development of the Union, particularly in the light of new economic and technological developments. But this sometimes seems to have the opposite to the desired effect, restricting economic activity substantially when the protection of the relevant rights is disproportionate, to the detriment of users and consumers.

Outcome of the vote on the amendment:

Votes in favour: 104

Votes against: 61

Abstentions: 36

j) Point 3.4.2

3.4.2 The EESC is concerned that rather than removing them the existing directive actually creates obstacles to trade and innovation in this area. For instance, the lack of clarity regarding equitable remuneration makes it harder, not easier, for SMEs to continue their activities without the necessary safeguards during an extended protection period. The same applies when collecting societies do not act properly or openly, when commercial users are not fully aware of the situation, and when potential damage suffered by copyright-holders owing to use of the work is negligible whereas the corresponding penalties are excessively severe.

Outcome of the vote on the amendment:

Votes in favour: 104

Votes against: 61

Abstentions: 36

k) Point 3.4.3

3.4.3 The EESC insists that the paragraph giving Member States the discretion to set penalties should be replaced, as in many Member States the penalties applied, sometimes even criminal, are not proportionate in the way they should be.

Outcome of the vote on the amendment:

Votes in favour: 104

Votes against: 61

Abstentions: 36

l) Point 3.4.4

3.4.4 The EESC is particularly concerned that Community legislation is aimed at protecting copyright and related rights of authors and artists, etc. without taking into account the corresponding rights of users and consumers. While reference is made to the fact that creative, artistic and business activities are largely carried out by self-employed persons and as such should be facilitated and protected, the approach is not the same for users. The use of a number of intellectual works is permitted only as an exception to the exclusive rights of copyright-holders, with limitations for users; however the terms of use are not entirely clear or legally defined and consumers come up against the current legislation as regards establishing permitted usage.

Outcome of the vote on the amendment:

Votes in favour: 104

Votes against: 61

Abstentions: 36

Opinion of the European Economic and Social Committee on 'Harmonisation of consumer claims in cosmetic products' (own-initiative opinion)

(2011/C 318/06)

Rapporteur: **Mr OSTROWSKI**

On 20 January 2011, the European Economic and Social Committee, acting under the second paragraph of Rule 29 of its Rules of Procedure, decided to draw up an opinion on:

Harmonisation of consumer claims in cosmetic products

(own-initiative opinion).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 115 votes with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC considers that a quick adoption of common criteria and a practical guidance for cosmetic product claims will be beneficial for companies operating in the internal market, for consumers and for control bodies.

1.2 For this reason, the EESC welcomes the fact that the European Commission has already started work on the development of common criteria for cosmetic product claims and that common criteria guidelines are in an advanced stage of drafting.

1.3 According to Regulation No 1223/2009 on cosmetic products the Commission should submit to the European Parliament and the Council a report regarding the use of claims on the basis of the adopted common criteria. The EESC considers, however, that the deadline for the submission of the report to the European Parliament and the Council set for July 2016 should be accelerated.

1.4 The EESC invites therefore the Commission to speed up the process of adoption of the common criteria allowing preparation of the report at least one year earlier.

1.5 The EESC requests the Commission to consider using new guidelines on ethical and environmental marketing claims until the 'green claims' criteria are set out by the International Standardisation Organisation, (for example on the basis of new guidelines prepared by the Danish Consumer Ombudsman).

2. General comments

2.1 Cosmetics claims

2.1.1 Claims for cosmetic products are statements made, usually in advertising, with regard to a product's functions

(R. Schueller and P. Romanowski, C&T, January 1998). A claim can be a word, a sentence, a paragraph, or simply an implication. For example: 'reduces the appearance of fine lines and wrinkles in ten days' or simply 'anti-ageing'. Further claims for example '100 % grey coverage' for a hair colorant or '70 % of women agreed that their hair was free from flakes after one use' coming from a consumer perception study for testing an 'anti-dandruff' shampoo.

2.1.2 Product claims and advertising, including other forms of marketing communication (these are together referred to as 'product claims'), are essential tools to inform consumers about the characteristics and qualities of products and to help them choose the products that best suit their needs and expectations. Considering the high relevance of cosmetic products for consumers, it is very important to provide consumers with clear, useful, understandable, comparable and reliable information to allow them informed choices.

2.1.3 Product claims are also essential tools for cosmetic companies to distinguish their products from the competitors and these claims might contribute to the functioning of the internal market by stimulating innovation and fostering competition among companies as well.

2.1.4 For product claims to meet their purposes adequately, that is to serve the consumer's and also the cosmetic companies' above described interests, it is important to have an efficient framework in place which ensure that product claims are fair and do not mislead consumers, taking into account the context and the marketing tools (irrespective of whether it is printed material, a TV advertisement or using any kind of new media such as internet and smart phones) in which such claims are shown.

2.2 Legislation for cosmetics claims in the EU

2.2.1 The Cosmetic Products Regulation (Regulation (EC) No 1223/2009, abbreviated as CPR) will fully replace Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products by July 2013. The new Regulation has as its main objectives to guarantee a high level of consumer protection and to ensure the good functioning of the internal market. The CPR claims that 'the consumer should be protected from misleading claims concerning efficacy and other characteristics of cosmetic products'.

2.2.2 The CPR only relates to cosmetic products and not to medicinal products, medical devices or biocidal products. For the purpose of the Regulation 'cosmetic product' means any substance or mixture intended to be placed in contact with the external parts of the human body or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours. A substance or mixture intended to be ingested, inhaled, injected or implanted into the human body shall not be considered to be a cosmetic product.

Cosmetic products include, for example, products intended for hair care (shampoos, hair conditioners, etc.), skin care (body lotions, face creams, nail products, etc.), personal hygiene (bath and shower products, toothpaste, deodorants/antiperspirants, etc.), colour cosmetics (hair dyes, make-up, etc.), fragrances (perfumes, eau de toilette, etc.).

2.2.3 Article 20 of the CPR stipulates that 'in the advertising of cosmetic products, text, names, trade marks, pictures and figurative or other signs shall not be used to imply that these products have characteristics or functions which they do not have'.

2.2.4 When it comes to misleading product claims, relevant articles of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (abbreviated as UCP) shall also be taken into account.

2.2.5 Article 6 of the UCP (misleading actions) states that 'a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to, among others, the main characteristics of the product, such as fitness for purpose, usage or the results to be expected from its use, or the results and material features of tests or checks carried out on the product'.

2.2.6 Article 7 of the UCP (misleading omissions) reiterates that 'a commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision'. The main characteristics of the product included in a product claim shall be regarded as material information (to an extent appropriate to the medium and the product).

2.2.7 Further, advertisers shall also follow the rules laid down in Directive 2006/114/EC on misleading and comparative advertising.

2.3 Current practice in the internal market

2.3.1 Current European legal and regulatory cases show that different authorities in the Member States interpret the same, above quoted, legislation in different ways hence there is no unified interpretation of the rules for cosmetics claims which place a significant burden on the cosmetics companies operating in the common market because they cannot be sure that their given advertisement which was legal for example in France will not be challenged by the relevant national authorities in Hungary or the UK. Most of the cases have resulted in heavy fines for the cosmetics companies. In 2007, the Hungarian Competition Authority (HCA) claimed for example that since the clinical tests were carried out in the USA and France, no statements as regards to efficiency of cosmetic products supported by percentage-type claims gained from such clinical tests can be used in Hungary. They believe that differences exist as regards to skin types of different countries and geographical areas. As a consequence, results of these tests – carried out under different climate conditions, under different humidity conditions, between women with different eating habits – do not give appropriate information for Hungarian consumers about the efficiency of these cosmetic products. No other EU Member States have come to the same conclusion so far. Moreover, there are different local requirements for 'natural', 'bio' or 'organic' products. Interpreting the law in a different way is also to the disadvantage of consumers as they may be better protected in one Member State than in another.

2.3.2 Differences in interpretation due to lack of common criteria and a practical guidance for product claims make it necessary for the cosmetics companies operating in the internal market to check and review each and every claim and advertisement by themselves in every Member State in order to make sure that they are following the law in the given country. Doing so, these companies incur considerable additional costs which, by implementing a common guidance for cosmetics claims in the EU, might be reduced and the savings could be used for innovation, research and for decreasing the prices of the products. It is worth mentioning that the European cosmetics market represents almost one third of the global cosmetics market, with more than 4 000 companies manufacturing products in the European Union, employing directly and indirectly 1,7 million people.

The necessity for the cosmetics companies operating in the internal market to review and check each and every claim and advertisement in each Member State also means that the internal market does not exist in this market segment.

2.3.3 Differences in interpretation due to lack of a common guidance for cosmetics claims in the EU are not beneficial to consumers either, because they cannot be sure what is the adequate meaning of the given claim when they are buying the same product in different Member States which might lead to confusion among them. If there is no common criteria for example for 'natural', 'bio' or 'organic' products, consumers will be uncertain as regards the real quality of the product. In the current on-line environment, consumers can also easily shop across borders and different products in different countries are available for them within just a 'clickable distance'. Should they see that using an anti-cellulite product 'the appearance of cellulite will be reduced in just ten days', without any further explanatory note in one country, while in other countries the following explanatory note would be shown 'with regular workout and diet', they might be confused over the real efficacy of the given product. Moreover, common criteria for claims are needed as consumers should have the possibility to compare different products of the same category (e.g. two types of face cream). To achieve this, all claims need to be easily verifiable by consumers based on common criteria. Only claims that are clear and concrete and are based on generally accepted methods allow consumers to compare products and to make an informed choice that best suits their needs.

2.4 *The need for a common practical guidance in the EU*

2.4.1 According to Article 20 of the CPR the Commission shall, in cooperation with Member States, and after consulting the Scientific Committee for Consumer Safety (SCCS) or other relevant authorities, establish an action plan and adopt a list of common criteria for claims which may be used in respect of cosmetic products taking into account the provisions of the UCP Directive.

2.4.2 The European Commission started to work on the development of common criteria for cosmetic product claims last year and is working together with stakeholders (national authorities, consumer organisations, cosmetics industry, supplier industry, SMEs, etc.). The EESC welcomes the progress of that work as guidelines are in an advance stage of drafting.

2.4.3 By 11 July 2016, the Commission shall submit to the European Parliament and the Council a report regarding the use of claims on the basis of the common criteria adopted. If the report concludes that claims used in respect of cosmetic products are not in conformity with the common criteria, the Commission shall take appropriate, stricter measures to ensure compliance in cooperation with the Member States. In such a case the Commission might need to rethink the scope of the guidance and move from a general guidance to a more detailed approach (e.g. legislative action as it was taken in the case of claims on food products).

2.4.4 The EESC strongly supports the idea of introducing common criteria which would provide a harmonised framework at EU level for justifying the use of claims for all cosmetic products. The criteria shall apply to all cosmetic product claims, be they primary or secondary, across all media, and shall allow the specifics to be tailored to the product, its packaging, the claims and their context, without curtailing innovation and yet ensuring that the same rules are respected.

2.4.5 The EESC considers, however, that the European Commission should speed up this process. If the work on drawing up the common criteria guidelines is indeed at an advanced stage of drafting, the EESC considers that the European Commission should make them operational preferably at the beginning of 2012, allowing the submission of the report to the European Parliament well before 2016.

2.4.6 The European Commission draft guidelines on common criteria currently do not specifically make reference to 'green claims'. The issue is being discussed at ISO level. However, it is currently difficult to say if agreed standards will be suitable for use in the European Union and when they will be available. The EESC therefore asks the European Commission to consider using new guidelines on ethical and environmental marketing claims by that time (for example on the basis of new guidelines prepared by the Danish Consumer Ombudsman).

2.4.7 The EESC considers that claims should be substantiated by either objective scientific studies (e.g. clinical studies) or subjective consumer perception studies. However, both kinds of studies should meet some generally accepted criteria (number of consumers surveilled, proper representation, etc.) so that they do not mislead consumers.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'EU crisis exit strategies and industrial change: more precarious or sustainable jobs?' (own-initiative opinion)

(2011/C 318/07)

Rapporteur: **Mr SIECKER**

Co-rapporteur: **Mr POP**

On 15 July 2010, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

EU crisis exit strategies and industrial change: precarious or sustainable jobs?

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 June 2011.

At its 473rd plenary session, held on 13-14 July (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 123 votes to 5 with 6 abstentions.

1. Conclusions and recommendations

1.1 This opinion seeks to answer the question of how European industry can best emerge from the crisis. The EESC is convinced that what is needed here is sustainable jobs. That means jobs that enable people to earn an income in a safe and healthy working environment and in a climate that respects workers' rights and accommodates fruitful social dialogue; it also means highly productive jobs that provide added value in terms of innovation, quality, efficiency and productivity. This will enable Europe to generate stable economic growth and to remain competitive against other regions in the world.

1.2 The EESC believes that the most important prerequisite for the creation of new jobs is sustainable, stable economic growth. The EESC welcomes the fact that a number of institutions and organisations have made proposals for emerging from the crisis that take account of the social dimension of recovery. The European Commission's Europe 2020 strategy, with its flagship initiatives, and the European social partners' labour-market policy recommendations will contribute to this, and the Council of the European Union, the European Parliament, the ILO and the IMF have also made recommendations that take account of more than just economic considerations.

1.3 The EESC notes that businesses have recourse to various types of employment. This results in new types of work: precarious jobs where people are employed on temporary contracts for low pay with little social protection and no legal protection. Not all temporary work is precarious – highly skilled freelancers can do very well for themselves on the labour market on the basis of individual orders – but it is, by definition, precarious when it comes to low-skilled and unskilled jobs in manufacturing and services. Flexicurity may be a way of meeting businesses' need for flexible work, but only on condition that the associated security is comparable to that provided by a permanent job, as noted in a previous EESC opinion on flexicurity (CCMI/066).

1.4 Demographic change – an ageing working population and fewer young people entering the labour market – and rapid technological developments in production processes mean that Europe is facing a serious shortage of skilled manpower. It is therefore of the utmost importance that everyone should gain long-term access to the labour market and that nobody should be excluded. The EESC stresses that employees must have the opportunity to keep their skills and professional qualifications up to date and to learn new skills during their working life, as this will enable them to adapt to changes in their working environment and provides a response to the demand for skilled workers on the labour market. Handling this process efficiently and effectively is one of the most important tasks facing the EU if it is to remain able to compete with other regions of the world.

1.5 The EESC stresses that employees must have access to vocational training programmes, in particular. Research has shown that it is often the employees who are most in need of training who are least likely to make use of it, so different measures will be needed for different categories of employee.

1.5.1 A large proportion of the budget must go to the lowest skilled workers, as they are the most in need of additional training. This could be achieved by allocating training budgets to individual employees, with the amount being inversely proportional to their level of training so that the least skilled workers are eligible for the most money.

1.5.2 Older workers need a personnel policy that takes greater account of age. At a time when many EU Member States are raising their pension age, many older people lose their place on the labour market before reaching the current pension age, for example because they cannot keep up with changes. Specific, targeted training could help to resolve this issue.

1.5.3 It is very important for education and training to be effective. A number of Member States are experimenting with new, more effective training methods and are rediscovering the importance of workplace learning. The EESC highlights the importance of further developing projects of this kind, and urges the Commission to promote this by ensuring that examples of good practice in the field are exchanged.

1.5.4 Employees gain informal, but valuable, knowledge and experience through doing their job. Skills gained by this route are not adequately recognised, because no formal certificates are issued for them. A number of Member States are working on a system for the accreditation of prior learning (APL); this initiative, too, is worthy of the Commission's recognition and support.

1.5.5 A number of mechanisms have been developed at the initiative of the Education and Culture DG to improve transparency of qualifications and quality of education and training in the context of lifelong learning at European level⁽¹⁾. These instruments are now being used, primarily in education, to increase students' mobility and employability within Europe. The EESC highlights the importance of these instruments and urges the Commission to look into how they can be used to increase workers' mobility and employability within Europe, too.

1.5.6 A variety of instruments are available to facilitate measures of this kind. A number of such programmes can be agreed through collective bargaining, and they can be funded at Member State level via financial incentives and tax breaks. The European Union can contribute in the form of co-financing from the structural funds and by publicising examples of good practice among the relevant institutions at EU and Member State level.

1.5.7 The EESC highlights the fact that employees not only have the right to access vocational training programmes but also need social protection and a secure income if they are to be able to function optimally, without fear for the future, in a rapidly changing society.

1.6 The EU's ambition is to develop into a competitive knowledge economy with more and better jobs and greater social cohesion. The Lisbon treaty explicitly states that the EU wants to achieve this by, inter alia, combating social exclusion, promoting economic and social progress for its citizens and guaranteeing the social rights set out in the 1961 European Social Charter, the 1989 European Community Charter of the Fundamental Social Rights of Workers and the 2000 EU Charter of Fundamental Rights.

1.7 The EESC urges the EU institutions to maintain European social standards with more conviction. The lack of decisiveness in this area has led to a growing number of working poor, rising inequality, ever greater fear for the future and, at the

same time, a rise in citizens' distrust in one another, social institutions and government – not just national governments, but also the EU institutions, as demonstrated by the rise in Euroscepticism in a number of Member States.

1.8 There are many initiatives in the Member States on the topic to which this opinion relates, a number of which are described in the appendix; the examples were submitted by CCMI members. The appendix shows that there is a great deal of dynamism, but also that there are significant differences between countries and sectors. There is a need for exchanges of experience and good practice at operational level. What works, what doesn't? What are the critical factors? The EESC advises the European Commission to promote and facilitate the exchange of experience and good practice.

2. Current state of play

2.1 The economy has now been in crisis for three years. This started with a crisis in the financial markets resulting from a stagnating housing market in the United States. In the second half of 2008, the 'real economy' also went into free fall as a consequence of the financial crisis. The term 'credit crunch' does not cover the entire scope of the crisis: the problem was not just that there was less liquidity and (in the longer term) capital; there was also a general structural crisis of confidence in the financial sector.

This own-initiative opinion is not about the crisis itself, but primarily seeks to answer the question of how European industry can best emerge from the crisis.

2.2 In total, 3,25 million jobs were lost in Europe in 2009 and 2010, primarily in industry and agriculture. Even before the crisis broke, concerns about demographic change had been voiced in the EU. Because the baby-boomers born after the second world war are now retiring, there will soon be a major shortage of skilled workers. Because older workers are leaving employment earlier due to the crisis, the issue of replacing them has become even more urgent. This raises two problems. The first is quantitative in nature: in some Member States, and some sectors, not enough young people with job skills are entering the labour market to meet demand. The second problem concerns quality: the abrupt way in which the workforce is being replaced is disrupting the transfer of knowledge within businesses.

2.3 The most important prerequisite for the creation of new jobs is sustainable, stable economic growth. Since the start of 2010 a fragile recovery has been in evidence, with a small increase in production in a number of sectors, and a tentative rise in demand for labour, although the situation varies between Member States. Society is rapidly changing under the influence of globalisation, as is the labour market. Businesses are using various types of work arrangements, which is increasingly resulting in new forms of employment, including precarious jobs. Eurofound's latest European working conditions survey shows that most employees still have permanent jobs,

⁽¹⁾ EQF, ECVET, Europass, EQAF.

but that the number of temporary contracts is increasing ⁽²⁾. The main mechanisms for getting around collective agreements seem to be subcontracting, outsourcing and pseudo self-employment under minimum working conditions. Use of these models has increased steadily in recent years.

3. Background

3.1 The European social model is a unique form of social capitalism which developed in Europe after the second world war and has successfully mitigated the excesses of capitalism while maintaining its benefits. This model was a source of inspiration for EU Member States in building a society characterised by cohesion, solidarity and competitiveness. Such a model must ultimately pave the way for a democratic, environmentally sound, competitive, solidarity-based and socially inclusive welfare area for all of Europe's citizens.

3.2 This principle can also be seen in the Lisbon treaty. As well as laying down a number of economic rights and rules concerning fair competition in the internal market, the EU also promises its citizens that it:

- wishes to combat social exclusion;
- is determined to promote economic and social progress for its citizens;
- guarantees the social rights set out in the 1961 European Social Charter, the 1989 European Community Charter of the Fundamental Social Rights of Workers and the EU Charter of Fundamental Rights;
- seeks the highest possible level of knowledge for its citizens through wide access to education;
- guarantees application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including equal pay for equal or equivalent work within the same business or under the same collective agreement.

3.3 In reality, the picture is less rosy. New jobs are being created, but most of them are temporary, casual jobs with low pay, limited social security benefits and little legal protection for employees. It is perfectly understandable that employers do not immediately start offering workers permanent contracts when the economy slowly starts to emerge from a crisis. Temporary employment can even constitute a welcome addition to the job supply and at the same time help to reduce social exclusion, by providing work for groups that would otherwise find it hard to

enter the job market. But this must not lead to exploitation. If the recovery continues and these jobs prove to be long-term, they must be switched to a type of contract that guarantees a reasonable income level, social security and legal protection.

3.4 A more serious problem is that permanent jobs with decent working conditions are also being converted into precarious jobs based on insecure, temporary contracts with little social security and legal protection, in the public as well as the private sector. This breaks the promises made to citizens concerning social cohesion in the Lisbon treaty. Of course, not all temporary work is precarious – highly skilled freelancers can do very well for themselves on the labour market on the basis of individual orders – but it is, by definition, precarious when it comes to low-skilled and unskilled jobs in manufacturing and services ⁽³⁾.

3.5 In many fields, Europe is still a world leader – on prosperity levels, social protection and competitiveness – but we have lost ground, measured against our own history and against other economies. Poverty is increasing, income disparities are growing and public spending is being cut, according to an OECD study from 2008 ⁽⁴⁾.

3.6 In 2003, Eurostat added 'working poverty' to the European portfolio of social indicators. The percentage of 'working poor' in the EU-27 in 2008 was 8.6 %, in part because the number of decent jobs is falling, while temporary and precarious work is on the increase. This is leading to an increase in distrust among the population, and a society based on distrust and torn apart by social conflict has no chance of sustainable, stable economic growth.

3.7 Material inequality has risen sharply in recent decades. Tony Judt gave some striking examples of this in one of his last books ⁽⁵⁾: in the United Kingdom, there is now greater inequality than there has been since the 1920s; the UK has more children living in poverty than any other country in the EU; the majority of new jobs created there are either very well or very poorly paid; and since 1973 inequality of income distribution has increased more in the UK than anywhere else.

In 1968, the head of General Motors in the United States earned 66 times the average salary in his company, while in 2009 the head of Wal-Mart earned 900 times the average in his. This is an extreme example, but the average situation reveals a similar picture. In 1965, directors of large US companies earned 24 times the average salary in their companies; by 2007, this figure had shot up to 275 times the average salary ⁽⁶⁾.

⁽²⁾ *Changes over time – First findings from the fifth European Working Conditions Survey.*

⁽³⁾ Precarious work is defined as employment based on a temporary contract that can be rescinded unilaterally by the employer at any time without giving rise to any obligations.

⁽⁴⁾ *Growing unequal? Income distribution and poverty in OECD countries.*

⁽⁵⁾ *Ill Fares the Land: a treatise on our present discontents* (2010).

⁽⁶⁾ www.finfacts.ie/irishfinancenews/article_1020265.shtml.

3.8 The social costs of growing inequality are high. Research by Wilkinson and Pickett⁽⁷⁾ has shown that societies with relatively large material disparities perform less well in almost all other aspects of daily life than societies that are relatively materially equal: people are less healthy and die earlier, there is more crime and – the biggest problem – mutual trust between people and trust in society are undermined. This ultimately leads to people turning against government – both against national governments and against the European Union, as demonstrated by the rise in Euroscepticism in a growing number of Member States. It also undermines mutual trust in society as well as trust between the social partners.

4. Objectives

4.1 Economic change is accelerating; this, in combination with the demographic problems we are facing, calls for rapid, extensive action. Society is never ‘finished’: it is continuously developing, and the labour market needs to develop in parallel. Economic interests are not the only factor in reshaping the labour market, though: there are also societal interests at stake. The challenge is thus to shape the labour market such that it benefits all of society.

4.2 There appears to be consensus among all the institutions concerned regarding the direction the labour market needs to take. The Council of the European Union has put forward employment policy guidelines⁽⁸⁾ that pay close attention to social factors. The Council of Employment Ministers has referred to the benefits of providing flexibility within businesses, instead of having a layer of flexibility ‘on the outside’, and the European Parliament has adopted a resolution calling on the EU to develop a strategy for ‘green jobs’. This will help create a sustainable future, and also force Europe to be innovative⁽⁹⁾. The EESC has adopted a number of opinions on the matter⁽¹⁰⁾. The European Parliament also adopted by a large majority a resolution on atypical contracts which argued *in favour* of permanent jobs and *against* the conversion of permanent jobs into precarious forms of employment⁽¹¹⁾.

4.3 As part of the Europe 2020 strategy, the European Commission has published a number of ‘flagship initiatives’ making specific proposals in this connection. The initiative ‘An industrial policy for the globalisation era’ promotes the creation of skilled, productive jobs. The ‘Youth on the move’ and ‘An agenda for new skills and jobs’ flagship initiatives call for a ‘single contract’. The Commission’s aim with this new type of contract is to combat the development of a two-tier labour market by giving new entrants to the market the opportunity,

following a reasonable trial period, to accrue social rights by allowing them access to systems based on collective agreements between the social partners or on legislation.

4.4 The European social partners are also broadly in agreement concerning the policy to be pursued. In 2007⁽¹²⁾ and 2010⁽¹³⁾, Business Europe, ETUC, UEAPME and CEEP published reports containing recommendations for a labour market policy that covered both economic and social interests.

4.5 At a conference in Oslo in September 2010, the IMF and the ILO stressed that it was of the utmost importance to bring down the very high levels of unemployment, not only for economic reasons but also in the interests of social cohesion. According to the IMF, we need to avoid the risk that another entire generation will be lost to the labour market. Since 1999, the ILO has had a Decent Work Agenda, which aims to enable people to work in conditions of freedom, equity, security and human dignity. In June 2009, the ILO adopted the Global Jobs Pact, a new initiative focusing on economic recovery and job retention. In its most recent publication on employment⁽¹⁴⁾, the OECD called for a policy that focuses on preventing mass long-term unemployment.

4.6 The basic principle is, of course, that Europe must remain competitive against other regions in the world, and this will only be possible on the basis of education, knowledge, innovation, quality, efficiency and productivity. The EU simply cannot compete with countries such as China, India and Brazil on the basis of labour costs. That will only be possible if working conditions in the EU are adjusted significantly downwards, which would conflict with the EU’s ambition of being a competitive knowledge economy with more and better jobs and greater social cohesion. What the EU can do, as well as redoubling efforts in research and development, is to promote and support investment in training, with general education the preserve of public education systems and the social partners and the government being responsible for targeted vocational training.

4.7 The importance of targeted vocational training is underestimated, and it is often restricted to young employees and employees who are already relatively highly qualified. Within the EU-27, 57.6 % of highly skilled employees participate in vocational training, but only 28.4 % of lower skilled employees do so. Sweden is top of the list, with 91 % and 57.6 %, respectively, and Romania is at the bottom (14 % and 3.9 %) ⁽¹⁵⁾. Training must also, and primarily, be targeted at the less educated, at older people, at women and at immigrants so

⁽⁷⁾ *The Spirit Level: Why more equal societies almost always do better* (2009).

⁽⁸⁾ Inter-institutional file 2010/0115.

⁽⁹⁾ P7_TA-PROV(2010)0299.

⁽¹⁰⁾ OJ C 306, 16.12.2009, p. 70 and EESC opinion on the proposal for a Council Decision on *Guidelines for the employment policies of the Member States – Part II of the Europe 2020 Integrated Guidelines* (OJ C 107, 6.4.2011, p. 77).

⁽¹¹⁾ 2009/2220(INI).

⁽¹²⁾ *Key challenges facing European Labour Markets: a joint analysis of European social partners.*

⁽¹³⁾ *Framework agreement on inclusive labour markets.*

⁽¹⁴⁾ *OECD Employment Outlook 2010 – moving beyond the jobs crisis.*

⁽¹⁵⁾ Eurostat Adult Education Survey.

that these groups, too, have the long-term prospect of a place in the labour market. An effective way of achieving this is to give individual employees training budgets inversely proportional to their level of training. Unemployment hits the low-skilled hardest, along with those with outdated skills working in traditional sectors that are in decline. Without additional investment in training it will not be possible to give them the opportunity to find jobs in another, modern sector of the economy, and if we do not ensure that those people can get back into the labour market, we will soon have a shortage of skilled workers at all levels of the market.

4.8 Not enough attention is being paid to the situation of older workers. At a time when many EU Member States are raising their pension age, many older people lose their place in the labour market before they reach the current pension age, either because they can no longer keep up with the pace of change in production processes or because shift work becomes more problematic with age. A targeted age-aware human resources policy is needed in order to keep these older employees healthy and in work. Many of these problems can be solved by specific, targeted courses, but here too Eurostat data ⁽¹⁶⁾ show that participation in vocational training is much lower among older people than among young people: 20.9 % of people aged 55 to 64 years, as against 44.2 % of people aged between 25 and 43.

4.9 Education and training are only worthwhile if programmes are effective and employees on them actually acquire the skills they need to adapt to a rapidly changing labour market. Conventional theoretical teaching approaches, far removed from workplace reality, need to be supplemented with placements in businesses – but these theoretical approaches are still all too common in practice. In recent years, a number of Member States have been using new, effective, practical training in the workplace. Cedefop recently undertook research into the effects of workplace learning ⁽¹⁷⁾. It is highly recommended that this kind of training be extended and promoted.

4.10 Employees do not just learn from formal training schemes, but gain informal, but valuable, knowledge and experience through doing their job. Skills acquired by this route are not adequately recognised because they are not certified, and so no formal, recognised qualifications are issued for them. This limits employees' mobility: while they stay in their old job there is no problem, but their opportunities to change job are restricted because they cannot use their informal qualifications to find a new job. A significant amount of research has already been done into options for APL systems, including by the OECD ⁽¹⁸⁾ and Cedefop ⁽¹⁹⁾.

The majority of Member States are developing systems for assessing and recognising the outcomes of informal and non-formal learning, but only a few have yet achieved concrete results ⁽²⁰⁾. This initiative deserves greater recognition and support.

4.11 A number of mechanisms have been developed at the initiative of the Education and Culture DG to improve transparency of qualifications and quality of education and training in the context of lifelong learning at European level ⁽²¹⁾. These instruments are now being used, primarily in education, to increase students' mobility and employability within Europe. The EESC highlights the importance of these instruments and urges the Commission to look into how they can be used to increase workers' mobility and employability within Europe, too.

4.12 An employer who invests in their workers by organising training courses during working hours and who covers all the related training costs may well ask their employees to study in their own time outside the training sessions, where such study is necessary. A training programme that does not focus solely on performing a specific task but also gives people the skills to work more widely within the business or elsewhere in the labour market is the best preparation for a future in a rapidly changing world. A programme of this kind would have benefits for both employers and employees: employers acquire skilled, committed staff, and employees improve their position in the labour market. This process needs to be given new impetus as a matter of urgency, given that according to recent figures the lifelong learning process has been stagnating for a number of years ⁽²²⁾.

5. How to achieve this

5.1 Businesses need certainty if they are to make long-term investments, for example in new developments. New technologies for renewable energy have been developed more quickly in Germany than elsewhere in Europe because the German government established a multiannual support programme that gave businesses in the sector the confidence that this structural development would be supported and subsidised by the government over a number of years. The result of that policy is that Germany has become a world leader in such technologies and that employment in the sector in Germany has risen from less than 70 000 to almost 300 000 jobs within a decade.

⁽¹⁶⁾ Cf. footnote 1.

⁽¹⁷⁾ <http://www.cedefop.europa.eu/> 'Learning while working. Success stories on workplace learning in Europe'.

⁽¹⁸⁾ <http://www.oecd.org/dataoecd/9/16/41851819.pdf>.

⁽¹⁹⁾ <http://www.cedefop.europa.eu/EN/publications/5059.aspx>

⁽²⁰⁾ For example, France has a certificate of business skills (*certificat de compétences en entreprise*, CCE), and the Netherlands has a certificate of experience (*Ervaringscertificaat*).

⁽²¹⁾ EQF, ECET, Europass, EQAF.

⁽²²⁾ <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tsiem080&tableSelection=1&footnotes=yes&labeling=labels&plugin=1>.

5.2 It is not only businesses that need certainty: employees also need security in terms of income, social protection and training. These principles represent the core values of the European social model as it was established in Europe in the years after the second world war. Well-trained workers have income security because their qualifications give them access to the labour market and the certainty of a decent job. Workers who are unemployed through no fault of their own need social security to enable them to undertake training, retraining or further training to help them find a job elsewhere. Finally, workers need to have confidence that they can access training programmes that will enable them to achieve their personal ambitions in terms of work and income. The only way we can ensure the survival of the European social model in a global market is through a motivated, qualified, responsible and flexible workforce. In return, we must ensure that the labour force benefits from the security inherent in the core values of the European social model.

5.3 Of course, workers never rely on all three of these forms of security at the same time. What is more, these forms of security always pay for themselves over the long term: a better balance between supply and demand on the labour market, thanks to adequate provision of programmes to provide people with training, retraining and further training, reduces long-term unemployment.

5.4 Flexicurity, negotiated between the social partners, may be an important tool in the section of the labour market where demand for flexible work is logical, understandable and justified⁽²³⁾. New forms of employment are more likely to be introduced successfully if the social partners reach collective agreements on them following proper consultation, and that will only be possible in a climate based on trust. Not only society, but also workers themselves, have changed significantly. Not all people are looking for a job for life nowadays. What workers want above all is the certainty that they will be able to find appropriate work throughout their working life, not in the form of insecure, precarious work but in a form that gives them greater security, as explained in point 5.2. In the case of larger businesses, this can easily be achieved through internal flexibility: rather than wrapping an external layer of flexibility around the company, permanent staff are used flexibly within it. The Council of Employment Ministers discussed this option in July. This form of flexicurity is a better fit for the knowledge economy that the EU aspires to. Collective agreements between social partners are the best way of realising this form of flexibility.

5.5 Nonetheless, businesses will always need temporary workers in busy periods. Moreover, the internal flexibility model is less suited to small and medium-sized enterprises. Small and medium-sized enterprises are important for the European economy and provide the majority of jobs. We therefore need to look for an effective method that reduces the differences between employees with permanent employment contracts, good social protection and a strong legal position,

and those with temporary contracts, minimal social protection and a weak legal position, who must also have a guaranteed right to things like sick pay, accrual of pension rights, unemployment benefits, paid leave and parental leave. This could be achieved by, for example, giving them access – under certain conditions and at an affordable cost – to arrangements negotiated at sectoral level by collective bargaining or established at national level in legislation. A system of this kind has been introduced in Austria. Here, too, responsibility is shared between the social partners and government.

5.6 Human resources management will also have an important twofold role in the future. Firstly, it plays a key part in shaping the content of training programmes, enabling employees to keep their job skills up to scratch. Yet HR management also performs an important task in helping to restore the broken trust between the social partners so that they can seek solutions to labour market problems together and in close consultation. If solutions are successfully found based on this restored trust, this can lead to a labour market where employers gain the flexibility they want and employees the security they need.

5.6.1 This improved human resources management is the key to both renewed trust between the social partners and a new sustainable employment market approach. Management of this kind must be founded in particular on:

- anticipating trends in terms of occupations and job profiles, ensuring that they are not too arduous;
- encouraging workers to take the initiative and responsibility in order to enhance the performance of individuals and groups;
- reviewing certain (preparatory) vocational training structures which do not (or only poorly) match the requirements of local labour catchment areas;
- improving career guidance schemes for young people, by bringing in more people who work or are expert in the relevant sector;
- focusing closely on local know-how and traditional products and regional brands whose relative rarity gives them their particular heritage status.

5.6.2 The aim of a more stable and healthy labour market needs to form part of a wider strategy including other sectors such as services of general interest and the liberal professions.

⁽²³⁾ See EESC opinion on *How flexicurity could be used for restructuring against the backdrop of global development* (OJ C 318, 23.12.2009, pp. 1–5).

5.7 Although it is Brussels that broadly sets the direction for the development of the labour market, this can only be implemented in the Member States, and the regions would generally seem to be the most appropriate level for this. The key to a knowledge economy will be for the regions to develop and maintain a creative working population. The EU could stimulate this development with financial assistance from the EU structural funds and by collecting examples of good practice and making them available in a database. CCMI members have collated a number of such examples of good practice, which are included in the appendix ⁽²⁴⁾. The EESC calls on the European Commission to disseminate these examples of good practice and to commend them to relevant institutions at both EU and Member State level.

5.8 There are examples of regions in Europe with a rich industrial past where the traditional industry and thus the

basis of regional employment and prosperity disappeared almost completely within a short period, such as the area around Lille in northern France and the Ruhr region of Germany. Instead of desperately trying to hold on to the past, stakeholders in these regions looked at their options for the future and acted on them, with the result that both the region around Lille and the Ruhr were given new hope, and both started to grow on the basis of completely new, and above all sustainable and knowledge-intensive economic activities: they have both even become European Capitals of Culture. For it is here that the strength of Europe's economy lies; these are the sectors where Europe has the best prospects, and it is here that it should try to consolidate its position. To that end, governments and the social partners need to develop initiatives that ultimately lead to the European social model as defined in a previous EESC opinion ⁽²⁵⁾.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²⁴⁾ <http://www.eesc.europa.eu/resources/docs/handout.doc>.

⁽²⁵⁾ OJ C 309, 16.12.2006, p. 119.

Opinion of the European Economic and Social Committee on ‘The economic crisis, education and the labour market’ (own-initiative opinion)

(2011/C 318/08)

Rapporteur: **Mário SOARES**

On 20 January 2011 the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on:

The economic crisis, education and the labour market.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July 2011), the European Economic and Social Committee unanimously adopted the following opinion:

1. Recommendations

Member States are urged to:

- ensure that measures designed to cope with the economic crisis and sovereign debt do not jeopardise public investment in education and training;
- focus in particular on public investment in education, research and vocational training when considering their medium-term budgetary targets, in order to ensure the continuity and growth of investment in these sectors;
- underline the need to improve the teaching of pupils' mother tongues and to teach STEM subjects (science, technology, engineering and mathematics);
- improve early study and career guidance, taking account of labour market needs;
- promote entrepreneurship at all levels of education;
- boost the effective implementation of the European Qualifications Framework and the development of National Qualifications Schemes;
- create additional training opportunities for young school-leavers and low-skilled workers, without neglecting digital literacy;
- respect people's right to high-quality certified work-related training, irrespective of their qualifications or type of contract;
- develop the recognition, validation and certification of skills acquired in different educational settings (both formal and non-formal) and in the course of people's working lives;
- use European Funds, especially the European Social Fund, to support education and training;
- support occupational integration programmes and encourage governments and businesses to use such instruments to create stable jobs;
- upgrade the teaching profession, promoting respect for education and continuous teacher training and improving teachers' working conditions and salaries.

2. Introduction

2.1 The financial crisis that erupted in 2008 triggered the worst economic crisis since the 1930s and the heaviest fall in global GDP since the Second World War. As a consequence, Europe is now undergoing a far-reaching economic and social crisis, with thousands of companies, especially SMEs, going out of business, higher unemployment, a drop in salaries, budget cuts in social security systems, higher taxes on consumption, higher prices for essential goods and rising poverty and social exclusion.

2.2 The purpose of this opinion is not to examine the causes of the crisis, but rather to highlight the detrimental effects it has had and is continuing to have on the fabric of society, and also to suggest a number of strategies that need to be implemented in order to lessen its impact and cope with its effects.

2.3 The opinion will address the importance of education and training as key tools for combating the crisis, relations between education/training and the world of work, the integration of young people into the labour market, the needs and responsibility of businesses regarding the training of their employees and the promotion of decent, high-quality jobs.

2.4 Furthermore, this opinion also considers that preserving the European Social Model requires society as a whole to make a collective effort, demonstrating creativity and solidarity.

3. General comments

3.1 In analysing this issue, four recent European Commission initiatives are particularly important:

- ‘An Agenda for new skills and jobs: A European contribution towards full employment’⁽¹⁾, which sets the following as its priorities for achieving a 75 % employment rate for the 20-64 age group by 2020: better functioning labour markets, a more skilled labour force, better job quality and working conditions and stronger policies for promoting job creation and demand for labour⁽²⁾;
- the ‘Youth on the Move’ initiative⁽³⁾, which is designed to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the European Union⁽⁴⁾;
- the Communication on Tackling early school leaving: A key contribution to the Europe 2020 Agenda⁽⁵⁾, which assesses the impact of early school-leaving on individuals, society and the economy, summarises its causes and details current and future European measures in this domain;
- the European Qualifications Framework, intended to make comparisons between national education systems easier, thus helping to achieve greater mobility for learning and European-level recognition of knowledge, skills and abilities.

All of these documents call for closer cooperation between the education and training sectors and the labour market – a view shared by the EESC.

3.1.1 The Committee also notes that in 2012, the Commission plans to launch the ‘EU Skills Panorama’, which aims to secure greater transparency for job applicants and employees and for businesses and/or public authorities. This ‘panorama’ will be available online and will contain updated forecasts of the supply and demand for skills up to 2020 through the networking of national bodies that forecast labour market developments.

3.1.2 The importance of European sectoral councils as a forum where the social partners can analyse workers’ skills and labour market needs should also be emphasised as a means of speeding up the exchange of information and good practice previously provided by councils or monitoring centres in each country⁽⁶⁾.

3.2 The economic crisis and the labour market

3.2.1 The financial and economic crisis is having a catastrophic effect on the labour market. According to the ILO, in 2010 the number of people unemployed worldwide stood at 250 million, with the unemployment rate having risen from

5.7 % to 6.2 % that year. Furthermore, unemployment has, in many countries, gone hand in hand, with a deterioration in job quality and dwindling job security.

3.2.2 According to Eurostat, the global unemployment rate in January 2011 stood at 9.9 % in the Euro area and 9.5 % in the EU-27, affecting 15 775 million people in the Euro area and 23 048 million in the EU-27, almost 5 million of whom are long-term unemployed.

3.2.3 Between the end of 2008 and February 2011, the unemployment rate in the EU-27 rose from 7.7 % to 9.5 % (male unemployment: 6 % to 9.5 %, female unemployment, 7.5 % to 9.6 %, youth unemployment: 19.7 % to 20.4 %).

3.2.4 These figures do not, however, show the significant disparities between Member States (ranging from 4.3 % in the Netherlands to 20.5 % in Spain) and say little about certain affected groups (such as immigrants and older workers).

3.2.5 Youth unemployment in the 15-25 age group stands at 20.4 %, having increased by 4 percentage points between the first four-month period of 2008 alone and the first quarter of 2009. Moreover, long-term unemployment in this age group has increased by nearly 30 % since spring 2008, with young people accounting for 1.2 million of the 5.2 million long-term unemployed.

3.2.6 Low-paid workers (who generally have fewer qualifications) are two to three times more likely to lose their jobs than higher-paid workers.

3.2.7 Once again, young people are worst affected by this (despite generally being better qualified), because they are twice as likely to be working for low wages as middle-aged workers.

3.2.8 According to Eurostat⁽⁷⁾, in 2007, even before the crisis, 79 million Europeans were at risk of poverty and 32 million were living below the poverty threshold. Despite the fact that people in work are less exposed to the risk of poverty, the term ‘working poor’ applies to at least 17.5 million workers⁽⁸⁾.

3.2.9 Dwindling job security has been a feature of new jobs created, and affects young people more than any other group, which has a number of implications for the young people themselves and for society (such as delaying leaving the parental home, remaining dependent on parents, postponing decisions on marriage and having children)⁽⁹⁾. It should be noted that the concept of poor job security does not refer specifically to fixed-term contracts, but rather to the way in which such contracts are abused when the workforce requirements are acknowledged to be unchanging.

⁽¹⁾ COM(2010) 682 final.

⁽²⁾ See the EESC opinion on New Skills for New Jobs, OJ C 128, 18.5.2010, p. 74.

⁽³⁾ COM(2010) 477 final.

⁽⁴⁾ OJ C 132, 3.5.2011, p. 55.

⁽⁵⁾ COM(2011) 18 final.

⁽⁶⁾ See the EESC opinion on ‘Matching skills to the needs of industry and services undergoing change – In what way could the establishment of sector councils on employment and skills at European level contribute to this objective?’, OJ C 347, 18.12.2010, p. 1.

⁽⁷⁾ Statistics in Focus (46/2009).

⁽⁸⁾ See the EESC opinion on Work and poverty, OJ C 318, 23.12.2009, p. 52.

⁽⁹⁾ Youth in Europe – A statistical portrait 2009.

3.2.10 The EESC considers the main problems and challenges to be:

- a) the discrepancy between the economic recovery now underway, albeit with significant differences between countries, and the on-going deterioration in the labour market situation, especially in the form of growth without jobs. The EESC seconds the warning sounded by the ILO in this regard in the latest Global Employment Trends Report⁽¹⁰⁾ and in the conclusions of its recent meeting entitled Dialogue on Growth and Employment in Europe⁽¹¹⁾;
- b) the social imbalances created by the difficult labour market situation, especially for young people (despite their having higher qualifications than previous generations) and for the long-term unemployed;
- c) Europe's demographic situation, in particular the ageing of the work-force, which could exacerbate the skills shortage on the labour market;
- d) changes in the nature of jobs, occurring increasingly rapidly: according to CEDEFOP, the demand for highly-skilled workers could increase by 16 million by 2020 and for workers with average skills by 3.5 million, whereas the demand for low-skilled workers could fall by 12 million. The skills gap will widen, especially in the following fields: STEM (science, technology, engineering and mathematics), energy, information and communication technology, green transport, the environment and health. The difference between the types of jobs that are being created and the types of jobs that are being lost is widening, and the unemployed are finding it increasingly difficult to get back into the labour market.

3.3 The crisis and education

3.3.1 Education is a means of achieving personal fulfilment, involvement in productive work, social cohesion and improving standards of living. According to Eurostat, people with higher educational levels have a higher life expectancy.

3.3.2 Low educational levels are associated with poverty and social exclusion and hence the emphasis placed by inclusion policies on guaranteeing access to public services (especially education and training).

3.3.3 The Europe 2020 Strategy reinforces the idea that education in Europe should be improved, from pre-school to higher education, in order to boost productivity and combat inequalities and poverty, based on the belief that Europe can only prosper if its people have the skills enabling them to contribute to a knowledge-based economy, from which they also benefit.

3.3.4 The EESC shares the concern expressed by the European Commission in its Digital agenda for Europe, according to which Europe is lagging behind in adopting new technologies, highlighting the fact that 30 % of Europeans have never used the Internet and that EU spending on information and communication technology (ICT) research and development stands at only 40 % of US levels. Developing digital literacy from an early age is a factor propitious to inclusion.

3.3.5 The EESC also notes that the EU is lagging behind the United States and Japan in terms of innovation, a situation that must be countered by increasing the number of highly-skilled workers, boosting Member States' and businesses' investment in research and development and forging closer links between science, technology and production. Furthermore, it wishes to point out that the term 'innovation' can be applied to both the organisation of work and social innovation.

3.3.6 The Commission's two main education goals for the Europe 2020 Strategy are:

- a) to bring down early school-leaving to below 10 %;
- b) to increase to 40 % the proportion of 30-34 year-olds completing university studies or the equivalent.

3.3.7 The EESC shares the Commission's concern about early school-leaving, which is a complex phenomenon with serious implications for the quality of the jobs to which young people can aspire and which can only be addressed by means of solid political commitment and new ways of tackling the problem and taking action.

3.3.8 According to the Commission, in 2009, more than 6 million young people (14.4 % of all 18-24 year olds) left education (either school or training) early, having completed only the first cycle - or an ever lower level - of secondary education; of these, 17.4 % had only completed primary education⁽¹²⁾. This means that reducing the average number of early school-leavers by just one percentage point would each year create nearly half a million qualified young workers able to start work.

3.3.9 Another important aspect that should be taken into account is the amount of repetition of academic years. According to the 2009 PISA study, the percentage of academic years repeated at primary school is 11 % in Ireland, 21 % in Spain and as high as 22.4 % in the Netherlands and Portugal. This trend continues in lower secondary education, with the rate of repeating years ranging from 0.5 % in Finland to 31.9 % in Spain.

⁽¹⁰⁾ Global Employment Trends (www.ilo.org).

⁽¹¹⁾ Dialogue on Growth and Employment in Europe, 13 March 2011, Vienna (www.ilo.org).

⁽¹²⁾ Grade Retention during Compulsory Education in Europe: Regulations and Statistics EURYDICE, January 2011.

3.3.10 In higher education and research, according to Eurostat's data for 2009, the percentage of graduates in Europe stood at only 32.3 % in that year. The budgetary cuts currently being implemented in most countries⁽¹³⁾ will jeopardise university research even further, which will have implications for many sectors of the economy and society (technology, medicine and the social and human sciences).

4. Specific comments: the EESC's proposals

4.1 *Boosting education in times of crisis*

4.1.1 In times of crisis, it should be reiterated that education is a fundamental human right and a public good, which should be guaranteed for everyone under equal conditions, with no conditions attached thereto, free of any form of discrimination, whilst also taking account of the gender dimension.

4.1.2 Investment in education should not be seen as a problem to be addressed in times of crisis, but rather as a solution for emerging from the crisis as successfully as possible. Consequently, in order to encourage Member States to invest further and more consistently in education, they should be asked to pay particular attention to public investment in education, research and vocational training when considering their medium-term budgetary targets.

4.1.3 It is equally important to point out that education is a collective responsibility shared by society as a whole. Schools, as specialist institutions with professional staff, cannot and should not act in isolation, and should interact first and foremost with families, whose role is crucial, but also establish permanent dialogue with the wider community and economic and social players.

4.1.4 The EESC is firmly convinced that the acquisition of solid knowledge provides pupils with a greater capacity for adjustment, and that the more the acquisition process is successful, the easier it will be to take market needs into account in decisions on academic and professional careers.

4.1.5 Education should, in particular:

- a) help pupils filter the information they receive, and teach them how to use the best means of planning their future private lives and careers;
- b) encourage critical thinking and the development of an enquiring and entrepreneurial mind able to take the initiative and solve problems. Interaction between schools and businesses could prove extremely useful for achieving this goal;
- c) instil in pupils a sense of reality so that they understand the effort required for learning and recognise its value. Convince pupils that learning is worthwhile and that culture is not just something to be consumed; but also to be grasped and developed;

⁽¹³⁾ In Latvia, following a 48 % cut in 2009, universities are now facing a further cut of 18 % in 2010; in Italy budgetary cuts planned up to 2013 total 20 %; Greece has imposed cuts totalling 30 % and in England, the budget will have been slashed by some 40 % by 2014/2015.

d) provide a solid basic education, especially in pupils' knowledge of their mother tongues, mathematics and other knowledge and skills essential to integrating people fully into the labour market across the whole of the EU, and specifically ensuring that modern foreign languages are taught from the early years of primary school, whilst at the same time helping to make them more open to lifelong learning;

e) develop creative and aesthetic abilities in every individual, capable of generating an open-minded attitude to culture and innovation;

f) in short, the aim is to mould free, supportive individuals who are aware of their rights and duties and able to undertake decent work under the best conditions possible.

4.1.6 This requires a more comprehensive and enriching form of initial and continuous teacher training than has been the case to date. What is needed is training that inspires teachers and helps them take on board new educational approaches that reflect the challenges they face (new technologies, new labour market needs, a multicultural environment with an increasing number of pupils from immigrant backgrounds, etc.). Member States should promote respect for the teaching profession, facilitate continuous teacher training and endeavour to improve teachers' working conditions and salaries.

4.1.7 Education should cover all stages of life, from pre-school to higher and adult education and in different educational settings – formal, non-formal and informal. Member States should adapt education to the economic and social challenges of the future: knowledge-based societies and highly productive, low-carbon economies.

4.1.8 To this end, the EESC recommends that the European Union:

- a) fulfil the commitments it has given in the 'Youth on the Move' and 'Agenda for new skills and jobs' initiatives and the Communication on Tackling early school-leaving;
- b) study the possibility of using European funds to achieve the EU's goals for education, training, research and development;
- c) support labour market integration programmes, encouraging governments and businesses to use such instruments to create stable jobs;
- d) strengthen, develop and intensify exchange programmes for students at all levels of learning;

and recommends that the Member States:

- a) find solutions to ensure that overcoming the economic crisis, especially the sovereign debt crisis, does not jeopardise public investment in national education and training systems;
- b) maintain (and, if possible increase) investment in research and development;
- c) launch and coordinate initiatives to improve the teaching of STEM subjects (science, technology, engineering and mathematics);
- d) adopt measures to revitalise the teaching profession, making it easier for teachers to perform their duties ⁽¹⁴⁾;
- e) set up study and career guidance systems to improve information on the professional skills needed for entering the labour market and on how to acquire them;
- f) develop alternative training programmes for young people leaving school early or in low-skilled jobs;
- g) solve the problem of pupils repeating academic years by providing support infrastructures for the weakest pupils;
- h) encourage businesses to take greater account of young people's work experience;
- i) promote entrepreneurship at all levels of education.

4.1.9 The EESC is well aware that in times of change, businesses require specific skills of their workers. Education and training systems should consequently be more attentive to these needs and shape their courses accordingly, after the acquisition of solid basic skills.

4.1.10 The dual learning system of education/training, in which young people are introduced to the world of work when they complete their studies, has yielded good results in some European countries and should therefore be studied.

4.1.11 The EESC realises that education is the responsibility of the Member States, but considers that the European Union could support states, not only by encouraging them to meet the EU's objectives and using the open method of coordination to achieve this, but also by creating more favourable conditions, such as not including investment in education and training when calculating the public deficit.

4.2 Valuing learning - from school to work

4.2.1 Current developments, such as greater international competition, the scientific and technical revolution, climate change and the rapid growth of the emerging economies and the ageing population, inter alia, require a more highly-skilled and qualified labour force.

4.2.2 Generational renewal is not in itself enough to improve the skills level, because many highly-skilled young people are currently employed in low-skilled jobs. Besides, the discrepancy between the education people receive and the type of jobs they get can lead to skills being devalued.

4.2.3 The EESC believes that the answer lies in developing high-quality jobs and therefore recognises the value of the 'decent work' advocated by the ILO.

4.2.4 To this end, investment should be made in active employment and vocational training policies, with support from European funds, especially the European Social Fund ⁽¹⁵⁾.

4.2.5 It should also be borne in mind that job creation is dependent on how dynamic businesses are, and this requires reducing the unnecessary red tape surrounding economic activity, especially for business start-ups.

4.2.6 In this area, the EESC recommends the following priority initiatives:

4.2.6.1 Promoting the integration of young people into the labour market

- a) improving study and career guidance systems, providing more detailed information on labour market trends and needs, the relevant professional skills and how to acquire them;
- b) setting up labour market integration programmes, using traineeships and apprenticeships;
- c) developing specific programmes for young people who have left school early or are in low-skilled jobs;
- d) ensuring there is no connection between the type of employment contract (open-ended/fixed term) and the worker's age, so that young workers are not penalised simply for being young.

4.2.6.2 Meeting the challenges of lifelong learning

- a) ensuring that everyone is able to engage in lifelong learning, enabling them to upgrade their skills and gain access to more highly qualified jobs, thus achieving the goal of 'inclusive growth' contained in the Europe 2020 Strategy;

⁽¹⁴⁾ See the EESC opinion on Improving the Quality of Teacher Education, OJ C 151, 17.6.2008, p. 41.

⁽¹⁵⁾ See the EESC opinion on The future of the European Social Fund after 2013, OJ C 132, 3.5.2011, p. 8

- b) improving training (further training and retraining) for everyone who is already in work but has poor academic skills. These initiatives should take account of the age, experience and knowledge of the workers in question;
 - c) formalising the individual's right to high-quality certified training, stipulating a number of training hours per year for all workers, irrespective of their qualifications or type of contract;
 - d) calling for individual skills development plans to be drawn up in businesses, involving workers and employers, taking account of the conditions affecting businesses, especially SMEs, in line with the agreement between workers and employers concluded at the European level;
 - e) supporting initiatives designed to improve recognition of non-formal learning, ensure the quality of such education and raise the profile of skills acquired outside the formal education system (such as the European Skills Passport);
 - f) establishing a close link between vocational training and a worker's career development, investing in the recognition, validation and certification of skills acquired in the course of people's working lives. In both cases, states should oversee the quality of assessment and certification services;
 - g) making efforts to ensure that training measures target the unemployed as a priority;
 - h) recalling that public employment services have a duty to play a more active role in training policies for priority target-groups, such as people with fewer skills and qualifications or in precarious jobs, or the most vulnerable groups, such as people with disabilities, older unemployed workers and immigrants;
 - i) taking due account of the gender dimension on the labour market and eliminating inequality and discrimination, specifically the wage gap between men and women.
- 4.2.6.3 Improving skills and harnessing the potential of older workers
- a) the EESC wishes to highlight the considerable risk posed by long-term unemployment (loss of income and skills as well as social exclusion) and therefore considers that public employment services should play a more active role in finding jobs for the long-term unemployed and in developing active employment and vocational training policies;
 - b) sector-specific social dialogue at both EU and Member State levels has a key role to play in solving problems relating to skills; this consequently highlights the importance of sectoral skills councils in this field;
 - c) against this backdrop, the collective negotiation of contracts should be maintained and promoted, since both workers and businesses would benefit from a higher level of skills;
 - d) in a crisis, it would be legitimate to expect the European Social Fund to finance both measures to improve skills and innovative projects to create decent jobs;
 - e) it would also be useful to enable older people to choose to extend their working lives, by improving health, adapting work to people, placing value on work and improving skills, bearing in mind the principles laid down in ILO Recommendation 162 ⁽¹⁶⁾;
 - f) Against this backdrop, it is particularly important to capitalise on the potential of older workers for passing on knowledge to others in the workplace, which could then be discussed by employees' and employers' representatives.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁶⁾ R162 Older Workers Recommendation, 1980, ILO (<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R162>).

Opinion of the European Economic and Social Committee on 'Revision of EIB transport lending policy' (own-initiative opinion)

(2011/C 318/09)

Rapporteur-General: **Mr SIMONS**

On 5 May 2011, the European Economic and Social Committee, acting under Article 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Revision of European Investment Bank transport lending policy.

The Section for Transport, Energy, Infrastructure and the Information Society was instructed to prepare the Committee's work on the subject.

Given the urgent nature of the work (Rule 59 of the Rules of Procedure), the European Economic and Social Committee appointed Mr Simons as rapporteur-general at its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), and adopted the following opinion with 123 votes in favour and three abstentions.

1. Conclusions and recommendations

1.1 The transport sector is very important to the EIB, and vice versa: in 2010 the EIB issued loans of EUR 63 billion, EUR 13.2 billion, or 21 %, of which went to the transport sector.

1.2 Given that the Commission will soon issue new TEN-T guidelines, it is important to coordinate with the EIB on how the core infrastructure network and individual projects can best be financed in view of the objectives set out in the white paper published on 28 March 2011.

1.3 In the Committee's view, the review of the 'renewed policy for lending to the transport sector', published by the EIB in 2007, needs to be seen in this context. The white paper now puts more emphasis than in the past on actions relating to sustainability – such as a reduction of at least 60 % in greenhouse gas emissions by 2050 with respect to 1990 – which means that the sustainability criterion will have more weight than it has previously had in the projects to be financed.

1.4 The Committee agrees with the EIB that the first guiding principle when granting loan facilities must be to strive for the most efficient, most economic and most sustainable way of satisfying transport demand. This will require a mix of transport solutions, covering all modes, that is compatible with comodality and the internalisation of external costs, both of which are principles for logistics chains.

1.5 The Committee is keen to stress that the EIB should therefore act neutrally and objectively with respect to all modes of transport. Particularly over longer distances, efficient and effective comodality is needed, making the most of the advantages of each available mode of transport.

1.6 The Committee fully agrees with the second guiding principle of developing TEN-Ts.

1.7 The Committee would like the third guiding principle used by the EIB in its guidelines and selection criteria – prioritising railways, urban transport, inland waterways and maritime projects – to focus less on the modes of transport themselves and more on the logistics chains, in order to maximise the benefits in terms of reducing greenhouse gas emissions.

1.8 With regard to funding for RDI projects, the Committee feels that funding projects to reduce emissions at source is the right approach.

1.9 In the Committee's view, the EIB should, when reviewing its guidelines for granting finance facilities, pay particular attention to consideration for logistics chains as a whole, with the role of transport hubs (such as ports, airports and multimodal terminals) as logistics centres being absolutely vital.

1.10 Given the tension between the ambitious target of reducing greenhouse gas emissions by 60 % by 2050 on the one hand, and the financial crisis on the other, the Committee feels that one of the challenges inherent in this situation is to further develop other forms of public and private financing such as public/private partnerships, albeit selectively as set out in point 4.6.3.

1.11 For a detailed response to the EIB's three specific questions, the Committee would refer to the numerous opinions listed in point 4.7 *et seq.*

2. Introduction

2.1 The European Investment Bank (EIB) is, like the EESC, a European Union body established by the Treaty of Rome in 1958. It finances projects that further the EU's objectives, by borrowing money cheaply and then lending it to banks and businesses.

2.2 The EIB is AAA rated, which means that it can borrow money on the capital markets at a low interest rate. It can thus then lend that money on favourable terms in various ways:

- it lends money directly to businesses or other bodies to help fund large projects (with budgets exceeding EUR 25 million);
- it lends money to banks and other lenders, which in turn grant loans to smaller projects, focusing on small and medium-sized enterprises;
- it can act as a guarantor for loans, thus eliminating risk for lenders.

2.3 With regard to project implementation and monitoring of the funding provided, the EIB has established close cooperative ties with the international banking sector and with other EU institutions.

2.4 In view of their high degree of interdependence, the EU institutions regularly invite the EIB to discuss and harmonise policy. For example, the EIB is involved in the preparations for meetings of the Council of Ministers, and takes part in the work of certain European Parliament committees, as well as being in ongoing consultations with the European Commission.

2.5 The EIB's shareholders are the Member States of the European Union, which jointly subscribe the bank's capital according to a scale that reflects their economic weight within the EU.

2.6 In 2010 the EIB issued loans totalling EUR 63 billion, 21 % (EUR 13,2 billion) of which went to the transport sector; in the period 2006-2010, loans to the transport sector made up 23,7 % of the bank's total lending. Apart from the Member States themselves, the EIB is the biggest provider of funding for TEN-T projects.

2.7 In 2007, the EIB published its 'renewed policy for lending to the transport sector', setting out guidelines and selection criteria in order to take better account of concerns over the impact of climate change while at the same time meeting the growing need for mobility. It also indicated that the dynamic nature of policy development meant that transport lending policy would need to be reviewed periodically.

2.8 With the Commission's publication of the white paper on 28 March 2011 and the forthcoming publication of the revised guidelines for TEN-T projects, it is important for the EIB's policy on lending to the transport sector to be reviewed once again.

2.9 The EIB has said the same, and has launched a public consultation. Alongside the current guiding principles, it is particularly interested in the following three questions:

2.9.1 How might the bank better contribute to 'smarter growth' based on knowledge and innovation? It is particularly interested in the impact of new technologies on transport.

2.9.2 How might the bank better contribute to 'sustainable growth' and to a more resource efficient, greener and more competitive economy? This particularly relates to improving sustainable mobility to reduce congestion and pollution while promoting energy efficiency and the use of renewable energy.

2.9.3 How might the bank better contribute to 'inclusive growth' fostering employment and delivering social and territorial cohesion? The bank is focusing here on bottlenecks, cross-border infrastructure, intermodal nodes and urban, peripheral and regional development.

3. General comments

3.1 The Committee believes that it is both useful and necessary to have regular coordination, at an early stage, between the EU's policy-making and advisory bodies and the EIB, and therefore welcomes the EIB's request for an EESC own-initiative opinion on the revision of EIB transport lending policy.

3.2 As indicated in the conclusion to the white paper, transport policy should increase the competitiveness of transport while delivering the minimum 60 % reduction of greenhouse gas (GHG) emissions from transport by 2050, compared with 1990. The goal for 2030 is to reduce GHG emissions to around 20 % below their 2008 level. In the Committee's view, this means that considerable efforts will be needed to meet these targets and that, with respect to sustainable development, funding will need to be sought for projects that promise significant sustainability benefits. This is set out in more detail by the study group for opinion TEN/454 on the White Paper: Roadmap to a Single European Transport Area – toward a competitive and resource efficient transport system.

3.3 Overall, the Committee considers the current (2007) EIB guidelines for transport lending to be appropriate; the first guiding principle is to strive for the most efficient, most economic and most sustainable way of satisfying transport demand. This will require a mix of transport solutions, covering all modes. The Committee feels that this complies with the principle of *comodalità*, to which it also subscribes and which will remain, now and in the future, the foundation for the logistics chains of a system for the internalisation of external costs that is 'objective, generally applicable, transparent

and easily understandable' and thus retains 'support ... in society at large, but more particularly in the modes of transport' ⁽¹⁾).

3.4 Nonetheless, it may, in the Committee's view, be justified for financing to be provided for a single mode of transport, if that proves to give the most economic, sustainable, safe and social result within that particular logistics chain.

3.5 In the Committee's opinion, the EIB should therefore act neutrally and objectively with respect to all modes of transport. As the white paper states, over longer distances, efficient and effective multimodality is needed, making the most of the advantages of each available mode of transport.

3.6 The Commission states that, over longer distances, the EU needs specially developed freight corridors optimised in terms of energy use and emissions, minimising environmental impacts, but also attractive for their reliability, limited congestion and low operating and administrative costs. The Committee endorses this, but would also like to see similar corridors for passenger transport.

3.7 The second guiding principle by which the EIB makes decisions concerning its lending facilities is the development of TENs. This involves long-term investments that have an essential role in achieving an efficient transport system in the EU. The Committee, too, considers developing and upgrading the TEN-T network to be extremely important.

3.8 The EIB's third guiding principle is that railways, urban transport, inland waterways and maritime projects will be a priority, as they are the most promising in terms of reducing greenhouse gas emissions per transport unit. The Committee would point out that it is not so much the modes of transport themselves as the relevant logistics chains that should be the key factor in reducing emissions. Focusing solely on the mode of transport is also incompatible with the comodality approach, i.e. making all modes stronger in order to develop intermodal cooperation within logistics chains, particularly over long distances.

3.9 With regard to the EIB's emphasis on, and funding for, RDI activities in cooperation with vehicle manufacturers, the Committee believes that the right approach is to reduce emissions at source, while also paying attention to energy efficiency and safety aspects.

3.10 Developments such as the ageing of the European population, the growing scarcity of fossil fuels, the ongoing increase in levels of urbanisation, climate change, and the progress of globalisation mean that there is a considerable need for financial resources. The Committee therefore believes

that the EIB is correct to state that a consistent funding strategy needs to be developed in which public and private funding complement each other. Moreover, the external costs of all modes of transport should be internalised in order to comply with the 'polluter pays' principle, and the revenue should of course be re-invested in reducing those external costs – that is, after all, the ultimate aim of internalisation ⁽²⁾.

4. Specific comments

4.1 The Committee calls for more attention to be paid, alongside networks, to the crucial role of transport hubs – such as ports, airports and multimodal terminals – as logistics centres which make efficient links in the hinterland necessary. It endorses the EIB's view, echoed in the white paper, that a genuine and efficient comodal approach will make the greatest contribution to reducing energy use and emissions.

4.2 With regard to the criteria for the financing of TEN infrastructure, apart from optimising traffic flows, it will also be necessary to place more emphasis on the potential gains in terms of energy use and emissions; provision should also be made for the extension of the TEN-T network to the EU's neighbouring countries.

4.3 The completion of the TEN-T network should be a priority when developing a new framework for the financing of infrastructure; consideration will also need to be given to the investment strategies of both the TEN-T programmes and the Cohesion and Structural Funds. The Committee considers that better coordination is needed between the Cohesion and Structural Funds and the investment funds for the transport sector to ensure that the best possible use is made of Community money.

4.4 In its white paper of 28 March 2011 the Commission estimates the cost of the investment in infrastructure needed over the period 2010-2030 in order to meet transport demand at EUR 1.5 trillion; the completion of the TEN-T network alone will require EUR 550 billion in the period to 2020, of which EUR 215 billion will be needed to eliminate the main infrastructure bottlenecks.

4.5 In the technology field, the Committee believes that the focus should be on financing projects which reduce emissions of dangerous substances at source through targeted investment in research and development. Research into alternative fuels to replace fossil fuels should also be included.

4.6 The Committee is also aware that there is a tension between the white paper's ambitious objective of cutting greenhouse gas emissions by 60 % by 2050 and the major investment this requires on the one hand, and the prudent financial policy made necessary by the financial crisis on the other.

⁽¹⁾ OJ C 317, 23.12.2009, pp. 80-83; and OJ C 255, 22.9.2010, pp. 92-97.

⁽²⁾ OJ C 317, 23.12.2009, pp. 80-83.

4.6.1 But it also thinks that this situation offers an opportunity for better allocation of the available financial resources and at the same time an incentive to develop other forms of public and private financing.

4.6.2 One possible approach would be participation in the development of new financial instruments for the transport sector, with investors like pension funds and insurance companies playing a part.

4.6.3 The EESC recommends careful and selective use of public private partnerships (PPP) in the funding of TEN-T, taking into account the different level of experience among the Member States in using PPP and recognising the need to mobilise EU financial instruments (e.g. Structural and Cohesion Funds, TEN-T, EIB) as part of a consistent funding strategy that pulls together EU and national public and private funding. In order to give a free choice for the public authorities to engage in PPPs, the EESC refers to its view that the definition of PPPs in Eurostat procedures for government debt should be amended ⁽³⁾.

4.7 With regard to the EIB's specific questions (see point 2.9 et seq.), the Committee would refer to its earlier opinions on the subject; references to the most relevant points follow below.

4.7.1 The following opinions are particularly relevant to the first question: contributing to 'smarter growth' through knowledge and innovation and the impact of new technologies on transport:

— **TEN/419** Towards the wider uptake of electric vehicles. ⁽⁴⁾ Point 1.1 – increasing the uptake of electric cars in order to reduce greenhouse gas emissions from the transport sector; point 1.6 – the EESC urges the European Union to promote and support this crucial transition.

— **TEN/382** Deployment of intelligent transport systems. ⁽⁵⁾ Point 1.7 – the EESC points out that building the infrastructure should involve relevant sources of funding from the Community, the Member States and the private sector;

— **TEN/362** A European strategy for marine and maritime research. ⁽⁶⁾ Point 1.10 – a reference to supporting those fields of marine and maritime scientific research which are

not covered by the European Research Strategy through dedicated Commission funds should be included in the documents drawn up as part of the follow-up work to this communication; point 3.6.4 – coordination between Structural Funds, the Framework Programme and other European funding sources is also a key objective; and

— **TEN/335** Emissions from road transport – concrete measures to overcome stagnation ⁽⁷⁾.

4.7.2 The following opinions are particularly relevant to the second question: 'sustainable growth', greater energy efficiency and a greener and more competitive economy:

— **TEN/399-TEN/400** A sustainable future for transport – European transport policy after 2010 ⁽⁸⁾. Point 2.8 first indent – sharp rise in proportion of older people, different transport patterns, increased government expenditure on public health and pensions, reduced budget for public transport; point 4.15 – massive changes needed in infrastructure investment;

— **TEN/412** European transport policy/Lisbon strategy and sustainable development ⁽⁹⁾. Point 1.5 – new trans-European transport network guidelines need to be set, and interventions through the EIB can provide incentives; point 1.8 – solutions which require bold political decisions and involve greater financial outlay, etc.;

— **TEN/297** Energy mix in transport ⁽¹⁰⁾. Point 5.4 – transport subsidies amount to around EUR 270-290 billion; point 8.13 – the Commission has earmarked EUR 470 million to set up the Fuel Cells and Hydrogen Joint Undertaking; point 8.15 – the Zero Regio project, co-financed by the European Commission, involving two innovative fuel supply structures;

— **TEN/376** Road transport in 2020: organised civil society's expectations ⁽¹¹⁾. Point 1.9 – requisite infrastructure to be expanded; point 4.2 – action is needed to put in place and upgrade the physical infrastructure (removal of bottlenecks);

— **TEN/336** The social implications of transport and energy developments ⁽¹²⁾. Point 1.2.5 – risk-sharing finance facility (RSFF);

⁽³⁾ OJ C 51, 17.2.2011, pp. 59 – 66 (Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Mobilising private and public investment for recovery and long term structural change: developing Public Private Partnerships.

⁽⁴⁾ OJ C 44, 11.2.2011, pp. 47-52.

⁽⁵⁾ OJ C 277, 17.11.2009, pp. 85-89.

⁽⁶⁾ OJ C 306, 16.12.2009, pp. 46-50.

⁽⁷⁾ OJ C 317, 23.12.2009, pp. 22-28.

⁽⁸⁾ OJ C 255, 22.9.2010, pp. 110-115.

⁽⁹⁾ OJ C 354, 28.12.2010, p. 23.

⁽¹⁰⁾ OJ C 162, 25.6.2008, pp. 52-61.

⁽¹¹⁾ OJ C 277, 17.11.2009, pp. 25-29.

⁽¹²⁾ OJ C 175, 28.7.2009, pp. 43-49.

- **TEN/262** Freight transport logistics - sustainable mobility ⁽¹³⁾. Point 1.3 – in order to optimise the physical network, the necessary funding sources need to be mobilised; point 4.5.5 – increase EU budgetary funds earmarked for the construction of trans-European networks; point 4.5.6 – mixed-financing system for the construction and maintenance of infrastructure;
- **TEN/440** Programme to support the further development of an Integrated Maritime Policy ⁽¹⁴⁾. Point 2.9 – implementation of the integrated maritime policy at risk due to insufficient financial means; point 2.10 – set up a (financial) programme to support further development of the integrated maritime policy;
- **TEN/427** Financial assistance to projects in the field of energy ⁽¹⁵⁾. Point 1.1 – using European funds as a 'leverage multiplier' to speed up investment in energy efficiency and renewable energy sources; point 2.2 – dedicated financial instrument to support renewable energy initiatives;
- **TEN/404** SMEs and EU energy policy ⁽¹⁶⁾. Point 1.2 – support for investment financing and creation of financial synergies between the EU, the Member States and business organisations; point 1.3 – innovation support and investment financing in regional programmes;
- **TEN/366** Integrating transport and land-use policies for more sustainable city transport ⁽¹⁷⁾. Point 5.2 – the EU has provided investment funds through the Structural and Cohesion Funds and through the EIB; point 5.3 – the new challenges of climate change require a collective European effort;
- **TEN/381** European rail network for competitive freight ⁽¹⁸⁾. Point 4.1.2 – important role of the European institutions in facilitating the deployment of EU assistance instruments for the development of a European rail network for competitive freight by co-financing the creation of the rail freight corridors through the budget for the trans-European transport networks (TEN-Ts), the ERDF, the Cohesion Fund and EIB loans;
- 4.7.3 The third question: 'inclusive growth', focusing on employment and social and territorial cohesion, has also been specifically highlighted in EESC opinions. These include, in particular:
 - **TEN/276** Transport in urban and metropolitan areas ⁽¹⁹⁾. Point 4.1 – the Commission should revise the rules for allocating funding for regional development measures; point 4.5 – a specific EU support programme to promote mobility and urban development would be worthwhile;
 - **TEN/445** Social aspects of EU transport policy ⁽²⁰⁾. Point 1.10.1 – the EU should provide financial support for infrastructure measures such as parking areas in road freight transport and good quality rail, metro, tram and bus stations;
 - **TEN/397** The EU's maritime transport policy until 2018 ⁽²¹⁾. Point 7.1 – more investment needed in port infrastructure and hinterland connections, and this should be taken into account in the TEN-T review;
 - **TEN/320** Green paper: towards a new culture for urban mobility ⁽²²⁾. Point 1.5 – the EESC endorses the use of 'green purchases' for procurement relating to infrastructure funded by European programmes, and calls for the removal of existing obstacles; point 4.25 – asks 'what added value could, in the longer term, targeted European support for financing clean and energy efficient urban transport bring?';
 - **TEN/401** Promoting sustainable green jobs for the EU energy and climate change package ⁽²³⁾. Point 6.3 – the Committee proposes the introduction of a European sovereign fund – backed by the EIB and by specific funds freed up by the European System of Central Banks and the ECB – for the purpose of reaching the goals on energy efficiency and saving, a kind of European Marshall Plan; point 6.4 – the EIB should administer this fund;
 - **TEN/414** Action plan on urban mobility ⁽²⁴⁾. Point 1.10 – the EESC recommends more effectively targeting the EU's Structural and Cohesion Funds, by establishing a financial instrument to promote urban mobility; point 4.4.4 – recommends optimising existing European funding sources;

⁽¹³⁾ OJ C 168, 20.7.2007, pp. 63-67.

⁽¹⁴⁾ OJ C 107, 6.4.2011, pp. 64-67.

⁽¹⁵⁾ OJ C 48, 15.2.2011, pp. 165-166.

⁽¹⁶⁾ OJ C 44, 11.2.2011, pp. 118-122.

⁽¹⁷⁾ OJ C 317, 23.12.2009, pp. 1-6.

⁽¹⁸⁾ OJ C 317, 23.12.2009, pp. 94-98.

⁽¹⁹⁾ OJ C 168, 20.7.2007, pp. 77-86.

⁽²⁰⁾ OJ C 248, 25.8.2011, p. 22.

⁽²¹⁾ OJ C 255, 22.9.2010, pp. 103-109.

⁽²²⁾ OJ C 224, 30.8.2008, pp. 39-45.

⁽²³⁾ OJ C 44, 11.2.2011, pp. 110-117.

⁽²⁴⁾ OJ C 21, 21.1.2011, pp. 56-61.

- **TEN/388** TEN-T: a policy review ⁽²⁵⁾. Point 2.6 – EUR 400 billion invested in projects of general interest since 1996; point 2.7 – estimated EUR 500 billion of further investment still required; point 3.4 – financing should reflect objectives rather than the other way round; point 3.16 – EESC recommends setting up a separate body to coordinate the use of funding.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²⁵⁾ OJ C 318, 23.12.2009, pp. 101-105.

Opinion of the European Economic and Social Committee on ‘State aid to shipbuilding’ (additional opinion)

(2011/C 318/10)

Rapporteur: **Mr KRZAKLEWSKI**

Co-rapporteur: **Mr CALVET CHAMBON**

On 9 December 2010, the European Economic and Social Committee, acting under Rule 29(A) of the Implementing Provisions of its Rules of Procedure, decided to draw up an opinion on

State aid to shipbuilding

(additional opinion).

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 June 2011

At its 473rd plenary session, held on 13-14 July (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 124 votes to 5 with 6 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee is convinced that the *Framework on State aid to shipbuilding* is an instrument which should be maintained; there is a need, however, to update and extend some of its provisions. The Framework contributed to the achievement of the addressed political and economic objectives during its period of application. The continued existence of the Framework is mainly justified by sector-specific circumstances, which are outlined in the introduction to the current Framework.

1.2 The Committee wishes to emphasise that the Framework is not a short-term measure for combating the crisis but takes account of the specific circumstances of the sector and that the assistance provided for under the Framework should not reward or encourage the construction of ships that are uncompetitive or vessels that have low technical specifications.

1.3 The EESC believes that the recent news about the collapse – after twenty years of discussion – of the OECD-sponsored negotiations on a multilateral agreement establishing normal competitive conditions in the commercial shipbuilding industry is another argument which bears witness to the unique situation of the shipbuilding industry, which requires the maintenance and revision of the Framework.

1.4 Further on in the opinion, the Committee looks in detail at a number of fundamental questions and problems which the Commission put to the stakeholders as part of the consultation process. The EESC puts forward and justifies a number of modifications which it considers should be introduced into the revised version of the Framework.

1.5 The Committee considers that aid for research, development and innovation (RDI), as provided for in the Framework, is essential as it helps shipbuilders accept the specific **types of risk** related to innovation.

1.5.1 The Committee considers that availability of **innovation aid** has a positive impact on risk assessments of each innovative element in the development of new products or processes. It allows companies to take additional steps towards new solutions, increasing the chances of market success for innovative products and, in consequence, stimulating further RDI activities.

1.6 Regarding the Commission's question as to whether it would be appropriate to exclude other types of innovation from eligibility for innovation aid and only keep innovation if linked to 'greener' ships, the Committee endorses the position of the social partners and considers that this would significantly weaken the effectiveness of this instrument. In particular, its highly positive impact on process and other product-based innovation in such fields as safety or productivity would be lost.

1.7 The Committee notes that aid instruments aimed at facilitating the market penetration of 'green technologies' are an important tool and **should be incorporated into the Framework**. The revised Framework should include a set of appropriate and practical provisions relating to this issue, together with the requirements for the cross-cutting measures on environmental protection. In the view of the EESC, such provisions will not serve to set up an additional state aid instrument but will simplify the application of the Framework and will make it possible to achieve key EU objectives.

1.8 Regarding the fundamental question raised by the Commission – whether RDI aid should be maintained in the

Framework due to the existence of horizontal rules on RDI – the Committee stresses firmly that **given the specific nature of the shipbuilding sector, RDI aid, as provided for in the Framework, must be maintained as the horizontal rules do not provide appropriate solutions supporting innovation in the shipbuilding sector.**

1.9 Considering that there was no incentive for **applying closure aid** during the period between the Framework's introduction in 2004 and the crisis of 2009-2010 and given that the situation has deteriorated so drastically in recent years that orders in EU shipyards have fallen to their lowest levels in over a decade, the Committee believes that this form of aid should be maintained. The rules on such aid should allow shipyards to carry out partial restructuring without the need to go through the fully-fledged restructuring process under the Rescue and Restructuring Guidelines.

1.10 The Committee is convinced that **regional aid is also beneficial for the shipbuilding sector. Regional aid** under the Framework should ensure the same aid intensities as action applicable under the Regional Aid Guidelines. The EESC believes that limiting the scope of such aid in the Framework to existing yard installations is neither adequate nor justified.

1.11 The application of restrictive EU rules for shipbuilding capacity expansion has had an opposite effect to the one intended. Instead of limiting the contribution to global over-production, it has placed European shipyards at a further disadvantage vis à vis their global competitors. Therefore, the maintenance of rules aimed at minimising support for capacity extension can, in the Committee's view, no longer be justified.

1.12 Regarding the rules on **employment aid** provided for under the Framework, the EESC calls on the Member States to employ these measures more frequently than in the past particularly in order to support the action of shipbuilders in their countries in the areas of education and training.

1.13 The Committee considers that the **clause on export credits should be maintained** within the Framework. Export credits granted in accordance with the OECD sector agreement do not constitute state aid and support businesses, and therefore the regions in which they are located. It is directly linked to maintaining or increasing employment in the sector and businesses connected with it and to benefits for EU ship owners (possibility of obtaining long-term loans or credit guarantees to purchase ships).

1.14 The Committee supports expanding the range of products included in the Framework, which is necessary due to developments in the shipbuilding sector and its technologies

since 2004. The EESC considers that, to this end, we should make use of the CESA's updating proposal set out in its opinion on Article 2 of the Framework ⁽¹⁾.

1.15 The Committee calls on the EU Member States and the EU administration to pay particular attention to the policy of providing information on the opportunities and conditions for employing state aid, as provided for under the Framework.

2. Introduction

Background to the opinion

2.1 On 29 April 2010, the EESC adopted an own-initiative opinion entitled *The European shipbuilding industry dealing with the current crisis*.

2.2 As part of its 2011 work programme, the European Commission plans to carry out a review of the *Framework on State aid to shipbuilding*, leading to its possible revision or prolongation beyond 2011. Official consultations were held with stakeholders, including the social partners, as well as the Member States, which were concluded on 6 December 2010.

2.2.1 An additional EESC opinion on this issue would be useful and timely given the economic and social ramifications of these rules and the significant impact they have on specific regions.

2.3 The Framework on State aid to shipbuilding lays down the rules to be applied by the Commission in assessing State aid to shipbuilding. The Framework entered into effect on 1 January 2004 for an initial period of three years. The Commission has since extended its life twice, in 2006 for a further two-year period, and in 2008 for a further three years. The Framework is thus currently due to expire on 31 December 2011.

2.4 The general principle of the Framework is that shipbuilding is eligible for aid under the horizontal state aid instruments, except where the specific provisions of the Framework apply. These specific provisions concern the following areas: aid to research, development and innovation, closure aid, employment aid, export credits, development aid and regional aid.

2.5 Given that shipbuilding is also eligible for aid under the horizontal State (and EU) aid instruments, the consultations, and the EESC opinion issued on behalf of EU civil society, should above all help determine whether the specific provisions of the Framework should continue to be applied and suggest whether - and if so how - they should be amended in the event of their extension.

⁽¹⁾ Review of the Framework on State Aid to Shipbuilding – CESA

3. Revised summary information on the European and shipbuilding sector in a global context ahead of the decision on the Framework

3.1 A comprehensive and wide-ranging presentation of the European shipbuilding sector was set out in the EESC opinion of April 2010. The information below is from last year.

3.2 After the first period of crisis, it is clear that the shipbuilding sector has been hard hit worldwide. There has been an unprecedented level of trade disruption and all shipbuilding countries have encountered substantial difficulties due to the huge fall in demand. Coupled with the - as yet - unresolved issue surrounding the lack of a level playing field for shipbuilding and maritime trade, Europe's long-term prospects in this area are now seriously endangered.

3.3 Asian countries currently account for over 80 % of global ship construction, while their order portfolio represents as much as 90 % of the global total. The growth in the position of these countries is taking place at the expense of EU countries, whose share in worldwide shipbuilding has shrunk to its current level of 7-8 %.

3.3.1 Europe's share of new orders worldwide plummeted to 2.7 % in 2009, but recovered to 4.8 % during the first three quarters of 2010. However, if we consider order book figures by volume, while the global index crept up slightly in 2010, in the EU it remained at a similar level to that of 2009, its lowest level for a decade.

3.3.2 The global total of new ship orders by volume in recent years was as follows: in 2007 - 85 million CGT, in 2008 - 43 million CGT, in 2009 - 16.5 million CGT. In the first three quarters of 2010, however, it grew to 26.3 million CGT (forecast as at end-2010 - approximately 35 million CGT). In 2009, the planned construction of many already contracted vessels was cancelled due, among other things, to very low freight rates and the unavailability of bank loans to finance shipbuilding.

3.3.3 The price index, calculated in euros, has recovered by some 17 % since the first quarter of 2010 (when it reached its lowest level for ten years) although exchange rate fluctuations have depressed prices expressed in some national currencies. Although the index has risen by over 20 % since 2000, in euro terms prices have remained static.

3.4 The crisis aside, most of the instability in the shipbuilding sector is still the result of intervention and protectionism by those countries where shipbuilding is, or aspires to be, a key sector of the economy. Certain shipyards, primarily in the Far East, which receive government support

are able to offer their products and services at prices which do not take account of all types of risk, and which are therefore lower than those of their competitors, primarily in Europe, who must factor such types of risk into their price calculations. The exchange rate can represent yet another tool of protectionism (as one of the factors determining competitiveness) which can be centrally guided to a certain extent (e.g. in China as well as in South Korea).

3.5 In December 2010, the OECD decided not to recommence negotiations on the agreement respecting normal competitive conditions in the commercial shipbuilding industry. The collapse of these negotiations after 20 years of discussions means that the global shipbuilding market will continue to be an arena for ruthless competition. This is a particularly negative turn of events, which has encouraged certain countries to apply various means of market intervention even more widely. The result of this is the creation of an even more uneven playing field within the global shipbuilding industry. The blame for this state of affairs lies with the intransigence of certain non-EU countries with shipyards: China and South Korea.

3.5.1 This turn of events is seen as a reaction to the global crisis and provides fertile ground for the introduction of protectionist measures. There is a greater risk that ships will be built on the global market which have no economic *raison d'être*. These newly launched vessels will aggravate the crisis on the freight market i.e. too many ships will be competing for the same cargoes. The multiple negative impact on all market players (production overcapacity, downward pressure on shipyard prices, surplus tonnage, depressed charter rates) has already been the subject of a complaint from the European social partners from the shipbuilding sector.

3.6 Employment in the sector has plummeted across the EU since 2008. Some 40 000 jobs have been lost and all stakeholders are calling for the introduction of a contingency programme to ensure the European shipbuilding sector retains critical mass ⁽²⁾ This trend is further compounded by the recent application of the Basel III Capital Framework for Banking Supervision which restricts conditions of financing.

3.7 Since the financial crisis began, it has become significantly more difficult to obtain financing for shipbuilding in the EU as a number of key financial institutions have reduced or indeed withdrawn their financial involvement prior to (pre-financing) and after ship delivery. Given this situation, public guarantee instruments, including for export credits, have therefore become significantly more important. The credit crisis in the shipbuilding sector is still continuing despite early signs of a possible market upturn.

⁽²⁾ EESC opinion CCMI/069 – OJ C 18, 19.1.2011, p. 35.

3.8 While the ship repair subsector, which is considered to be part of the shipbuilding sector, also experiences periodic difficulties, it is in a much better situation than the yards specialising in construction. Ship repair yards operate on a different market to the shipbuilding industry (over half of all vessels undergoing repair are from outside the EU). This subsector was not spared by the global crisis of 2009-2010 as ship owners significantly cut spending on ship repair, often limiting such repairs to essential or periodic repair work required by maritime regulations.

3.8.1 Given the fierce competition on the global market, ship repair yards in a number of EU countries have taken action to diversify their production by focusing on modernising (retrofitting) vessels and carrying out more complex operations such as: hull extension as well as other reconditioning including for equipment for deep sea oil and gas extraction or the production of smaller vessels.

3.8.2 At present, ship repairs are largely carried out in shipyards located in the EU's neighbouring countries. The EESC urges the EU Member States and EU administration to draw up a strategy to stimulate the development and construction of these types of shipyards in the EU's coastal areas. It is in the interest of EU Member States to maintain a 'strategic minimum' of repair facilities in the EU to serve its shipping sector. These yards could repair ships at competitive prices, ensure the timely completion of contracts and the use of 'green' methods, while at the same time contributing to the industrial regeneration of certain coastal regions.

4. General comments

4.1 The general aim of the review of the Framework should be to improve the conditions under which European shipyards compete. This spirit should pervade all its provisions.

4.2 The global competitiveness of Europe's shipbuilding sector is coming under immense pressure as a result of the difficult market conditions, particularly due to the large amount of support available in competitor countries. As the European sector is unable to compete on labour costs, it must seek to gain an advantage by ensuring the highest possible quality in terms of ship safety, efficiency and protection of the marine environment, as well as through the introduction of innovative processes aimed at further improving efficiency. It is clear that the revised and revamped Framework will be capable of providing the appropriate incentives to achieve this, which are vital if the objectives are to be attained.

4.3 It is essential for the updated Framework to immediately set up a practical system of incentives facilitating investments in newly built or modernised vessels with higher environmental

specifications. Failure to implement a system of this kind in the short term could make it impossible to achieve any rapid economic benefits from the reduction of nitrogen oxides, sulphur oxides or greenhouse gas emissions. The Framework should stipulate that this type of aid and the resources allocated to it must be restricted to European shipbuilders.

4.4 Aid granted under the Framework is important both for individual companies and regions. Accordingly, there is a need to introduce new innovative projects enabling shipyards to respond to the changing needs of the market as quickly and effectively as possible. To be eligible for aid innovative projects would have to include investment in both new product R+D+I and in training and upgrading employee skills. The renewed Framework should take this into account.

4.5 The Committee believes that before examining the issue of export credits in detail (see specific comments), it should be stressed that access to competitive financing is often of decisive importance when securing new shipbuilding projects. The involvement of public authorities, state-owned banks and other state institutions in financing prior to (pre-financing) and after ship delivery has increased significantly in recent years, especially in Asia. It is probably safe to assume that over the short to medium term, shipbuilding will be financed with support in the form of public loans or guarantees, also in the EU, with the involvement of national and EU financial institutions e.g. EIB (where the sector has experienced difficulties ⁽³⁾).

4.6 Since the first EU Shipbuilding Framework was established, the sector has undergone many structural changes, which should be taken into account when formulating new provisions. They are as follows:

- European shipyards have made significant progress towards specialisation, a process which must be continued and supported;
- there has been a significant decrease in the share of standard vessels in the order portfolio of the European shipbuilding industry;
- global competition is also becoming apparent in the case of smaller vessels, including inland waterway vessels;

⁽³⁾ See EESC opinion CCMI/069 – OJ C 18, 19.1.2011, p. 35.

- while the average size of European shipyards has remained constant or decreased slightly over the past ten years (following the closure of shipyards in Poland, Croatia, Denmark and Spain), Europe is now having to come to terms with the mass expansion of shipyards in its competitor countries, particularly in Asia;
- the importance of environmentally friendly products and production processes has grown significantly; this trend should be encouraged by necessary action on emissions, particularly sulphur oxides, nitrogen oxides and greenhouse gases;
- the growth of coastal shipping means that the European shipbuilding industry needs to find a way to meet local demand.

4.7 The approach adopted by the EU Member States when employing the aid measures provided for under the Shipbuilding Framework is particularly important; they must provide information in a comprehensive and systematic manner about the opportunities and conditions for obtaining state aid (not subsidies) as provided for under the Framework.

5. Specific comments

Aid for RDI

5.1 RDI activity is essential if companies are to offer better products and, consequently, be successful on the market. However, RDI activities may only be conducted if the market is prepared to accept the **specific types of risk** related to innovation.

5.2 As has been stressed by European shipbuilders, **the risk exposure related to the production of prototype ships is substantial**. Unlike most other sectors, sales contracts in shipbuilding stipulate product performance definitions which are untested at the time of signature. Even small incidents related for example to one innovative element can be the origin of changes requiring significant additional resources and time and causing substantial disruptions of the production process.

5.2.1 In this situation, the availability of **innovation aid** has a positive impact on risk assessments of each innovative element in the development of new products or processes. It allows companies to take additional steps towards new solutions, increasing the chances of market success for innovative products and, in consequence, stimulating further RDI activities.

5.3 Using innovation aid produces an accelerating effect, which is an important factor leading to greater efficiency and

competitiveness, which is crucial in order to maintain technological leadership in the field of complex and innovative ship types. The speed of innovation is a crucial element of competitiveness, particularly considering the limited possibilities for the protection of intellectual property in maritime technology.

5.4 The European social partners from the shipbuilding sector all agree – on the basis of specific examples – that aid for innovation has clearly contributed to an increase in efficiency and competitiveness for the EU's shipyards. It has made it easier to introduce and disseminate new production methods, technologies and products and stimulate RDI. Accordingly, it should be considered to be an appropriate instrument of EU policy.

5.5 Entrepreneurs believe that problems with the application of the rules on aid for innovation can be corrected without modifying the text of the Framework but rather by revising the notified national programme to alter the block exemption threshold for product innovation relating to small ships and process innovation.

5.6 Regarding the Commission's question as to whether it would be more appropriate to exclude other types of innovation from eligibility for innovation aid and only maintain innovation when it is linked to 'greener' ships, the Committee endorses the position of the social partners and considers that it would significantly weaken the effectiveness of this instrument. In particular, its highly positive impact on process innovation aimed at improving the competitiveness of European industry would be lost. Moreover, a number of product innovations e.g. linked to improved safety, security or crew and passenger comfort could no longer be supported.

5.6.1 Support instruments to facilitate market penetration of 'green technologies' are an important tool which deserves to be incorporated into the Framework as **environmental aid, complementing innovation aid, yet taking the form of a separate instrument**.

5.7 Incentives to go beyond regulatory requirements should be introduced along the lines of the State aid framework for environmental protection. However, the application of this horizontal framework to the shipbuilding sector has hardly advanced. Appropriate and practical provisions along with the requirements of the horizontal rules should therefore be incorporated into the Shipbuilding Framework. One effective means of doing this would be to refer to the rules on environmental aid under the rules on block exemptions in tandem with the specific requirements for ships. This would be an effective contribution to the simplification of EU state aid rules.

5.8 The horizontal RDI Framework also includes provisions for innovation activities, including 'the development of commercially usable prototypes and pilot projects [...] where the prototype is necessarily the final commercial product and where it is too expensive to produce for it to be used only for demonstration and validation purposes' ⁽⁴⁾.

5.8.1 The respective provisions actually foresee higher aid intensities than the Framework and, to some extent, a wider range of eligible costs. However, they also stipulate that 'in case of subsequent commercial use of demonstration or pilot projects, any revenue generated from such use must be deducted from the eligible costs' ⁽⁵⁾.

5.8.2 Whereas this provision is workable in most manufacturing sectors due to series production where development costs are amortised over a larger number of products, it is unworkable for prototype ships.

5.9 Summing up, the Committee notes that, **owing to the particularities of the shipbuilding sector, the horizontal RDI Framework does not offer an appropriate solution for innovation aid for shipbuilding and the best solution would therefore be to include appropriate provisions in the updated Framework.**

Closure aid

5.10 During the period between the introduction of the Framework in 2004 and the beginning of the crisis, shipbuilding experienced a period of strong demand, which meant there was little incentive for the industry to consider any facility closures. This demand situation has changed dramatically over the past two years with the order book of the European industry declining to its lowest level in more than a decade.

5.10.1 The Committee therefore believes that in the light of the current market situation the maintenance of this form of aid is justified ⁽⁶⁾.

5.11 The provisions on this type of aid should allow shipyards to partly restructure ⁽⁷⁾, without the need to go through the fully-fledged restructuring process under the Rescue and Restructuring Guidelines; this model should be taken over when reviewing those guidelines. If this was done,

⁽⁴⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 (OJ L 214, 9.8.2008).

⁽⁵⁾ Ibid.

⁽⁶⁾ Spain, among other countries, is planning to use 'closure aid' in the near future for several shipyards (partial restructuring).

⁽⁷⁾ Restructuring aid is defined in the appropriate horizontal rules, which are scheduled to be reformed in 2012. Aid for partial restructuring is expected to be included in this reform.

then of course there would be no need to maintain separate provisions on restructuring aid in the Shipbuilding Framework.

Regional aid

5.12 In the event that regional aid rules are maintained, the scope and aid intensities need to be aligned with the ones applicable under the Regional Aid Guidelines. Limiting its scope to existing yard installations is neither adequate nor justified. The European shipbuilding industry needs to invest in more efficient production methods and facilities in order to strengthen its competitive position. This may make it necessary to create larger production units, in order to use synergies, become more efficient and use economies of scale. The current rules hamper, or make impossible, the granting of regional aid for such projects.

5.13 Huge investments in Asia have been the key driver of these countries' successful development. These investments have often been facilitated by direct or indirect state support. The restrictive European rules for shipbuilding capacity expansion have taken the opposite direction; this has placed the European industry at a further disadvantage compared to its global competitors. **Therefore, the maintenance of restrictive rules, aimed at minimising support for capacity expansion, can no longer be justified.**

5.14 The key problems in terms of the interpretation or application of the current regional aid rules concern the restrictive nature of the Framework's regional aid rules compared to the horizontal provisions. In particular, the strict interpretation of limiting the aid to investments in existing installations has unreasonably narrowed the scope of this instrument and has caused significant problems with its application.

Employment aid

5.15 The EESC is convinced that employment aid should be maintained within the Framework.

5.15.1 The Committee considers that the Member States should employ the employment aid measures set out in the Framework more frequently to support the action of shipbuilders in their countries in the areas of education and training in crisis situations caused by market cycles, global overproduction or unfair competition from non-EU shipyards.

Aid for export credits and development

5.16 Export credits provided by state-owned export credit agencies are common practice in various industrial sectors

around the world. Sectoral agreements at OECD level provide the internationally accepted standards. All EU Member States are fully committed to the rules, which in the context of EU state aid rules are also considered fully compatible with the internal market.

5.17 Export credit facilities are an important element in the financing of shipbuilding projects. In Europe, they are intended to cover costs and therefore do not constitute subsidies. Their availability under competitive conditions contributes significantly to the competitiveness of the European industry. Particularly in the light of extensive financing packages made

available by other major shipbuilding nations, in particular China and South Korea, Member States must be encouraged to provide their companies with equivalent tools.

5.18 The Committee considers that it is important to establish – using the opportunities provided by sectoral dialogue – the extent to which a reference to the OECD provisions in the Shipbuilding Framework is necessary or useful. The social partners in the shipbuilding sector consider this question one for the administrations to address, should the continued availability of the current export credit systems be put at risk.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'Cooperation between civil society organisations and local and regional authorities in integrating immigrants' (additional opinion)

(2011/C 318/11)

Rapporteur: **Luis Miguel PARIZA CASTAÑOS**

On 20 January 2011, the European Economic and Social Committee decided, under Rule 29A of the implementing provisions, to draw up an additional opinion on

Cooperation between civil society organisations and local and regional authorities in integrating immigrants.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July 2011), the European Economic and Social Committee adopted the following opinion by 119 votes to 1 with 11 abstentions.

1. Conclusions and recommendations

1.1 The coming years will see an increase in the internal mobility of European citizens and in immigration to Europe by third-country nationals. These migration processes will enhance the EU's national, ethnic, religious and cultural diversity⁽¹⁾. The increase in mobility and immigration presents a challenge at local and regional level.

The European Economic and Social Committee condemns the recent actions restricting freedom of movement within the Schengen Area, and drew up an opinion⁽²⁾ with a view to cooperating with the work of the European Council of 24 June.

1.2 One of the guiding principles of *Europe 2020 – a European strategy for smart, sustainable and inclusive growth* relates to the integration of immigrants. The EESC wishes to point out that economic growth and job creation and improved training and public services facilitate integration.

1.3 It is very important that the EU has **good common legislation** to ensure that immigration is managed by means of legal and transparent procedures. This common legislation must be based on respect for the European Charter of Fundamental Rights and the European Convention on Human Rights in order to ensure that immigrants enjoy the same rights and obligations, equal treatment and non-discrimination in work and in society.

1.4 Against a background of economic and social crisis, **intolerance, xenophobia and racism** are on the rise throughout Europe, **including within the political agendas of certain governments**. The EU Institutions must be extremely active in the fight against xenophobia and discrimi-

nation towards visible minorities and immigrants, promoting equal opportunities and social mobility and cohesion. The media must act responsibly and informatively.

1.5 Local and regional authorities have political, regulatory and budgetary instruments for implementing integration policies. In many cases, there are national policies aimed at controlling migratory flows, but they remain very distant from the local and regional level, where the challenge of integration has to be faced. Policies have taken various forms: proactive, preventive, corrective and reactive. Local authorities have moved away from the approach which saw integration as a natural process free from difficulties and not requiring active and specific policies.

1.6 The EESC believes that integration is not a legal act, but rather a complex, long-term social process, with many dimensions and many stakeholders involved, particularly at local level. The social integration process takes place within society's structures and in various areas of people's lives: family, neighbourhood and city, workplace, school, training centre, university, association, place of worship, sports club, etc.

1.7 The social process of integration must be based on a legislative framework which guarantees 'bringing immigrants' rights and duties, as well as access to goods, services and means of civic participation progressively into line with those of the rest of the population, under conditions of equal opportunities and treatment' ⁽³⁾. The first of the Common Basic Principles of the European Union's integration policy ⁽⁴⁾ states that 'Integration is a dynamic two-way process of mutual accommodation by all immigrants and residents of Member States' ⁽⁵⁾.

⁽³⁾ OJ C 125, 27.5.2002, p. 112.

⁽⁴⁾ Council doc. 14615/04. Common Basic Principles adopted by the Council and Representatives of the Member States on 19 November 2004.

⁽⁵⁾ COM(2005) 389 final. Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union.

⁽¹⁾ OJ C 48, 15.2.2011, p. 6.

⁽²⁾ OJ C 248, 25.8.2011, p. 135.

1.8 **Integration and social inclusion policies adopted by local and regional authorities should focus on a number of different areas** ⁽⁶⁾: initial reception; teaching the language, laws and customs; housing; health; combating poverty; combating discrimination; employment and training policies; gender equality; education for children; family policy; youth policy; healthcare; providing social services and facilitating public participation. The staff of public authorities must reflect ethnic and cultural diversity and public employees must be given intercultural training. Intercultural and interreligious dialogue and cooperation should be promoted at local and regional level.

1.9 **Democratic governance** is based on the principle that all members of the political community should be able to take part directly and indirectly in the governmental decision-making process. If integration policies are to be successful, civil society and local and regional authorities must be actively involved in their drawing up, implementation and evaluation.

1.10 In a democratic society, everybody affected by collective decisions must be able to influence and participate in those decisions. Democracy in the European multicultural cities of the 21st Century must be improved through the participation of residents whose rights of political participation are restricted: residents from third countries ⁽⁷⁾.

1.11 The EESC has called for **citizenship rights to be extended** to third-country nationals with permanent resident status in the EU ⁽⁸⁾. It also calls for more flexible national naturalisation policies.

1.12 The EESC can contribute to the implementation of the conclusions of the Zaragoza Conference, by means of an opinion on **active citizenship** indicators.

1.13 The ninth Common Basic Principle, *'The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration'*, has been inadequately implemented in the Member States. The third edition of MIPEX ⁽⁹⁾ (which includes integration indicators for 31 countries of Europe and North America) concludes that most immigrants have few opportunities to inform and improve the policies which affect them daily.

1.14 The EESC believes that proactive integration policies should be implemented, with a two-way focus, targeting both the host societies and immigrants, the purpose being to achieve a society in which all citizens, regardless of where they come from, have the same rights and obligations, and share the values of a democratic, open and pluralist society.

1.15 In European cities, civil society is extremely active and works to improve co-existence and integration. These organisations represent wonderful social capital which can promote inclusive societies in each of its spheres of action. **The EESC proposes that local and regional authorities encourage the activities of civil society and promote its consultation and participation** through public and transparent procedures, and that sufficient funding be provided. Funding systems must not restrict the independence of organisations.

1.16 In order to encourage integration, governance must be improved by means of systems for civil society participation, and the EESC therefore proposes that **the role of existing local and regional participation and consultation bodies be strengthened and that new forums and platforms be created in cities and regions which have yet to establish them**, because public action is more successful when participatory systems are in place.

1.17 **The EESC proposes that Europe's municipal and regional authorities set up consultative councils, forums and platforms** so that civil society (immigrants' organisations and immigrant-support organisations, human rights organisations, women's organisations, social partners – trade unions and employers' organisations – and other relevant NGOs) can participate in and be consulted on integration policies. At municipal level, participatory structures can be adapted to reflect the specific local situation and can have either stable or more flexible structures. Local and regional authorities must take steps to remove the obstacles preventing participation.

1.18 The EESC believes that, **in the new integration agenda**, the European Commission should stress the importance of the local and regional level, promoting cooperation between political authorities and civil society organisations. It is at local level that integration takes place most effectively and a sense of belonging develops. Social and political participation is crucial to creating this sense of belonging.

1.19 The Commission's Communication should propose that structures be created at local level for consultation with immigrants and civil society, and **the European Integration Fund could work with local authorities to fund** these participatory activities, while guaranteeing the independence of organisations.

⁽⁶⁾ OJ C 347, 18.12.2010, p. 19.

⁽⁷⁾ R. Gropas and R. Zapata-Barrero (2011) Active immigrants in multicultural contexts: democratic challenges in Europe, in A. Triandafyllidou, T. Modood, and N. Meer European Multiculturalism(s): Cultural, religious and ethnic challenges. Edinburgh: Edinburgh University Press.

⁽⁸⁾ OJ C 208, 3.9.2003, p. 76.

⁽⁹⁾ Migrant Integration Policy Index III, 2011.

1.20 In the context of the forthcoming mid-term evaluation, the EESC believes that **the Fund's budget should be increased and that it should have more flexible funding systems for local and regional authorities**. Furthermore, Commission should manage up to 20 % of the Fund, financing EU actions with high added value. The Committee shares the concern of many immigrants' organisations regarding the fact that the Fund only finances projects presented by large organisations with the capacity for high levels of match funding, but does not fund small local organisations.

2. Background and general comments

2.1 Through a range of opinions, the EESC has contributed to the establishment of a common EU approach to integration policies: the Common Agenda for Integration, the Common Basic Principles, the European Integration Fund, the ministerial conferences, the Network of National Contact Points, the integration handbooks, annual reports, the website and the creation of the European Integration Forum.

2.2 The **Lisbon Treaty** provided the European Union with a legal basis (Article 79.4 of the Treaty on the Functioning of the EU) for implementing measures to **encourage and support the work of the Member States to integrate third-country nationals**.

2.3 In 2006, the EESC adopted an own-initiative report ⁽¹⁰⁾ to contribute to the implementation of EU integration policies from a local and regional perspective. The EESC stressed that integration policies were not the exclusive competence of the Member States, but also of local and regional authorities.

2.4 Good governance is needed in order to ensure that public authorities back this social process through appropriate policies. In keeping with the powers they have in the various Member States, local and regional authorities possess political, legislative and budgetary instruments that they must put to good use in integration policies. In order to guarantee the efficacy and overall consistency of programmes and actions, they must be properly supported, coordinated and evaluated at the three levels (national, regional and local).

2.5 The EESC wishes to stress that, at local and regional level, organised civil society is involved in and committed to integration policies and combating discrimination: immigrants' organisations, immigrant support organisations, trade unions, business associations, human rights and anti-racism NGOs; religious communities, organisations of women, young people and residents; educational, cultural and sporting organisations, etc.

⁽¹⁰⁾ OJ C 318, 23.12.2006, p. 128.

2.6 The EESC has stated previously that work represents a fundamental part of the process of social integration, *since decent work is vital to immigrants' self-sufficiency, and it facilitates social relations and mutual understanding between the host society and immigrants* ⁽¹¹⁾.

2.7 Education and training are crucial to integration and equal opportunities. Systems of lifelong training in companies must be bolstered in order to facilitate the recognition of immigrant workers' professional qualifications. The EU must establish more flexible systems for the recognition of academic and professional qualifications obtained in countries of origin.

2.8 The EESC has discussed ⁽¹¹⁾ the greater social integration difficulties faced by immigrants when their situation is irregular, and has suggested introducing case-by-case regularisation for irregular workers to take account of the degree to which they have settled in social and employment terms, on the basis of the undertaking by the European Council under the European Pact on Immigration and Asylum ⁽¹²⁾. Case-by-case regularisations would be carried out under national law for humanitarian or economic reasons, taking account of the greater vulnerability of women.

2.9 Article 19 of the Council of Europe's revised European Social Charter ⁽¹³⁾ lists a series of principles for the integration of immigrant workers and their families which the EESC believes should provide the basis for people's development in cities. It has been ratified by 30 of the 47 Member States of the Council of Europe. The Charter provides for an important system of collective complaints which can be used by trade unions, employers and civil organisations (only 14 countries have ratified this system).

2.10 Furthermore, individuals and representative associations will have an increased opportunity to make known and publicly exchange their views in all areas of Union action in accordance with Article 11 TEU. In an own-initiative opinion of 2010, the EESC welcomed this provision as a milestone on the road to a people's Europe ⁽¹⁴⁾, through horizontal dialogue, vertical dialogue and the European citizens' initiative. The EESC believed that representativeness criteria (both quantitative and qualitative) should be introduced for the participation of associations, and proposed that third-country nationals permanently resident in the Union should be able to participate in the initiative.

⁽¹¹⁾ OJ C 354, 28.12.2010, p. 16.

⁽¹²⁾ Council of the European Union, 13440/08, 24 September 2008.

⁽¹³⁾ European Social Charter. Turin, 18 October 1961. Council of Europe (Strasbourg). Revised: Strasbourg, 3.V. 1996 <http://www.coe.int/t/dghl/monitoring/socialcharter/>.

⁽¹⁴⁾ OJ C 354, 28.12.2010, p. 59.

3. European Integration Forum

3.1 At the request of the European Commission, in 2008 the EESC adopted an exploratory opinion⁽¹⁵⁾, which provided the basis for the creation of the Forum, with plenary meetings every six months at the EESC's premises. **The Forum has now held five plenary meetings.** The present opinion was the EESC's contribution to the fifth plenary meeting, held in May 2011, which discussed the importance for integration of the local and regional level.

3.2 The EU institutions, various experts and one hundred representatives of civil society organisations (immigrants' organisations, human rights organisations, social partners and other relevant NGOs) take part in the Forum. The Forum is consulted by the EU institutions, exchanges information and draws up recommendations to promote integration on the European agenda, taking account of national good practice. The Forum is assisted by a Bureau made up of four members (the Commission, EESC and two representatives of relevant organisations). Unlike the Commission's other consultation systems, the Forum expresses civil society's views in a structured, ongoing and proactive fashion.

3.3 The Committee committed itself to playing an active role in the Forum and decided to set up the **Permanent study group on immigration and integration (IMI)** within the SOC section. The permanent study group draws up opinions, holds hearings and contributes to the Forum's activities.

3.4 The Stockholm Programme⁽¹⁶⁾ also calls on the Commission to support Member States' efforts for improved consultation with and involvement of civil society, taking into account integration needs in various policy areas. The European Integration Forum and the European integration website must play a key role in this.

3.5 In several Member States and in some regional authorities, consultative forums and platforms have been created in which civil society organisations participate. These methods for the consultation and participation of civil society and immigrants' organisations operate most extensively at local level. They take very varied forms, according to Europe's differing circumstances and social and political cultures.

3.6 Prior to the fourth meeting of the European Integration Forum, the EESC asked the Migration Policy Group to draw up a report assessing the situation of national consultative bodies

on integration⁽¹⁷⁾. There are national consultative bodies in 11 countries (in Germany and Italy there is a legal framework, but not yet an institution; in Ireland it has been set up recently). Fifteen countries have local consultative systems. In 10 countries there are regional consultative councils (such as Germany and other federal countries). In three countries (Austria, France and Greece) there are local consultative bodies, but not national ones.

4. The Zaragoza Ministerial Conference

4.1 The EESC contributed to the preparation of the last Ministerial Conference on integration in Zaragoza⁽¹⁸⁾ by means of two opinions⁽¹⁹⁾. For the first time, two representatives of the Forum took part in the Ministerial Conference.

4.2 The Conference's conclusions stressed the need to create a **new agenda for integration**. The European Commission is completing its work on drawing up the new agenda for integration, in preparation for which the EESC drew up an information report⁽²⁰⁾.

4.3 The Zaragoza Declaration states that **civil society plays an active role in the integration process** and that a pilot project must be launched with a view to the evaluation of integration policies.

4.4 Member States, regions and local authorities must strengthen local integration initiatives and methodologies for citizens' participation. The creation of networks and the establishment of channels for dialogue between local and regional authorities and organised civil society will be promoted.

4.5 The indicators mentioned in the Declaration relate to employment, education and social inclusion, and also **include active citizenship**, because immigrants' participation in the democratic process – as active citizens – contributes to their integration and increases their sense of belonging.

4.6 The EESC, which participated in the Conference, pointed out that, as well as quantitative indicators, qualitative indicators should also be drawn up. **Furthermore, the EESC could contribute to the implementation of the conclusions of the Zaragoza Conference, by means of an opinion on active citizenship indicators.**

⁽¹⁵⁾ OJ C 27, 3.2.2009, p. 114.

⁽¹⁶⁾ The Stockholm Programme — An open and secure Europe serving and protecting the citizen (OJ C 115, 4.5.2010, p. 1). Point 6.1.5.

⁽¹⁷⁾ Consulting immigrants to improve national policies, Migration Policy Group.

⁽¹⁸⁾ 15 and 16 April 2010.

⁽¹⁹⁾ OJ C 347, 18.12.2010, p. 19 and OJ C 354, 28.12.2010, p. 16.

⁽²⁰⁾ OJ C 48, 15.2.2011, p. 6.

5. Governance in cities

5.1 The preamble to the 1985 **European Charter of Local Self-Government**⁽²¹⁾ states that 'the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all Member States of the Council of Europe'. This right can be exercised most directly at local level.

5.2 **Convention 144 of the Council of Europe on the participation of foreigners in public life at local level (1992)**⁽²²⁾ states that the active participation of foreign residents enhances the development and prosperity of the local community. The convention undertakes to guarantee foreign residents freedom of expression, assembly and association, to promote consultative bodies to represent foreign residents at local level, and finally to promote the right to vote in local authority elections. However, very few Member States of the Council of Europe have signed this convention and the Committee therefore calls upon the Member States to ratify it.

5.3 The **European Charter for the safeguarding of human rights in the city**⁽²³⁾, adopted in St. Denis in 2000 by more than 70 European cities, states that the **city is the political and social space for an accessible democracy**. Active participation by citizens defines the city. The signatory cities undertake to recognise the right to participate in local life through the free and democratic election of local representatives, without distinction between foreign and national citizens, and propose that the right of municipal suffrage be extended to people who have resided in the city for more than two years. Taking account of the restrictions imposed by national legislations, they **call for democracy to be promoted by involving citizens and their associations in decisions concerning the local community** (through public debates, municipal referenda, public meetings, public action, etc.).

5.4 In 2003, the members of the **Eurocities** network, made up of 128 large European cities, adopted a 'Contribution to good governance concerning the integration of immigrants and the reception of asylum seekers'⁽²⁴⁾. Drawn up by and for cities, this Charter contains general principles for dealing with integration. It acknowledges that local integration policies are more effective if they have the support of the whole community.

5.5 The **Committee of the Regions (CoR)** is particularly pro-active in relation to integration, having drawn up various opinions⁽²⁵⁾ which stress that local and regional bodies are at the forefront in drawing up, implementing, evaluating and monitoring integration policy, and it should therefore be seen as a key player in its development⁽²⁶⁾. The CoR also notes the importance of local and regional authorities playing an active role in the integration of immigrants, and is cooperating with the European Commission.

5.6 The EESC **adopted** an own-initiative opinion⁽²⁷⁾ addressed to the Convention that drafted the ill-fated Constitutional Treaty, calling for **European citizenship to be granted to third-country nationals having long-term resident status**. The Committee calls on the Commission and the European Parliament to adopt new initiatives to ensure that permanent immigrants are given citizenship rights, particularly at local level.

5.7 The 2nd Commission handbook on integration for policy-makers and practitioners⁽²⁸⁾ recommends investing in social organisation and mobilisation, in structured communication and dialogue and in strengthening local integration networks.

5.8 **SMART CITIES**⁽²⁹⁾ is an instrument for ongoing evaluation created in 2007 with the participation of 70 medium-sized European cities sharing sustainable development strategies in the fields of the economy, people, governance, mobility, the environment and quality of life. Various indicators are used. The EESC recommends that the proposals contained in this opinion be taken into account in relation to the indicators for people and governance.

5.9 Intercultural Cities (ICC) is a joint action by the Council of Europe and the European Commission created during the European Year of Intercultural Dialogue in 2008. Its aim is to contribute to the development of an intercultural integration model in urban communities characterised by their diversity. It sees interculturalism as a means to promote policies and practices to reinforce interaction, understanding and respect between different cultures and ethnic groups.

⁽²¹⁾ European Charter of Local Self-Government, adopted by the Committee of Ministers of the Council of Europe in June 1985 and open for signature by the Member States on 15 October 1985, the first day of the 20th session of the CLRAE.

⁽²²⁾ Convention on the Participation of Foreigners in Public Life at Local Level. Strasbourg, 5.11.1992.

⁽²³⁾ European Charter for the Safeguarding of Human Rights in the City, 18.5.2000.

⁽²⁴⁾ Contribution to good governance concerning the integration of immigrants and the reception of asylum seekers, 28.11.2003.

⁽²⁵⁾ Opinion of the Committee of the Regions on A Common Immigration Policy for Europe (2009/C 76/07).

⁽²⁶⁾ Opinion of the Committee of the Regions on Strengthening the global approach to migration: increasing coordination, coherence and synergies (2009/C 211/05).

⁽²⁷⁾ OJ C 208, 3.9.2003, p. 76.

⁽²⁸⁾ Handbook on integration for policy-makers and practitioners. Second edition, May 2007.

⁽²⁹⁾ <http://www.smart-cities.eu/>.

5.10 In the document entitled *Citizenship and participation in the intercultural city* ⁽³⁰⁾ the ICC programme analyses the methods and procedures which cities can adopt in order to increase intercultural dialogue and interaction. The document reaffirms the principles of the **1992 Convention of the Council of Europe on the participation of foreigners in public life at local level**, and provides a creative approach, recommending more flexible forms of consulting in more informal contexts. It offers a complementary and valuable approach to long-term governance strategies based on consultative bodies.

5.11 A good number of Member States currently guarantee (totally or partially) the right to vote for foreign citizens: Belgium, Denmark, Estonia, Finland, Greece, Ireland, the Netherlands, Malta, Portugal, Slovakia, Spain, Sweden and the United Kingdom. However, there is little active participation by the foreign population and the EESC therefore believes that public actions in cooperation with civil society should be promoted in order to boost participation by foreigners.

5.12 According to MIPEX III, in Europe, third-country nationals can stand as municipal candidates in 13 countries, vote in municipal elections in 19, vote in regional elections in seven and vote in national elections in two (Portugal and the United Kingdom). As we have already pointed out, there are national consultative bodies in 11 countries and local consultative bodies in 15.

5.13 The information in MIPEX III contains some very important indications, not just regarding countries which consult immigrants, but also regarding the development of genuine integration policies. **The countries with strong consultative structures are the countries that guarantee political freedoms for everybody**, back immigrant civil society with sufficient funding, extend voting rights and full citizenship and do most to promote full participation by all residents in consultative systems regarding employment, education, health and housing. MIPEX points out that consultative bodies are not a substitute for voting rights.

5.14 The strongest consultative councils in Europe are those which have been operating the longest (some since the 70s and 80s), and are found in the countries with the greatest traditions of immigration. On the other hand, the weakest are in the countries where immigration is most recent, in the south of Europe. The countries of Central Europe, which are recent recipients of immigration, have under-developed systems.

5.15 An analysis of these platforms in light of the Council of Europe's criteria ⁽³¹⁾ suggests that the creation and permanence of these structures should not depend upon the will of authorities and governments, but rather that they require

specific legal provisions. They must be able to adopt initiatives and receive responses and information in the areas on which they have been consulted, and from the comments made at the 5th European Integration Forum it would appear that this is not usually the case. They must be representative structures with clear immigrant leadership and have sufficient financial resources ⁽³²⁾. The EESC stresses the importance of ensuring that organisations are representative and that women participate.

5.16 During the drawing-up of the opinion, a hearing was held in Valencia on 30 March 2011 between the EESC and the Regional Government of Valencia, on **Cooperation between local and regional administrations and civil society organisations**. In the various speeches, experiences in the areas of consultation and participation were presented by Rome (Italy), the Flanders Region (Belgium), Strasbourg (France), Dublin (Ireland), the Hesse Region (Germany), Aarhus (Denmark) and Valencia (Spain). This opinion reflects many of the experiences and views discussed at the meeting.

5.17 **The EESC believes that local and regional authorities should allow persons of immigrant origin to exercise the right of association**, since national legislations grant third-country nationals a limited citizenship status (insufficient and unequal recognition of the right to vote). Associations promote organised participation, strengthen solidarity networks, improve conditions for the settling and well-being of citizens and ultimately benefit the entire community.

5.18 **Local and regional authorities must promote the formation of associations, particularly for immigrants, and support them with technical resources** (advice on association management, democratic, economic, financial and communications management; capacity-building measures, leadership, particularly for immigrant women; promoters of forums and networks, exchange of good practices etc); **financial resources** (subsidies, agreements or the award of service-provision contracts); **material resources** (infrastructures for bodies: premises and basic resources for carrying out activities), particularly in the case of e-inclusion actions.

5.19 Local and regional authorities must promote **the inclusion of immigrants in civil society organisations**, as members and as directors. Of particular importance are residents' associations, parents' associations in educational establishments, women's associations, cultural, sporting and leisure associations, religious communities, and trade union and business organisations. Trade union organisations in Europe have a great tradition of membership and participation by workers of immigrant origin. There is great ethnic and cultural diversity amongst their members and they perform a crucial social mediation function.

⁽³⁰⁾ http://www.coe.int/t/dg4/cultureheritage/culture/Cities/paperviarregio_en.pdf.

⁽³¹⁾ Convention 144 of the Council of Europe on the participation of foreigners in public life at local level (1992).

⁽³²⁾ Consulting immigrants to improve national policies. Thomas Huddleston, Migration Policy Group.

5.20 Relations between immigrants' associations and the rest of organised civil society must also be boosted, promoting the creation of networks based on common social goals for all citizens (education, employment, housing, town-planning and urban development). The European Year of Volunteering offers an opportunity to recognise and support organisations.

5.21 These take many different forms in the EU: forums, consultative platforms and councils, dialogue groups. The 3rd Handbook on integration for policy-makers states that a dialogue platform is a civic space 'in which to begin an open and respectful exchange of views among immigrants, with fellow residents, or with government'. The objective is for participants to develop shared understanding and trust.

5.22 The EESC believes that **the European Integration Forum must work in a network with the existing consultative councils and forums in the EU**. In the Member States as well, local and regional forums should set up networks. (There is a very interesting case in Denmark, where the 14 members of the national ethnic minorities council are elected by the 42 local forums.)

5.23 The EESC **wants** to promote more democratic cities in Europe, boosting **common citizenship** linked to residence in the city (urban citizenship, to use the words of the Deputy Mayor of Rotterdam), bearing in mind that the city is the most important place for developing a shared sense of belonging amongst highly diverse people. The majority of immigrants identify more with the city in which they live

than with the State. It is in cities, first and foremost, that people share their problems, plans and dreams.

6. The European Integration Fund

6.1 The 5th European Integration Forum discussed the functioning of the Fund in the context of the mid-term evaluation being carried out by the European Commission. In accordance with its conclusions, the EESC proposes that:

6.1.1 Priority should be given to the **principle of cooperation** laid down in Article 10 of the Decision on the Fund. The Member States should therefore involve local and regional authorities and organisations representing civil society in the drawing-up, implementation and (ex post) evaluation of the multiannual programme and the use of the Fund at national level.

6.1.2 The Fund's current rules and procedures are too complex and create administrative barriers, hindering the funding both of civil society and of local and regional authorities⁽³³⁾. **The EESC recommends that those rules be revised in cooperation with the European Integration Forum** and in accordance with the principle of cooperation, particularly those relating to the criteria of access, match funding, transparency and people. In order to ensure that the Fund provides added value, the EESC believes that all projects funded must guarantee that the first common basic principle – 'integration is a two-way process' – is implemented.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽³³⁾ See S. Carrera and A. Faure Atger (2011), Integration as a two-way process in the EU: Assessing the Relationship between the European Integration Fund and the Common Basic Principles on Integration, Executive Summary, Centre for European Policy Studies, CEPS: Brussels. Available at http://www.ceps.eu/system/files/research_area/2011/02/CEPS{EIF_study_summary.pdf.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

473RD PLENARY SESSION HELD ON 13 AND 14 JULY 2011

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Tackling the challenges in commodity markets and on raw materials'

COM(2011) 25 final

(2011/C 318/12)

Rapporteur: **Mr ZBORIL**Co-rapporteur: **Mr GIBELLIERI**

On 2 February 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Tackling the challenges in commodity markets and on raw materials

COM(2011) 25 final.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 7 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 142 votes to 4 with 3 abstentions.

1. Conclusions and recommendations

1.1 EESC welcomes the Commission document COM(2011) 25 final 'Tackling the Challenges in Commodity Markets and on Raw Materials' and The European raw materials' initiative (RMI) as an important step to tackle this vital issue.

1.2 Although there is no reason to believe that there exists any danger in the long term of global depletion of stocks of any vital critical raw material, a real threat of shortages in short term exists. Such shortage can be triggered by political or economic factors, if some raw materials, necessary for EU high tech production are only produced in few countries. The resources which could be used to alter the present supply are in sufficient volumes and could be extracted in several countries,

e.g. Australia, Denmark (Greenland), USA; but nowadays, it is much cheaper to rely on the current supply chain. Some of the countries have already shown they would use such influence to impose their economic or political interests.

1.3 EESC thus urges the EC to monitor the situation in international trade of critical raw materials (as listed in COM(2011) 25 final and with regular updating of this list). EESC recommends preparing several plausible scenarios, with the worst case one, to describe the threats and potential solutions. In addition, we endorse the need of continuing in negotiation at the international level (WTO) to promote free trade also in commodity markets. Cooperation with other countries in the similar situation (US, Japan, South Korea) should be enhanced.

1.4 The EESC urges a more active foreign policy regarding security of raw materials for EU Industry. For this purpose key guidelines of raw material diplomacy should be defined and agreed between member states. Bilateral trade agreements and diplomacy are of utmost importance to secure the critical raw materials for EU based industry. These represent an immediate and tough challenge for the newly established EU diplomatic service. There needs to be not only a direct focus to secure the vital raw materials but also to create a positive environment for EU interests in target countries. The fact that EU is among the world's most popular and important markets have to be exploited.

1.5 The raw material policy must form an integral component of the EU industrial policy:

- To promote the resource efficiency of both primary energy sources and raw materials towards de-coupling growth from consumption of resources.
- To have a consistent policy of urban mining that aims to recover and to make available such a resource of valuable raw materials and to promote the new skills and jobs related.
- To strengthen the research and development about the possibilities of substitution of the critical raw materials.
- To maintain and increase employment in the European extractive sector ensuring continuous education and training of the workforce, accompanying the transition to more sustainable extractive activities by the social dialogue at all the levels.

1.6 EESC thinks that the creation of a strategic stockpile of critical raw materials is among the potential solutions and recommends that an impact assessment be carried out to establish the feasibility of such possibility in the light of the worst case scenario. Such measure could have also negative side effects (e.g. not sufficient flexibility, impact to the price of the commodity, etc.), and must be carefully studied and consultations held and decisions taken with EU industry representatives.

1.7 EESC recommends launching initiatives to support research, data collection and monitoring focused on the current or potential raw material resources in the Member States but also in third countries. The data obtained from such a research or data collection, which were obtained with public money support, have to be accessible for all EU market players and EU and national authorities.

1.8 The Committee considers research and innovation to be a crucial factor of the Raw material policy. Successful advancement needs involvement of the main manufacturing

sectors (ETPs – partnership initiative on raw materials in the framework of the EC Communication 'Innovation Union'). Raw Material policy must be reflected as a priority of the forthcoming 8th Framework Programme for research and innovation in the EU.

1.9 EESC recommends supporting current or new raw material extraction in the Member States, which conforms to the EU environmental, social and health and safety legislation. The domestic supply should be among the pillars of all raw material policies.

1.10 EESC supports recycling of raw materials and underlines the necessity to secure the highest level of recycling rate, where it is economical and technically feasible. EESC recommends supporting extraction from old mining waste, which contains a significant volume of a rich spectrum of different metals.

1.11 The Committee supports the European Commission's measures to regulate the financial commodity markets aimed at improving transparency, enhancing the quality of information and improving oversight mechanisms.

2. The Commission document, introduction

2.1 The Commission published the document COM(2011) 25 final *Tackling the Challenges in Commodity Markets and on Raw Materials* on 2 February 2011. The document is enlarged against the initial intentions to cover the challenges of raw materials. The commodity markets both the physical ones where materials are traded and the financial markets derived from them are also covered now.

2.2 A commodity is any product with a low value added and thus very sensitive to price competition. Raw materials, agricultural products and basic goods are commodities. Commodity markets have seen increased volatility and unprecedented movements in prices in recent years.

2.3 While the debate on the relative importance of the multiple factors influencing commodities prices is still open, it is clear that price movements across different commodity markets have become more closely related, and that commodities markets have become more closely linked to financial markets.

2.4 The years 2002 to 2008 were marked by a major surge in demand for raw materials, driven by strong global economic growth, particularly in emerging countries such as China, India and Brazil, but also in other smaller emerging countries in Asia, America and, particularly, in Africa. This increase in demand will be reinforced by the further rapid industrialisation and urbanisation in such countries.

2.5 Beyond commodity price volatility, in recent years, some countries have introduced restrictions on the export of certain vital raw materials such as rare earths (for instance praseodymium and neodymium and some other elements and minerals that are considered important because of their increased use in new technologies). These restrictions, as well as other bottlenecks in the sustainable supply of raw materials, pose a real challenge for European industry and consumers and need to be tackled.

2.6 The Communication describes developments in global commodity markets explaining changes on physical markets (energy, agriculture and security of food supply, and raw materials) and growing interdependence of commodities and related financial markets. EU policy responses are highlighted in the same logical structure.

2.7 At EU level, there has been an initiative to increase oversight, integrity and transparency of trading in energy markets. There have also been a number of initiatives to improve the functioning of the food chain and transparency on agricultural commodity markets. As part of the ongoing reforms of the regulatory framework for financial markets, the Commission has also identified measures to increase the integrity and transparency of commodity derivatives markets.

2.8 The European raw materials' initiative (RMI) is a crucial part of the document. It is based on three pillars:

- ensuring a level playing field in access to resources in third countries;
- fostering sustainable supply of raw materials from European sources;
- boosting resource efficiency and promoting recycling.

It examines results to date on identifying critical raw materials, and in the areas of trade, development, research, and resource efficiency and recycling.

2.9 While significant progress has been made in implementing the RMI, further improvements are necessary. An integrated approach based on the three pillars is essential, as each contributes to the objective of ensuring a fair and sustainable supply of raw materials to the EU.

3. General comments

3.1 The EESC acknowledges the Commission initiative to address the raw materials issue and the communication

summarising the results of extensive analytical work on this topic. We also appreciate reflections of the stakeholder's consultations and contributions of other EU bodies involved.

3.2 Europe has to take its place in a new world where emerging economies will consume a greater proportion of raw materials available on earth, in the same way as developed countries. We know that's impossible and Europe has to lower its raw material intensity. The first manifestation of that reality is that the industrial raw materials' prices are determined by the Chinese market which is the major consumer in the world and often at the same time the first producer. The consequence of that domination is the creation of new raw material markets (spot and futures) in China in the coming years. These markets are more and more the sector's reference.

3.3 The raw material policy must form an integral component of the EU industrial policy:

- To promote the resource efficiency of both primary energy sources and raw materials towards de-coupling growth from consumption of resources.
- To have a consistent policy of urban mining that aims to recover and to make available such a resource of valuable raw materials and to promote the new skills and jobs related.
- To strengthen the research and development about the possibilities of substitution of the critical raw materials (Japan has already launched this type of programme).
- To maintain and increase employment in the European extractive sector ensuring continuous education and training of the workforce, accompanying the transition to more sustainable extractive activities by the social dialogue at all the levels.
- The raw materials' procurement policy in developing countries, especially in African countries has to be coupled with investment in social matters and infrastructures in these countries (as China does in Africa in the recent years).

3.4 On the other hand, inclusion of the commodity markets and even financial markets somewhat, distracts focusing the Communication. The Committee understands the necessity of having a broader picture of the issue. The question is, if the framework was set in a proportionate manner.

3.5 It is obvious, that commodity markets, both physical ones and commodity derivative markets show numerous similarities, but they are very much differentiated, also due to their inherent specificities. A block (EU) purchase power should be a very strong argument while specific trade policy and procurement negotiations are performed on a bi-lateral level, mostly.

3.6 A common EU strategy is clearly needed to be reflected in the bi-lateral negotiations, thus, a concept of raw material diplomacy must gain the ground in practical terms. The EESC cautions that besides the 'hard facts' also 'soft' issues, like creating the positive emotional environment, would play an important role. Europe must define key guidelines of new raw material diplomacy that need to include:

- pursuit of the Tony Blair initiative for transparency in the extractive industries (2003) to promote the voluntary signature of each European country;
- a requirement that each extractive enterprise, which is listed in the European stock exchange has to publish its profit country by country (like Hong Kong did in June 2010);
- adoption of a law to oblige the extractive industry to publish what they pay at each government and state (as United States adopted the Dodd-Frank law in 2010);
- observance of the OECD guidelines for multinational large corporations as a standard Code-of-Conduct; and
- adoption of the ISO 26 000 standard helping to progress to a higher level of social responsibility of the enterprises at the micro-economic level should be requested.

3.7 The focused raw material strategy should aim at a common goal – to have a strong, highly competitive industry, operating in Europe, achieving not only high carbon efficiency, but also making intelligent use of resources, and geared to meet the requirements of EU consumers and citizens.

3.8 Our region is becoming smaller and smaller on a global scale, and therefore, we cannot access as easily as we used to the raw materials we need, since many others have come to need them as well. So, we need to be twice as smart in using the raw materials that we have available, or that we source

elsewhere. A raw material policy is indeed about the future of our society, and even national security – as it is in the US.

3.9 The very reason for developing an EU raw material policy shows that we cannot rely on just getting raw materials to grow. We must use raw materials in an intelligent way: that means creating the highest added value for each ton of material we use.

3.10 There are also other aspects of the consistent raw material policy framework that have not been taken into account, though, their impact on raw material availability can be even greater. Such an aspect is, for instance, consistency of this policy with other EU policies, which should also be coherent with each other so as to prevent conflicts with raw materials' availability.

3.11 Raw material policy and its implementation both at EU level and also in the member states need perfect coherence with industrial policy, innovation policy, resource efficiency, environmental policy, agricultural policy and measures, energy and, in particular, renewable energy policy, trade, and competition. This integrated perspective will enable the EU industry to use the raw materials it needs, in an intelligent and sustainable way, contributing to the EU 2020 strategy.

3.12 Building the raw material policy on short term criticality of some raw materials is not enough. Medium and long term effects of some EU policies must be seriously analysed and their impacts on raw materials assessed. Some of the basic raw materials easily available nowadays can become scarce in relatively short period of time. Important raw materials (e.g. iron ores and coking coals) have not been included in the Communication, although their availability in a sufficient quantity and quality should be at risk soon. Furthermore, the volatility and continuous increase of their prices represent an element of uncertainty for the value chains of the main European manufacturing sectors.

3.13 For instance, if the mandatory renewable energy targets were to remain unchanged, the classical and newly developing bio-based industries would be endangered. That opens a much more complex discussion on sustainability, substitution, intelligent use of resources. We need the political courage to debate such issues and to reconcile similarly divergent policies. If need be the EU should have the courage to revise decisions taken so far in the light of holistic impact assessments that carefully assess the ultimate consequences of ambitious environment targets, especially where EU decisions are not accompanied by corresponding measures from other economic blocs.

4. Specific comments

4.1 *Physical commodity markets*

4.1.1 No doubt competition on the markets with primary energy sources (gas and oil, in particular) would intensify with the growth of world population (9 billion in 2050). There is also more and more the strain on the coal market. Thus, if the EU is set to maintain the social and welfare standards in member states, all indigenous primary energy sources must be mobilised including newly discovered reserves of shale gas. Of course, such resource mobilisation must meet the EU environmental standards.

4.1.2 Electricity is a prerequisite of mankind's decent development. Imbalanced development of its generation capacities and transmission networks can lead to catastrophic consequences, social and economic collapse of societal structures. A Common EU energy policy should resolve all inconsistencies and uncertainties in the investment environment to prevent the potential deficit of power generation capacities after the year 2020.

4.1.3 The EESC understands that the security of food supply on the volatile markets is a serious problem; on the other hand, the EU CAP and other relevant EU and national policies should be geared towards this security as a top priority. EESC pleads for the protection of productive land for agriculture purposes; all relevant policies should take this into account and be shaped and coordinated so as to avoid losses of such land, in particular as a result of competing policies or initiatives or as a consequence of urbanisation. In this context, fair rules of the game should be established also for international trade, reflecting individual natural conditions of specific geographic regions.

4.1.4 Extensive international cooperation is needed also in assessment and differentiating among global trends and occasional market/crop fluctuations. Dangerous trends should be prevented.

4.1.5 Sound science should be applied to maintain and boost the crop yields, since the arable land area is diminishing and there would be a need to provide food for the estimated 9 billion world population in 2050.

4.2 *Commodity and related financial markets*

4.2.1 Despite the raft of measures launched by the European Commission over recent years to regulate the financial markets, investment flows in the commodity derivatives market are still veering significantly away from the risk coverage role for which they were designed, and towards operations of a speculative nature which are creating considerable price distortions and seriously harming the weakest market players, in particular consumers and SMEs.

4.2.2 The Committee confirms the Commission observation, that better understanding of interaction between material and financial commodity markets is needed. We also support the recommended drive towards more transparency and even accountability of those market players who would break the rules agreed upon. Access to finance the individual market players, mainly SMEs should be facilitated as the key priority of further development and innovations.

4.3 *The European Raw Material Initiative*

4.3.1 The Committee appreciates this initiative as an important component of the EU 2020 strategy. It reflects also the resource efficiency concept, though these two policies should be reconciled towards the highest attainable level of compliance and the highest added value for the EU citizens.

4.3.2 The concept of criticality in the Raw material initiative, though, overcasts needs of more general overview and detailed assessment of the spectrum of the relevant policies. Such a holistic approach should result in adequate policy compliance, and it would bring much more synergetic effects.

4.3.3 The list of critical materials is a good guidance, on the other hand, on priorities which should be followed at the EU level as a part of the raw material diplomacy by the newly established EU diplomatic service.

4.3.4 Of course, the list would need to be checked upon the established criteria on a regular basis to find out if the urgency of listing still applies. The need of consistent data and both technical and market knowledge is indisputable for the raw material initiative.

4.3.5 Undoubtedly, such scarcity of raw materials requires also regular checking of resource efficiency. On the other hand, the ever growing prices are the best motivator for the efficiency which is innate to any sustainable business. Performance standards and eco-design can help in the permanent strive for the highest resource efficiency.

4.3.6 The threat of an ever growing scarcity of raw materials and increasing prices should be analysed on the micro economic level to show its impact on competitiveness and, in fact, on maintaining jobs in the endangered sectors.

4.3.7 The EU trade strategy for raw materials must be sensitive and flexible enough. Since the real trade takes place on the bi-lateral, individual member state basis, mostly, it is even more difficult to have a single EU trade policy. Apparently, nothing too much can be expected from the WTO, although the mutually agreed rules should be observed in the process of building credibility.

4.3.8 The raw materials scarcity, on the other hand, boosts research and development and innovation processes both in the direction of ever improving resource efficiency and appropriate substitution of some raw materials. It is necessary to mention, that some of the critical materials are vitally needed for high performance technologies, thus we are in a sort of vicious circle.

4.3.9 The Commission should involve the major European manufacturing sectors, particularly through their European Technology Platforms (ETPs), in a specific partnership initiative on raw materials in the framework of the EC flagship Communication 'Innovation union' taking into account the worsening of quality standards in some raw materials in recent years. There is a requirement for ever more skilled jobs, so as to realise the high innovation potential of manufacturing processes.

4.3.10 The Committee appreciates the Commission initiative of developing guidelines how to match competing mineral extractive activities with the Natura 2000 environment protection legislation. This is essential for fair, healthy and sustainable neighbourhoods and for the securing of the domestic raw material supply, which has to be among the pillars of all raw material policies.

4.3.11 The EESC also draws attention to its opinion on access to secondary raw materials⁽¹⁾ and endorses its conclusions and recommendations. We should mention here the recommendation of flexibility of instruments needed to keep these Secondary Raw Materials (SRMs) in the EU as much as possible.

4.3.12 The Committee also misses information on the impact of the raw material policy on employment, in particular, the rate of threatened jobs if the policy targets are not met.

4.4 There should also be serious discussion about worst case scenarios – e.g. the temporary scarcity of some vital critical raw material in short term. The policy to mitigate the impact to the European industry could include as well a decision to operate some strategic reserve of the selected materials. Such policies were discussed in non European countries (USA, Korea and Japan), although they could have some negative impacts to the commodity markets they could help to bridge the certain time when the specific raw materials are not available on the market in a sufficient volume.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁾ EESC opinion on Access to secondary raw materials (scrap iron, recycled paper, etc.), OJ C 107 of 6.4.2011, p. 1.

Opinion of the European Economic and Social Committee on 'Regional policy contributing to smart growth in Europe 2020'

COM(2010) 553 final

(2011/C 318/13)

Rapporteur: **Mr CEDRONE**

On 20 October 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

Regional policy contributing to smart growth in Europe 2020

COM(2010) 553 final.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 114 votes to 6, with 9 abstentions.

1. Conclusions

1.1 The Committee agrees that the EU needs smart growth in the Europe 2020 strategy to meet the challenges of today and tomorrow. A large part of the EU has not only problems with slow growth, lack of R&D and innovation, but is confronted also with other issues such as high unemployment, especially among young people, social problems, poverty and integration, school leavers without the necessary knowledge to get a job, demographic challenges and budgetary restrictions.

1.2 Cohesion policy stems from the aim to defend the European social model, which combines aspects relating to free competition and the social market economy with objectives based on solidarity and the promotion of specific economic, social and territorial development priorities as outlined in Article 174 of the Treaty on the Functioning of the European Union.

1.3 The Committee agrees that regional policy is a key instrument for implementing the Europe 2020 strategy because success in achieving its goals will largely depend on decisions to be taken at local and regional level, as stated by EU Commissioner Johannes Hahn ⁽¹⁾.

1.4 The Committee believes that one of the key aims of economic, social and territorial cohesion policy – and this should be the 'correct' point of reference when the Commission speaks of smart growth in the Europe 2020 strategy ⁽²⁾ – should remain that of promoting overall harmonious development

across the Union, in particular by reducing disparities between the levels of development of the various regions in order that they can integrate fully into the EU.

1.5 While welcoming and appreciating the Commission's wish to promote 'innovation in all regions [without fragmenting resources], while ensuring complementarity between EU, national and regional support for innovation, [and] R&D', the Committee feels that the research should be funded not solely from cohesion policy, but also from all of the other funds.

1.6 The Commission's *Communication on Regional Policy contributing to sustainable growth in Europe 2020* should be considered as a supplement to the Innovation Union flagship initiative and as an appeal to start the process to accelerate investment in innovation, and not wait for the future financial period in which Europe 2020 will no doubt be a central focus for cohesion funds ⁽³⁾.

1.7 The Committee is concerned about cohesion policy being fragmented and diverted from its original objectives of providing funding to address regional imbalances by means of sectoral policies, as also confirmed by the Lisbon treaty. It must be ensured that this approach takes into account the challenges, needs and potentials – i.e. starting points – of each of the addressed regions and Member States and is not detrimental to cohesion, not only from an economic, social and territorial point of view, but above all politically and culturally.

1.8 While the Committee deems the Commission's proposed policy on promoting research and innovation to be of primary importance, it would point out that there should be a strong

⁽¹⁾ Statement made in January, when the commissioner launched the communication *Regional Policy contributing to Sustainable Growth in Europe 2020* – which also must be seen as 'smart or intelligent growth'.

⁽²⁾ COM(2010) 553.

⁽³⁾ Ibid.

focus on regional specificities when dealing with these issues. The innovation of a production process can be the result of research carried out in a different location from that in which it is applied and by different people. Therefore, there should also be a focus on the transferability and replicability of innovative processes and their dissemination at regional level. The Committee would, however, welcome the attempt to create a synergy between cohesion policy and other EU policies, and to improve the use of the ERDF.

1.9 The Committee believes, as indicated in the communication, that the pursuit of smart growth should have its own regional structure, backed up by the specific needs of sectors, districts, clusters, or macro-regions, and connected to research institutes and universities that already exist and/or need to be bolstered and to local businesses and communication networks that can facilitate its anchoring and development on the ground, while favouring specialisation and regional governance.

1.10 The Committee also believes that cohesion policy and the Europe 2020 strategy should be the subject of a special European Council; cohesion policy cannot be demoted from being a strategic EU policy to being the *poor relation*, nor can it be seen as the only potential driver of 2020.

1.11 The launch of this proposal by the Commission should not be seen as an opportunity to scatter funds thinly across the regions, including rich ones, with the promise of a noble objective; instead, the opportunity presented by the proposal should be seized to pursue regional convergence in order to assert a European concept, through common indicators, of cohesion *par excellence*!

1.12 In the same way, it is also crucial to ensure that all Member States are able to participate in the various EU programmes and to foster the creation of synergies between these programmes, by simplifying procedures and breaking down the walls between the DGs (i.e. between the Commission as a whole), the Member States and the regions, in the awareness that administrations are there to serve the public, businesses, and communities, whose lives should be made easier, and not the other way around.

1.13 The Committee believes that the Commission rightly proposes a broad approach to innovation which does not confine itself to technical or technological issues. However, the Committee would prefer the Commission to pay greater attention to the practical opportunities for the various stakeholders to use innovation programmes. For example, SMEs – only a few of which have researchers – could benefit from innovation programmes. Many SMEs are indeed innovative, but they do not use the possibilities open to them for obtaining support from EU programmes, even though they would benefit greatly from such support. Access to venture capital should be increased; in this respect, the JEREMIE programme should be strengthened, although the use of this instrument should not be made obligatory and it should be up

to Member States to decide whether to use grants, loans or a combination of both, as well as the thematic scope of application. Furthermore, simplification is necessary in this field.

1.14 New forms of effective partnership – consensus platforms – could be instrumental to this end. Such platforms could accompany the innovation strategy, with the participation and assistance of all stakeholders – public and private, including the banks – and with simple, clear and effective rules governing the projects for their duration and establishing timelines, responsibilities, and possible sanctions.

1.15 The Committee advocates reversing the current approach of the Commission, which is more concerned with the formal aspects of the programmes than with the content and, more specifically, with the results achieved, which is the priority objective to aim for.

1.15.1 What is needed, rather, is parallel and concerted support – following consultation and based on territorial analyses – for the two opposite poles of catching up and innovation.

1.16 The EESC is disappointed at the considerable inequalities which exist not only between the different regions of the EU, but also within some Member States. These inequalities are also present in the R&D and innovation sectors, which demonstrate why there is a need to strengthen economic, social and territorial cohesion policy towards 2020.

1.17 At the same time, the EESC notes that the Member States are also facing increasing global competition from new industrialised countries that are also experiencing strong growth in the R&D and innovation sectors and have already overtaken Member States in some sectors, particularly in high-tech sectors.

1.18 The EESC therefore welcomes the fact that the Commission is highlighting a number of problems and bringing regional policy into play with its Europe 2020 programme Innovation Union and its communication on smart growth. Although to a large extent it is decentralised measures that encourage renewal, these cannot be achieved without funding: support and policies must be the same everywhere.

1.19 The EESC shares the view that in order to capitalise on the differences between regions there is a need to implement completely new forms of cooperation using all the resources available at national, regional and local level.

1.20 The EESC finds that more focus on innovative workplaces is in line with the policy for smart growth and the developing of smart specialisation strategies (*). The Committee stresses in its opinion SC/034 *Innovative workplaces as a source of productivity and quality jobs* that innovative workplaces are at the heart of the Europe 2020 strategy. The EESC recommends that the Commission launch a pilot project on innovative workplaces as part of the Innovation Union flagship initiative.

1.21 The Committee applauds the fact that the Commission is planning for next year a bigger research programme for the public sector and social innovation. The EESC agrees with the introduction of a scoreboard for innovation in the public sector, with pilot projects for European social innovation to help social innovators and with proposals for social innovation in programmes under the European Social Fund. It further agrees that civil society organisations must be involved. Such initiatives can be seen as a way to smart growth.

1.22 The EESC supports the idea of developing strategies for smart specialisation that regions and local areas have to develop themselves, based on their specific requirements and taking into account their level of development. Smart, intelligent growth in some regions still consists of developing essential infrastructure such as telecommunications, energy, or water treatment.

1.23 Regional policy, and in particular EU regional funding, is essential to achieve intelligent growth and indeed to encourage and assist national and regional governments to build strategies for smart specialisation that help regions to identify their best assets.

1.24 As the Commission argues in its communication, concentrating resources on a limited number of activities will ensure a more effective and efficient use of the funds and help to increase the levels of private investment, provided the priority areas for activities and investment are determined by the appropriate local authorities together with their economic and civil society partners.

1.25 To sum up, the objectives of the Europe 2020 strategy and of cohesion policy tie in with one another. Cohesion policy, through its unique multi-level governance structure, is in a position to provide positive incentives and assistance to ensure the ownership of Europe 2020 objectives at macro-regional, interregional, local and regional levels. However, the

institutional framework for their implementation lacks shared financial and legal elements whose interplay could enable them to become factors contributing to higher efficiency. Hence the need for enhanced cooperation towards achieving the aforementioned goals.

1.25.1 Enhanced cooperation should therefore be introduced with a view to achieving the aforementioned goals.

2. Proposals

2.1 **Definitions:** There are many definitions of innovation. In the Innovation Union plan, innovation means change that speeds up and improves the way we conceive, develop, produce and access new products, industrial processes and services. Changes that create more jobs, improve people's lives and build greener and better societies. The Committee supports the definition first of all because it covers lots of political areas.

2.1.1 At the same time, the definition shows that many directorates-general of the European Commission services must be involved in innovation and social, economic and territorial cohesion and that all EU funds must be involved in developing this area.

2.2 **Bringing the funds together:** The Committee believes that to achieve the objective of harnessing regional innovation to 'unlock the growth potential of the EU', other EU resources should also be used, such as the CAP – at least in the case of investment aimed at innovation and smart growth in the agricultural sector – and the European Social Fund. Moreover, EU financial instruments should be coordinated and synergies developed between them and their national and regional equivalents. Furthermore, all Member States need to be able to fully access the opportunities offered by the EU financial instruments and simplification is necessary in this field.

2.3 **Selecting priorities:** The Committee believes that the types of innovation should be specified, and those of a regional nature safeguarded, and that choices need to be made on programmes, the relevant sectors (e.g. sustainable development, energy, the environment, transport), and on the regions to be involved, bearing in mind their challenges, needs and potentials i.e. starting points, enterprise culture, research conditions and capacity to upgrade plants or shift production. Links between macro-regions should be fostered and the 'thousand flowers' policy abandoned. Priorities should be selected in consultation with public authorities, the private sector and organised civil society at the various levels.

2.4 **Knowledge, communication and information:** It is vital that positive experiences are disseminated and shared between the relevant sectors and regions; hence the need for a suitable communication and information strategy to be incorporated directly in the Commission's programmes.

(*) New reports in Denmark show that hospitals have increased their efficiency – more operations – and, at the same time, employees are more satisfied with their jobs, although budgets are cut and the hospitals have fewer employees. Working methods have been changed, doctors' second jobs are in some cases forbidden and the patients are given more care. The reports show that the patients are also more satisfied (the conclusion is not just cut budgets, but change working methods and the organisation of work).

2.5 Training: This is another key tool for achieving the targets set by the Commission in this communication. It would be very useful, particularly for young people, to assist the dissemination of an innovation culture. Moreover, the Committee believes that such training would foster the use of funds, reduce unused appropriations and prevent waste; this would enable excellence to be achieved in the use of funds and thus help regional governance.

2.6 Consolidating partnership: Priority should be given to programmes and projects drawn up directly by existing SME associations or research centres, in cooperation with workers' representatives and civil society and with the involvement of local and regional authorities. Given that the systematic use of partnership at all levels brings considerable added value, priority should be given to projects drawn up in this way. This would also greatly aid **regional governance**.

2.7 Assessing the results: This should be an imperative, supported unwaveringly by the Commission. Common parameters and systems are required for assessing the results of both innovation and research – a key objective for the Commission and the EU. In regions or areas that do not meet these or do not draw the funds, alternative forms of intervention should be provided for by the Member States and/or the Commission, which should lead this process.

2.8 Public-private cooperation should be promoted, including by means of a mixed financing system for programmes of particular importance or interest, in respect of both research and innovation.

2.9 Urging the Member States, in tandem with the Commission and the EU, to act with greater resolve. For the reasons set out many times, they must not abdicate their role. Priority should be given to interregional projects, which have a European rationale and remit, while the Commission should return to playing a leading role in the framing and implementation and, in particular, in the assessment of the results.

2.10 Promoting support and advisory services: the Committee believes that in order to compensate for their lack of in-house researchers and experts, SMEs, and particularly micro-enterprises, require easy access to effective support and advisory services, tailored to their needs. The Committee calls for a policy of buttressing the actions of intermediary organisations, with respect to their support and advisory services, including by means of regional objective contracts and by funding innovation advisor posts within these intermediary organisations.

2.11 Making communication clearer: The Committee believes that communication should be simplified and made clearer as regards the objectives being set. The approach should be reversed, with proposals sought from the bottom up, in the conviction that the money should follow the ideas, and not the other way around.

2.12 Simplification at all levels is a preliminary goal. A *simplification strategy* to save time and reduce costs should always be pursued, *inter alia* by establishing a standard form and applying the 'only once' principle; payments should also be speeded up and pre-financing for companies – particularly SMEs – should be facilitated; finally, financial rules should be harmonised and a standardised audit introduced, applicable to all bodies.

3. EU budget review, cohesion and smart growth

3.1 In its communication on the budget review, the Commission devotes a long chapter to cohesion policy and much less to the CAP, for example, which still accounts for 43 % of EU spending. The section on cohesion is entitled 'inclusive growth': while this title is full of promise, it has to be put into practice.

3.2 The headings themselves leave nothing out: a) Cohesion policy and Europe 2020; b) Greater concentration and coherence; c) A common strategic framework; d) A Development and Investment Partnership Contract; e) Improving the quality of expenditure. All of these aims except the last, which is a key goal, should already have been achieved.

3.3 The EESC welcomes the Commission's efforts and proposals to create synergies between cohesion policy and the other EU and national policies, including some of the priorities set down in the Europe 2020 strategy. However, it feels that all resources need to be used to achieve the 'smart growth' objectives.

3.4 The budget review should be an opportunity to bring into line cohesion policy, the CAP and the Europe 2020 strategy, taking account of the Stability Pact under review, in order to reconsider and revamp the European budget and those of the euro area members (for example, education and research should not be considered current expenditure).

3.5 **Helping SMEs** is key to the success of the proposal. It should be done by simplifying and facilitating financing, *inter alia* by means of risk insurance in respect of the provision of credit – in line with the principles laid down in the review of the Small Business Act (SBA) – or of direct financing for innovation, accompanied by a flanking, support policy. This could also be achieved by consolidating and utilising SME and micro-enterprise associations. It should be up to Member States at the appropriate level to decide whether to use grants, loans or a combination of both.

4. Comments

4.1 The EESC welcomes the actions that the Commission is to carry out in order to help reach the objectives, particularly as regards analysis and information concerning the results achieved and the provision of venture capital and guarantees for SMEs committed to innovation, making funding available to SMEs and micro-enterprises that is adapted to their specific situation.

4.2 The five areas of smart specialisation identified in the communication appear to be rather general and belong to sectors and reference areas which are very different from each other: they are not tailored to the specific features of the regions, and do not allow for possible synergies with policies to encourage innovation in other areas of EU intervention (competition, agriculture, internal market, environment and energy, education, etc.) or other EU programmes; for example, there is no mention of the social economy. Furthermore, there is no provision for the involvement of the social partners or other stakeholders from organised civil society in framing and implementing the policies related to smart specialisation.

4.3 No reference is made to the requirement to coordinate the EU innovation initiative with the innovation policies of those Member States that have greater resources and have already identified and embarked on research and action programmes in the sectors in which R&D could be stepped up. Similarly, there has been little analysis of the factors that have hindered or prevented the use of funds: **the most serious issue of all**. And to think how many analyses the Commission produces!

4.4 However, the Commission's particular focus is on regions in the best circumstances, when it states, for example, that some regions are competitive at global level, while others

are struggling to reach this level. That is not to say that some regions are completely falling behind. To iron out this inequality, there is a need to ensure that regional policy focuses increasingly on developing the weaker regions, along exactly the same lines as cohesion policy.

4.5 The EESC is concerned, however, about the fact that the gap between the rich and the poor regions in the EU is constantly increasing and that the Member States which are weakest in economic terms are also the least advanced as regards research, development and innovation. The Committee notes however that, as demonstrated by the new scoreboard, it is R&D that offers the greatest potential for growth in the least developed countries and regions.

4.6 The Commission therefore needs to cooperate with the different Member States to circulate R&D and innovation policy, so that the rich regions in Member States do not monopolise all the resources, with the additional imbalance in the distribution of resources this would involve at national level.

4.7 The communication is preparing the ground for the various technical research instruments to be used more widely to support innovation. These include soft loans, guarantees and venture capital. The EIB group is another body that should receive additional funding to benefit SMEs more specifically.

Brussels, 14 July 2011.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Green Paper on the future of VAT — Towards a simpler, more robust and efficient VAT system'

COM(2010) 695 final

(2011/C 318/14)

Rapporteur: **Ms MADER**

On 1 December 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the:

Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system

COM(2010) 695 final.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July 2011), the European Economic and Social Committee adopted the following opinion by 161 votes with 10 abstentions.

1. Conclusions and recommendations

1.1 The Committee unreservedly endorses the Commission's initiative to consider overhauling the VAT system, the rules of which were described as 'provisional' at the time of their introduction in 1967 and which have been widely criticised. The Green Paper is only the beginning of a procedure which is likely to be long, difficult and complex, and whose success will depend on real determination by Member States to develop a 'simpler, more robust and efficient' system.

1.2 Over time, there have been numerous changes to the current system: the Commission has proposed improvements to make the system more effective and consistent with the principles of the Single Market. The Member States have agreed to various measures relating to organisation, administrative cooperation and automatisisation. Other measures were primarily administrative and organisational in nature. However, up till now the Council has always resisted proposals to reform the system as a whole.

1.3 The Committee agrees with the Commission's statement that a comprehensive VAT system should reduce operational costs for users and administrative charges for authorities while cutting back attempted fraud, which represents a burden on public finances. Another consideration which should be mentioned here is the needs of economic operators, who ultimately have to handle the collection of this tax and who, along with consumers, pay for its inefficiency. As previously stated by the Committee, attention should also be paid to the VAT regime on financial services ⁽¹⁾, and certainly if a new

financial sector tax based on cash flows or similar factors were to be introduced, the Commission should assess the merits of designing it within the VAT framework ⁽²⁾.

1.4 One particularly sensitive issue is that of dealing with cross-border transactions. From a rational point of view, the tax should be levied in the Member State of origin under the same conditions as internal trade; due to the difficulty of settling accounts between Member States, the Council opted for the simplest solution of levying a tax in the Member State of destination, with a few exceptions, mostly concerning services. The Commission is now proposing alternative solutions, but everyone is well aware that a perfect solution is difficult to find.

1.4.1 At all events, the Committee feels that radical changes should be avoided; instead, a step-by-step approach should be pursued. The best option would probably be generalised taxation in the Member State of destination while maintaining the principles of the current system. At the same time, the reverse charge mechanism should be generally adopted, optionally at first and then on a compulsory basis. A one-stop shop for businesses should in any event be set up to simplify administrative procedures.

1.5 The Green Paper proposes to compile comments and suggestions from all stakeholders in order to ultimately formulate Commission proposals. To this end, the document, which is impossible to summarise, puts 33 questions; these are answered by the Committee. For details, see Section 5 of this document.

⁽¹⁾ See EESC opinion OJ C 224, 30.8.2008, p. 124 on the Proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services (COM(2007) 747 final - 2007/0267 CNS).

⁽²⁾ See EESC opinion OJ C 248, 25.08.2011, p. 64 on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Taxation of the Financial Sector (COM(2010) 549 final).

2. Introduction

2.1 For several years, improvement of the VAT system has been one of the Commission's fiscal policy priorities. This tax, adopted by the EU in 1967 as a common taxation system for all Member States, generates a large part (over 20 %) of their revenue. In addition, some of the VAT levied contributes to the EU budget; it is therefore obvious that it is of direct concern to the Commission that its interests be protected by ensuring that the tax is applied as effectively as possible.

2.2 Although the VAT system contributes substantially to Member States' revenue, it is far from being satisfactory and has been the subject of many criticisms from both Member States and other stakeholders, such as businesses and consumers. For a long time the Commission has been endeavouring to take these criticisms on board and has been proposing improvements to make the system more effective and consistent with the rules and principles of the Single Market; admittedly, these efforts have met with more or less overt opposition from the Member States.

2.3 It must be said clearly and openly that in fiscal matters, the desire for European cohesion is constrained by every Member State's concern - indeed need - to protect its own sources of finance; countries which feel certain rules might adversely affect their interests or result in heavier costs or more cumbersome administrative procedures express their disagreement fairly overtly, often in a way which lacks transparency.

2.4 Detrimental as all this is to a common European policy, it does explain why the Commission's laudable efforts over the past years have foundered. Nevertheless, considerable progress has been made in rationalising and computerising procedures, in reducing costs for both governments and taxpayers, and in enhancing administrative and judicial cooperation.

2.5 Aware as it is of the problems and obstacles, the Commission has now come back to the objective it has always had in mind, namely reforming the system as a whole to align it with the principles of the Single Market, taking into account the concerns of all parties. Following the usual procedure, the Green Paper asks a series of questions on various aspects of the VAT system; the answers it receives will be used as the basis of proposals for a new 'simpler, more robust and efficient' system. This opinion sets out the EESC's contribution - in its capacity as representative of socio-economic interest groups.

3. General remarks

3.1 As the Commission rightly points out, the crisis has impacted on public finances, not least due to a shift in the importance of direct taxation relative to indirect taxation; the percentage of total revenue contributed by VAT, which has been around 22 % up to now, shows a rising trend. This is the result of policies generally geared to improving competitiveness by

reducing taxes on work and business. Although the EESC feels that this is a positive development, **it must not lead to higher VAT rates being laid down in the framework directive**, which would mean an unacceptable additional burden on employees and consumers.

3.2 The mechanism would be improved by putting in place 'a **comprehensive VAT system**' which, according to the Commission, should reduce operational costs for users and administrative charges for administrations and cut back **attempted fraud**. On the latter point, the Committee shares the Commission's concerns; its opinions have repeatedly pointed out that VAT is the most widely evaded tax in the EU, and that tax evasion is a significant source of funding for organised crime and terrorism. The interdependent phenomena of tax evasion, crime and associated money laundering represent a **major threat to society at international level**. The Committee stresses that examination of the new rules should always take into account how **'watertight' they are in relation to fraudulent attacks**.

3.3 The Green Paper does not overlook business-related aspects: VAT management and administration (the Committee would also mention litigation here) represent a major part of businesses' administrative costs, to the extent that many SMEs are reluctant to take part in international trade. The Committee reiterates that there is a need for **VAT management to become more flexible, simpler, and less burdensome**; it is consumers - as end users - who pay the price for shortcomings in this area.

3.4 Another important subject is the possibility of introducing a **single-rate tax**, considered to be the 'ideal consumer tax'; the Committee agrees with the Commission that this is a near-impossible goal, and strongly **supports** the Commission in its attempts to **reduce or eliminate the excessive number of exemptions, exceptions, and reduced or preferential rates** - arrangements which cut revenue by 45 % compared to what could theoretically be levied by applying the normal rate. A reasonable balance will have to be struck between budget needs and the social and economic considerations underlying such arrangements, particularly with regard to local and labour-intensive services.

3.5 As the EESC has emphasised in its opinion on 'Taxation of the financial sector' (ECO/284 - CESE 991/2011), the approach to VAT in the financial sector is in need of revision.

4. VAT treatment of cross-border transactions in the single market

4.1 When it was adopted in 1967, the VAT system between Member States based on application in the country of destination, was described as 'provisional'; the definitive system was to involve taxation in the country of origin. 44 years on, the 'provisional' system is still in force. From a rational point of view, **the tax should be levied in the Member State of origin** under the same conditions as internal trade, except for settling the balance due to the country of destination. Given

the problems at that time, some of which persist, the Council opted for the **simplest solution of levying a tax in the Member State of destination**; this approach is still used, albeit with some significant exceptions, mainly concerning cross-border telematic services.

4.2 The Commission has tried twice in the past to get Council agreement on a standardised VAT system based on the principle of levying a tax in the country of origin; it failed on both occasions due to serious implementation problems. In 2007 the Commission looked into a system of **taxation in the country of origin at a rate of 15 %**, leaving it up to the Member State of destination to levy or reimburse as appropriate the balance relative to its own VAT rate. The Council did not follow through with this proposal.

4.3 The Committee acknowledges the complexity of the problem; given the variety of tax rates and differences in administrative procedures which still exist despite the Commission's attempts to achieve harmonisation, **a perfect solution is difficult to find**. However, **we cannot deny the progress** which has already been made or is being made in taxation on provision of services ⁽³⁾, improvements to taxation systems ⁽⁴⁾, administrative cooperation and one-stop-shop mechanisms ⁽⁵⁾, as well as on good governance and combating fraud ⁽⁶⁾.

4.4 The Green Paper is a step in the right direction in that it sets out to gather useful information in order to propose improvements; based on past experience and the current situation, the Committee would prefer a **policy of step-by-step improvements rather than radical changes**. It therefore feels that the best solution is the one mentioned in Point 4.2 of the Commission's document - **generalised taxation in the Member State of destination, and maintaining the principles of the current system** (Point 4.2.1), with gradual adoption - optional at first and then compulsory - of a **reverse charge mechanism** (Point 4.2.2). At the same time, one-stop shops should be set up to ensure that businesses can settle their cross-border tax liabilities with minimal bureaucracy.

5. Replies to questions

5.1 VAT arrangements for intra-EU trade (Q.1): the current system is not perfect: it has various drawbacks, mostly due to

⁽³⁾ EESC opinion on *Rules/place of supply of services*, OJ C 117, 30.4.2004, p. 15.

⁽⁴⁾ EESC opinions on *Improving the operation of taxation systems in the internal market (Fiscalis 2013)*, OJ C 93, 27.4.2007, p. 1, on *Promoting Good Governance in Tax Matters*, OJ C 255, 22.9.2010, p. 61, and on *VAT: Combating tax evasion*, OJ C 347, 18.12.2010, p. 73.

⁽⁵⁾ EESC opinion on *Simplifying VAT*, OJ C 267, 27.10.2005, p. 30.

⁽⁶⁾ EESC opinion on *Anti-abuse measures in the area of direct taxation*, OJ C 77, 31.3.2009, p. 139.

the numerous concessions, exceptions, exemptions etc. granted to Member States. That said, **it has been operating for too long to allow easily for radical change**; a radical shift would be disastrous. It would be better to **concentrate on applying the principles of good governance** so often mentioned by the Commission, as endorsed by the Committee in its opinions; these are summarised in the document accompanying the Green Paper ⁽⁷⁾. The **main obstacles to drawing the full benefits of the system have less to do with the principles themselves** than with defective implementation and resistance to change in Member State administrations.

5.2 VAT and public authorities (Q.3): in principle, exemptions to public bodies in competition with private operators (e.g. transport, health care) are justified by the typically social nature of public services. However, it should be kept in mind that private operators often **complement** inadequate or defective public services. Undoubtedly the current situation **distorts competition**, an effect generally mitigated by new forms of cooperation. At all events, the consumer has a choice between cheaper public services or more expensive private ones. Except in cases in which one or the other is not available (e.g. transport), choice between the two is mostly based on an **assessment of quality**.

5.2.1 The Committee feels that a fair solution which would be advantageous to consumers would be to retain exemptions for public services and to extend them to private operators providing an essential service in the absence of a public service. We are aware of the difficulties in applying this principle; on the other hand it is unacceptable that consumers in deprived areas should have to pay more for services offered to them without there being a choice. In order to avoid distortions to competition with the private sector, this exception should definitely be limited to tasks of public interest ⁽⁸⁾.

5.3 VAT exemptions (Q.6): there is no reason to retain **exemptions granted to Member States** prior to 1 January 1978 - these **should be scrapped**: as privileges negotiated by the Member States at the time when the EU was founded or shortly afterwards, they now constitute an unacceptable departure from the principles of the Single Market. The same arguments apply to the new Member States, for which exemptions should be phased out in line with improvements in their living standards, while setting transparent criteria for the assessment thereof.

⁽⁷⁾ Commission Staff Working Paper, SEC(2010)1455 of 1.12.2010.

⁽⁸⁾ Services of General Interest (SGI) – Protocol of the Intergovernmental Conference No. 26, 23.7.2007.

5.3.1 **Exemptions for certain activities in the public interest and other activities** are more complex and require a more nuanced approach. Both types of exemption depend on the policy orientations and economic policies of each Member State; although they contradict the principles of the Single Market, they may be used as instruments to **support national growth and employment policies**. At all events, any future good governance policy should only allow such exemptions as **exceptional and temporary measures**. As previously stated in its opinion regarding the VAT regime on financial services⁽⁹⁾ 1, the Committee would welcome a more thorough legislative approach to eliminate the remaining interpretation difficulties and unsolved problems. In addition, regarding the possible introduction of a financial transaction tax⁽¹⁰⁾, the Commission should assess the merits of designing it within the VAT framework, so as to ensure an administratively easier approach for the sector and to alleviate the burden of irrecoverable VAT.

5.3.2 **The exemptions granted to SMEs in certain countries constitute a special case; these should be scrapped.** As is well-known, VAT evasion is a serious problem in all countries; the possibility of legally avoiding VAT in neighbouring countries only increases cross-border purchases of goods and services from such countries. An additional consequence for countries with no VAT exemption is the undermining of efforts to combat VAT evasion and distortion of competition to the detriment of SMEs complying with the rules.

5.4 Taxation of passenger transport (Q.7): our reply is along similar lines to the comments on Q.3 (paragraph 5.2 above); it should be applied to **all transport modes, including air transport** (as indeed already appears to be the case).

5.5 Problems with the right of deduction (Q.9): VAT deductions are a **major problem for businesses**, being complex, difficult to apply in many cases, and liable to give rise to disputes, litigation and fines. Moreover, it is based on an **unfair principle**, as the Commission itself points out: the right of deduction (together with the obligation to pay VAT) arises at the moment when goods are delivered or services provided, regardless of whether or not the client has paid. Late payers also have what the Commission calls a 'cash-flow advantage', which in fact amounts to **certain revenue for the taxation**

authority, paid in advance by the vendor or supplier and guaranteed even in the event of insolvency on the part of the client⁽¹¹⁾.

5.5.1 Another serious problem is **VAT deduction by means of offsetting arrangements whenever a positive balance for the VAT taxpayer arises**: in some Member States, reimbursement involves considerable delays, adversely affecting cash flow and in some cases even driving businesses into bankruptcy. As Member States have pointed out, the offsetting (clearing) system offers some scope for fraud; although this is true, it is up to them to put in place speedy checks, as businesses pay the price for Member States' inefficiency.

5.5.2 The Committee agrees with the Commission's arguments in favour of the **cash accounting system as a possible, fair and neutral solution for intra-community trade**, especially from the point of view of companies' cash flow. However, the solution will only be possible in intra-community trade if an **offsetting system using a one-stop-shop mechanism** is developed, as proposed by the Commission; implementing such a system would involve several problems.

5.6 VAT on **international services** (Q.11): the importance of international services, especially those provided electronically, warrants adoption of special rules for such services; however, the non-tangible nature of such services often makes it difficult to monitor application of VAT by providers, especially in the case of services provided to individuals (software, music, etc). Such monitoring is impossible when providers are based outside the EU; both the OECD and the Commission are studying the problem, but finding a solution will not be easy, certainly not in the short term.

5.6.1 The main problems have to do with the serious **distortion of competition** between services provided within the EU and those originating from outside; there are few effective means of regulating the situation, apart from **possible international cooperation agreements between tax authorities**. At all events, the Committee is **opposed to measures** such as those adopted in Canada, which involve **levying VAT from consumers after checking online payments** made by them. Apart from the inconvenience for consumers of paying VAT on each purchase, the checks envisaged here represent an **unacceptable intrusion into people's private lives**.

⁽⁹⁾ See EESC opinion of the EESC OJ C 224, 30.8.2008, p. 124 on the Proposal for a Council directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of insurance and financial services (COM(2007) 747 final - 2007/0267 CNS).

⁽¹⁰⁾ See EESC opinion of the EESC OJ C 248, 25.8.2008, p. 64 on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Taxation of the Financial Sector (COM(2010) 549 final).

⁽¹¹⁾ Reimbursement of VAT on goods or services remaining unpaid involves long, complicated and costly procedures in many countries.

5.7 EU VAT law (Q.13): Article 113 of the Treaty gives the Council all the powers on **harmonising VAT legislation**; there are therefore no constraints in the choice of legal instruments, whether directives or regulations. Based on past experience and a tendency among Member States to interpret provisions according to their own interests, a **Council regulation would no doubt be the best choice**. However, the provisions of such a regulation should realistically be limited to certain fundamental aspects: scope of VAT, definition of VAT taxpayers, administrative cooperation and the fight against fraud. The more detailed that provisions are, the more serious will be the difficulties in reaching a consensus within the Council, thus making it necessary to resort to implementing directives.

5.7.1 Implementing provisions (Q.14): we would welcome the option of authorising the Commission to adopt implementing decisions; however, this solution was already rejected by the Council in 1997. It remains to be seen if such an agreement could be reached on the basis of a majority decision; it would be difficult to get round the unanimity requirement (which is a Council prerogative) by delegating powers to the Commission. Although a favourable decision would be welcome here, the Committee fears that this is **not a realistic prospect**.

5.7.2 Guidance on new EU VAT legislation (Q.15): it would be useful to publish Commission guidelines for Member States wishing to comply with them. Problems might arise from the fact that these guidelines are not binding; taxpayers or even administrations could **litigate** on the basis of failure to apply guidelines - which have no legal value - or the poor application thereof. The **courts would then have to decide on a case-by-case basis** on the merits of complaints invoking guidelines whose validity would be questioned.

5.7.3 Improving the legislative process (Q.16): for improving the legislative process, we should be thinking in terms of a **new approach and method** rather than new measures. In the **initial stages** of the process, the Commission's approach is one of transparency and openness; prior consultation with the Member States, meetings of consultative committees, green papers and contacts with stakeholders. So much for the early stages; later on, Council procedures become less transparent and less open to offers of dialogue from outside.

5.7.4 In the **final stages**, improvements at national level could involve faster legislative processes for the adoption of directives and implementing regulations; the latter in particular often lack clarity and precision, making it difficult for operators and sometimes even administrations to comply with the rules. At European level, agreement should be reached on a reasonable period of time between the deadline for transposition of the directive by Member States and entry into force of new measures.

5.8 Derogations granted to Member States (Q.17): just looking at the list of over 100 derogations shows that the

Member States, and certain ones in particular, are excessively reliant on such derogations and on extensions of their validity. The Commission rightly points out that this patchwork leads to confusion, extra costs, distortion of competition, and often provides scope for fraud; the Commission is asking for more powers enabling it to grant derogations promptly and where needed. The Committee agrees with this proposal, but at the same time it calls for a comprehensive overhaul to make sure that the existing derogations are still warranted.

5.8.1 Procedure for granting derogations (Q.18): the current procedure is slow, and the request for the powers needed to speed it up is justified; at the same time, the Committee would like to see tighter criteria for granting derogations. The list of derogations should be constantly updated, and it should be possible to check it easily and quickly.

5.9 Current VAT rates structure (Q.19): it is certainly true that the current rates structure **diverges from the principles of the Single Market**; it remains to be seen whether - and if so, to what extent - rate differences are a **means of accommodating the specific circumstances** of certain activities. On the subject of **differing rates applied to similar products**, for example online services compared to products and services with similar content, the Committee points out that consumers generally benefit from lower prices. As far as products are concerned, delivery costs to some extent balance out the operational costs of conventional trade; equal VAT rates would therefore be detrimental to online shoppers. For services, on the other hand, the question is open and would be worth discussing. Finally, as a general rule, similar products should be subject to the same VAT rate.

5.9.1 Reduced VAT rates (Q.20): although we might like to get rid of reduced rates, we **cannot realistically expect this to happen**; however, the list should certainly be **pruned**, and is definitely in need of a rigorous review - for example, some of the cases where reduced rates have long been applied are no longer acceptable, given the changes that have taken place.

5.9.2 A compulsory and uniformly applied **reduced VAT rates list** is likewise an appealing, but **unrealistic** idea. Reduced rates are used in all the Member States as a powerful economic policy lever, sometimes for social or even purely political reasons. Whatever the case, we **cannot expect Member States to give up their powers to grant reduced rates for individual cases**. The thinking behind this will only **change** when there is Europe-wide **economic governance**, clearly aligning national policies in all the Member States.

5.10 Problems with the current rules (Q.21): the problems with red tape which operators, vendors and purchasers face have to do with the **multiplicity of rules** applied on either side of a border, which are **often different and sometimes overlap**. These include recapitulative statements, recording

requirements, documentation requirements, declaration obligations, invoicing requirements (electronic invoicing), registration requirements in other Member States, and the distinction between the supply of goods and services. **Language** problems also mean additional costs and can cause dangerous misunderstandings.

5.10.1 Overcoming these problems (Q.22): the Commission itself has suggested solutions in several directives and recommendations aimed at achieving **administrative simplification**, for example through the creation of a **one-stop-stop mechanism, the introduction of a European number to identify operators, and the computerisation of administration**. The problem is that administrations have only implemented these measures to a limited extent, sometimes with differences between countries and considerable delays. **Harmonisation and coordination** of procedures have thus become **priority objectives**, even more so than simplification ⁽¹²⁾.

5.11 Exemption for small businesses (Q.24): there are **several possible justifications** for generally overhauling exemption arrangements: distortions of competition, permanent monitoring of the reasons originally justifying exemptions, impact on the budget of each Member State, the general economic climate, implications for competitiveness, employment and consumers, and consistency with the Europe 2020 objectives. Basically, however, there are **significant political aspects to this issue**, and it remains to be seen whether the Council is willing to look into the problem.

5.12 Needs of small farmers (Q.26): insofar as this question applies to 'small' farmers, in most cases the problem should only concern cross-border traffic between neighbouring areas. Given the relatively limited volumes of such traffic, **general exemption arrangements** might be a possibility.

5.13 One-stop-shop mechanism (Q.27): the Committee confirms all the arguments ⁽¹³⁾ put forward for proposals to introduce a **one-stop-shop mechanism** ⁽¹⁴⁾: this would be a **good solution** for cutting costs and simplifying administrative procedures, once a general, coordinated solution has been found to the **numerous problems which still need to be tackled**: setting up an electronic register recognised throughout the EU, scrapping the requirement for direct financial transfers between debtors and the creditor Member State, and harmonisation of various national rules, especially those on declaration periods.

⁽¹²⁾ The Committee has discussed the subject on several occasions: EESC opinions on a *Common system of VAT (Recast)*, OJ C 74, 23.3.2005, p. 21; *VAT/Rules on invoicing*, OJ C 306, 16.12.2009, p. 76, and all other EESC opinions referred to in this text.

⁽¹³⁾ EESC opinion on *Simplifying VAT*, OJ C 267, 27.10.2005, p. 45.

⁽¹⁴⁾ COM(2004) 728 final.

5.14 Cross-border transactions (Q.28): the answer is already implicit in the way the question is asked: current rules definitely cause problems for intra-European companies and corporate groups, as well as administrations. Inevitably, the detailed rules which apply here are complicated for businesses to comply with and for administrations to monitor. One solution - although not perfect - would be to consider multinational companies as **being solely subject to the rules of the country in which their headquarters are located**, regardless of the countries of origin or destination, except where **compensation is due for sums over-or underpaid by means of a one-stop-shop mechanism**. The main disadvantage here would be the increased scope for fraud. To conclude, this problem is so complicated that ultimately only a **study group** comprising experts from administrations and corporate groups would be in a position to **come up with reasonable proposals**.

5.15 Synergies with other legislation (Q.29): the Committee has already given a detailed answer to this question in its opinion on 'Promoting Good Governance in Tax Matters' ⁽¹⁵⁾. In this document it emphasises the need to **coordinate VAT directives ('customs' directives) with directives on indirect taxation and money laundering**. It also deems it essential to establish **structured cooperation and structurally organised collaboration between the various bodies** responsible for combating organised crime. Nothing has been done here at EU level, and it seems that the Committee's proposals have been completely ignored.

5.16 VAT collecting arrangements (Q.30): of the four alternatives proposed, the second one - envisaging a **central database** recording all invoice data - seems to be by far the best one, as it is a simple, effective means of combating fraud. Electronic invoicing does, however, entail high costs for businesses. That said, civil service and business professionals should have the last word here. For its part, the Committee notes that the main positive aspect here is that **this method seems to be best option for fighting fraud**.

5.17 Optional split payment (Q.31): the Committee finds it **difficult to understand the reasons for a split payment system** as proposed in the first model in Point 5.4.1 of the Green Paper; it feels that requiring a double payment for every transaction would mean more complicated accountancy and greater scope for error. Besides, according to some experts **there is no certainty that this model would provide absolute, infallible protection from 'missing trader' fraud ('carousel' fraud)**. In any case, the idea of an **optional system** is also best **avoided**, as it would run counter to the idea of harmonisation, to which there are already too many exceptions.

⁽¹⁵⁾ EESC opinion on *Promoting good governance in tax matters*, OJ C 255, 22.9.2010, p. 61.

5.18 Relationship between traders and tax authorities (Q.32): the Commission's Communication of December 2008 ⁽¹⁶⁾ already includes guidelines (an action plan) for a policy to **improve relations between traders and tax authorities at national level**. The Committee put forward its comments and proposals in an **opinion** ⁽¹⁷⁾ which, while expressing agreement with the Commission's proposals (essentially the same as those set out in the Green Paper), emphasised the need i) to pay closer attention to the protection of data on operators, ii) for administrations to accept responsibility vis-à-vis taxpayers in the event of mistakes or abuse of powers and iii) to adopt a fair approach to joint liability. Apart from this, numerous recommendations have been made inter alia on information that is clear, rapidly available, and accessible on line, as well as on assistance from national authorities to operators in dealing with administrations from other Member States.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁶⁾ COM(2008) 807 final accompanying COM(2008) 805 final - 2008/0228(CNS).

⁽¹⁷⁾ EESC opinion on *Tax evasion linked to imports*, OJ C 277, 17.11.2009, p. 112.

APPENDIX

to the Opinion of the European Economic and Social Committee

Text of the section opinion, rejected in favour of the amendment adopted by the plenary assembly

Point 1.3:

The Committee agrees with the Commission's statement that a comprehensive VAT system should reduce operational costs for users and administrative charges for authorities while cutting back attempted fraud, which represents a burden on public finances. Another consideration which should be mentioned here is the needs of consumers, who ultimately bear the costs of this tax and pay for its inefficiency.

Outcome of the vote: 81 for, 45 against and 29 abstentions.

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Removing cross-border tax obstacles for EU citizens’

COM(2010) 769 final

(2011/C 318/15)

Rapporteur: **Mr FARRUGIA**

On 20 December 2010 the Commission decided to consult the European Economic and Social Committee, under Article 113 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Removing cross-border tax obstacles for EU citizens

COM(2010) 769 final.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July 2011), the European Economic and Social Committee adopted the following opinion by 74 votes with 5 abstentions.

1. Conclusions and recommendations

1.1 The existence of different tax jurisdictions in the EU imposes an added burden on EU citizens who work, invest and operate across borders because of double taxation and of overlaps of administrative requirements. These conditions are causing effective impediments to the proper operation of the Single Market and are denting the fundamental rights of EU citizens. Small businesses tend to be disproportionately negatively affected by these impediments.

1.2 The EESC is of the opinion that existing tax rules across the Union are not able to prevent discrimination between citizens of different countries and to eliminate obstacles on the freedom of movement of people, goods, services and capital.

1.3 In order to remedy for these problems, the EESC recommends the following actions aimed at removing double taxation and enhancing administrative simplification in cross-border situations:

- the establishment of one-stop shop services whereby citizens can acquire information, pay taxes and receive the necessary certificates and documentation to be used across the entire EU;
- the simplification of administrative procedures applied to cross-border situations to be undertaken on bi-lateral and multi-lateral bases across Member States, including *inter alia* the removal of double taxation and the utilisation of administrative instruments to ensure the seamless operation of the numerous existing double taxation agreements;
- the provision of advance tax rulings giving information on the final tax liability outcome which is specifically tailored to the individual taxpayer;

- the setting-up of an independent Cross-Border Taxation Observatory that should, after an early initial period operating under the auspices of the European Commission with specific resources and functions clearly entrusted to it, be concurrently developed over a period of three years into an institution with full legal personality under public law with the status of a Policy Agency. The Observatory aims to gain, on an on-going basis, a detailed and practical understanding of existing tax barriers and their evolution and whose functions entrusted to it shall include:
 - the investigation of tax obstacles as reported by EU citizens;
 - the undertaking of research to uncover other obstacles;
 - the investigation of the effectiveness of on-going efforts to remove obstacles;
 - the estimation of the effects on EU citizens of the matters under the purview of the Observatory;
 - regular reviews of changes in tax policies and administrative requirements within EU Member States so as to assess the extent and manner in which tax obstacles may be evolving, and to specifically highlight and report on instances where such obstacles would be increasing;
 - the study of the introduction of tax equalisation mechanisms, whereby workers who change their place of work between countries within the EU on a frequent basis would be able to pay tax always under the same, single jurisdiction, possibly in the country where the worker is registered for social security;

- to study the extent to which harmonisation is effective in the context of specific tax regimes such as VAT and the way in which its implementation or lack thereof is impinging on tax distortions within the Single Market;
- the establishment of ad hoc working groups to gather information and propose solutions in the context of the above issues;
- the issuing of reports on regular and *ad hoc* bases to detail the results of the work of the Observatory and to provide recommendations to eliminate tax obstacles to cross-border situations.

1.4 In more general terms, it is the opinion of the EESC that the responsibility for the efficient undertaking of tax procedures in cross-border situations should not be put down on the individual citizen, but that there should be proper mechanisms in place to ensure that the operating procedures are simple and clear enough for the citizen to be able to cope with. While recognising the valid contribution made by available facilities for citizens to report tax obstacles, the effort of policy to remove such obstacles should progress beyond this.

1.5 In proposing these recommendations, the EESC is at this stage focusing on the removal of tax barriers rather than addressing the wider issue of tax harmonisation. The latter may be interpreted as one of the criteria required for a Single Market, but it may also be in conflict with other fundamental objectives of the European Union.

1.6 The removal of tax obstacles for cross-border situations is necessary to uphold the individual rights of citizens, to promote competitiveness especially of SMEs and to enhance the knowledge and research base of the European economy in line with the EU2020 targets.

2. Context

2.1 The original action programme under the Single Market Act was aimed at removing all tax-related obstacles to cross-border business. The 1985 White Paper proposed measures that targeted the elimination of tax barriers through the removal of obstacles related to the different indirect taxes, but these issues remain pending. A unanimous vote is required for the establishment of or amendments to measures involving taxation.

2.2 The removal of tax barriers among Member States is mentioned in the 'Europe 2020 Strategy' ⁽¹⁾, which highlights the importance of eliminating tax obstacles to achieve a fully operational Single Market.

2.3 On 12 December 2010, the European Commission issued a Communication paper based on issues related to the removal of cross-border tax obstacles for EU citizens, with specific reference to income, capital and inheritance tax, tax on dividends vehicle registration and circulation taxes and taxation in the e-commerce market.

3. General Comments

3.1 Over the past decade, growth in the movement of goods, services and capital raised more concern on problems associated with cross-border taxation, as reported through initiatives such as Your Europe Advice, SOLVIT, the Europe Direct Contact the European Customer Centres, The European Enterprise Network and the European Employment Services (EURES). The need for better coordination in the implementation of tax policies has also been recognised by the heads of State or Governments in the euro area.

3.2 Tax discrimination issues related to nationality and other unjustified restrictions are mainly tackled through EU Treaty rules. However, the current system does not protect EU citizens against various other problems including limited tax information access, which is widely regarded as a major obstacle to cross-border situations ⁽²⁾, double taxation and mismatches occurring from different tax structures. Although it has been widely recognised that complete tax harmonisation is neither desirable nor feasible, measures that lower tax barriers to cross-border business are necessary.

3.3 Double taxation on income is one of the main obstacles for cross-border activity and it limits the functions of the Internal Market. Other tax barriers relate to problems in obtaining allowances, tax reliefs and deductions from foreign tax authorities. In some cases EU citizens pay higher taxes on foreign income. Discrimination in capital gains tax present another challenge to Member States. Under the current system, foreign investors in most EU countries are required to pay higher taxes than residents. The Commission is planning to present possible solutions by firstly preparing an impact assessment so as to consider the problems arising from the improper or insufficient functioning of existing instruments to relieve double taxation, such as bilateral double taxation treaties on both income and capital.

3.4 Different Member States apply different inheritance tax rules while bilateral tax agreements among Member States are very limited. Over 80 % of these Member States have an inheritance tax while the remaining adopted an estate tax. The Commission has undertaken a consultation process and will shortly propose how Member States could design non-discriminatory inheritance tax systems and make their double tax relief mechanisms more comprehensive so as to lower cross-border inheritance tax obstacles as much as possible.

⁽¹⁾ COM(2010)2020final

⁽²⁾ COM(2010)769 final

3.5 Taxes on dividend payments are usually paid in two Member States where cross-border situations are involved. This raises problems in relation to economic and juridical double taxation as well as problems of tax refunds particularly when various layers of taxation are involved. An impact assessment is being drafted by the Commission from which an initiative to resolve the cross-border taxation problems that arise when dividends are paid across borders to portfolio investors shall be outlined.

3.6 The need for streamlining vehicle registration and circulation taxes across the EU is expressed in a Directive⁽³⁾ proposed by the Commission in 2005, aims at phasing out car registration taxes while applying a system of refund. Still, there has been no unanimous agreement in this regard, and this issue is being re-assessed.

3.7 Research has shown that around 60 % of EU customers find problems in buying goods and services online across borders⁽⁴⁾. VAT issues are one of the tax obstacles discouraging businesses to sell their product to foreign Member States. The availability of a one-stop shop has facilitated trade in this regard and encouragement of broader application of this application is deemed to be a priority⁽⁵⁾. Consultation on this matter in the form of a Green Paper⁽⁶⁾ is currently under way.

4. Specific Comments

4.1 Tax obstacles are curtailing the realisation of the main scope of the Single Market, that is, the freedom of movement of people, goods, services and capital.

4.2 Improved access and better information are essential for good governance in tax policy. In 2009, the European Commission issued a paper – ‘Promoting Good Governance in Tax Matters’⁽⁷⁾ – which states that good governance in the tax policy area would lead to enhanced administrative cooperation and thus better economic relations. This would facilitate information exchange among Member States and also promotes bilateral agreements.

4.3 Where double taxation still exists, countries should be encouraged to remove it in comprehensive manners that take into account all forms of taxation. Where agreements to remove double taxation are already in place, specific arrangements (e.g. binding arbitration) should be implemented to ensure that such agreements operate properly. It is furthermore important for any additional tax systems that are in the implementation process to be examined to safeguard EU citizens against new elements of double taxation.

⁽³⁾ COM(2005) 261 final.

⁽⁴⁾ COM(2009) 557 final and SEC(2009) 283 final.

⁽⁵⁾ In 2004 the Commission proposed a ‘one-stop shop’ system (COM(2004) 728) that would allow certain Reporting obligations to be met in the Member State where the business is established. However, the proposal has not yet been adopted.

⁽⁶⁾ COM(2010) 695 final.

⁽⁷⁾ COM(2009) 201 final.

4.4 In this spirit, the EESC is proposing four measures in order to remedy for double tax problems while enhancing administrative simplification in cross-border situations. These measures are: (i) the establishment of one-stop shop services; (ii) the simplification of administrative procedures; (iii) the provision of advance tax rulings; and (iv) the setting-up of a cross-border taxation Observatory exercise.

4.5 One-stop shops as considered in this document would have two primary aims. One is to serve as information centres where EU citizens can obtain all the necessary required information related to taxation in a form which is direct, accessible and relevant. The EESC is also proposing a second function for such one-stop shops, namely to act as service point for citizens who are liable to pay taxes offering extended services including the provision of certificates and documentation related to taxation.

4.6 Helping EU citizens adapt to the current and any potential future tax rules requires the simplification of administrative procedures from existing ones. This measure particularly refers to double tax agreements. Moreover, the implementation of tax systems which are centred on the provision of tailor-made advance tax rulings, catering for the specific characteristics and conditions of individual situations, is an efficient way of enhancing transparency of tax procedures for EU citizens and reducing uncertainty involved in cross-border situations for firms and citizens alike.

4.7 Finally, the EESC is through this text actively promoting the setting up of an Observatory exercise in relation to obstacles to cross border situations. This initiative is deemed essential for examining, on a frequent basis, current and potential future obstacles emerging from tax policies and the effectiveness of such policies in removing obstacles. The outcomes emerging from regular research and investigations in this regard shall be published in regular reports together with proposals related to the elimination of the tax barriers in question. The Observatory would use various sources to identify obstacles, including the available instruments based on reporting by citizens, as well as through the undertaking of specific research. An important element of the reporting function of the Observatory would be to assess the welfare implications of such obstacles on EU citizens in general, on business, and on specific categories within them.

4.8 The implementation of an Observatory exercise will ensure that tax policies being implemented are effective in practice especially with regards to job mobility. In particular, the Observatory would be mandated to study a system whereby workers who change jobs from one country to another on a frequent basis would pay taxes under a single jurisdiction, preferably at the country where the worker is registered for social security. This so-called ‘Tax Equalisation’ system could be operated through clearing houses set up specifically for the purposes, either within private companies or as part of public institutions. The Observatory would be called to make a cost-benefit assessment in this regard, and to make recommendations on the best approaches towards implementation of such systems within different contexts.

4.9 In addition, the Observatory should undertake studies related to the optimal level of harmonisation with regards to specific tax systems such as VAT, enabling a more detailed analysis associated with the implications of tax distortions on the main elements of the Single Market. Ad hoc working groups would be set up under the Observatory to study specific problems and issues that may arise from time to time and to propose solutions thereto.

4.10 It is the opinion of the EESC that simplified procedures will enhance efficiency as the process of acquiring information and understanding the rules will be made more clear and understandable for EU citizens. Appropriate information must be available to better support the citizens to meet their obligation at law to pay in the due manner the taxes which are due.

4.11 At the same time, the EESC strongly believes that any opportunities to combat tax evasion which may be presented through these measures should be made use of.

4.12 The need to establish the Cross-Border Taxation Observatory is urgent as there is substantial evidence that without immediate action the problem will continue to grow with serious economic and social consequences rather than diminish. The EESC therefore recommends that in the first instance the Observatory is established and operates under the

auspices of the Commission. It is recommended that the Commission assigns to it the specific authority and responsibilities and resources that will enable the Observatory to effectively execute the functions entrusted to it and as defined in this opinion. The EESC, however, strongly recommends that in the shortest time possible the Cross-Border Taxation Observatory is established as a Policy Agency with full legal personality under public law. This legal status would ensure that the Observatory can be completely independent and operate without any bias. The Observatory as a Policy Agency would qualify for the allocation of specific resources necessary to execute the functions entrusted to it.

4.13 Focus on the removal of tax barriers is required irrespective of decisions regarding tax harmonisation. The latter may theoretically be viewed as one of the criteria required for a Single Market, at least in the indirect tax area, but it is in practice an extremely challenging objective that furthermore may be in conflict with other fundamental objectives of the European Union. For this reason, it is even more important to focus on the removal of tax obstacles to cross-border situations in order to contribute to the realisation of the objectives of the Single Market. Efforts aimed at the removal of tax obstacles for cross-border business are deemed to complement and be complemented by a number of important on-going initiatives, not least those regarding the EU2020 process and the Small Business Act.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Green Paper on expanding the use of e-Procurement in the EU'

COM(2010) 571 final

(2011/C 318/16)

Rapporteur: **Mr FARRUGIA**

On 18 October 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

Green Paper on expanding the use of e-Procurement in the EU

COM(2010) 571 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 110 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the European Commission's (EC) Green Paper on e-Procurement and the Green Paper on the EU public procurement policy.

1.2 The EESC is of the opinion that the:

a) implementation of an inter-European e-procurement framework is a cornerstone for the proper functioning of commerce within the internal market given the importance of public procurement vis-à-vis the GDP of each Member State; and

b) deployment of e-procurement up to local public administration level is to be considered as an important policy instrument as e-procurement:

- reduces cost for business and public administration;
- results in a streamlined procurement process, particularly if e-procurement instruments such as e-Auction and Dynamic Purchasing are selected leading to faster decision making;
- results in greater transparency and reduces real and perceived malfeasance in procurement;
- is a vehicle to the further attainment of an information society.

1.3 The EESC is of the opinion that a review of the e-procurement framework cannot be carried out independently of a review of the legal framework for public procurement. e-procurement is a channel that enables public procurement policy to be carried out more efficiently, effectively and economically. The EESC concludes that it is important that there is cohesion and a joint-up approach is adopted in this regard.

1.4 The EESC recognises that implementation of e-procurement across Member States has not met expectations set out in the 2004 Action Plan. Be that as it may, the EESC recognises that best practice examples exist. One such best practice is the holistic implementation approach to e-procurement adopted by Portugal – which merits commendation.

1.5 The EESC concludes that the multi-pronged approach whereby every Member State adopted its own time-frame vis-à-vis e-procurement implementation failed to meet the desired results and instead led to further distancing from the desired objective of an agreed unified system. The EESC recommends that it is now of paramount importance for the EC, through the Directorate for Internal Markets and Services together with the Directorate for the Information Society, to adopt strong and effective leadership (similar to that adopted with the e-Europe Agenda) to achieve an integrated, inter-operable, and business/technology standardised e-procurement framework across Member States. This would ensure that while no activity by any individual Member State is affected that further endangers the achievement of the desirable target, action is actually implemented that furthers the implementation process over an agreed time-frame of an approved cohesion approach. The EESC intends however to place the emphasis on the need to establish practical e-procurement frameworks geared to specific sectors, particularly in the social economy and social services sectors. Services subject to public procurement in these sectors are often complex, involving specific, one-of-a-kind features and so some freedom of action is necessary, even in e-procurement.

1.6 The EESC recommends that an implementation monitoring mechanism is introduced to review progress, barriers, corrective action et al with regards to the introduction of e-procurement within Member States.

1.7 The EESC adds that the EC, in stewarding e-procurement implementation, should encourage Member States to seek innovative solutions to overcome business procedures and language issues.

1.8 The Commission, in tandem with assuming a leadership role, should act as a 'champion' by adopting e-procurement across its institutions.

1.9 The EESC reinforces the importance of e-procurement as a vehicle to spur pan-European commerce within the internal market for large as well as Small Medium Enterprises (SME) and micro enterprises. The EESC underlines that business processes and technology should spur commerce in the internal market rather than by design act as trade barriers.

1.10 The EESC underlines that SMEs and micro-enterprises are the backbone of entrepreneurship in the EU. It is imperative that the work resulting from the review of the public procurement and the e-procurement frameworks respectively is directed to unleash SMEs and micro-enterprises ability to compete in an e-procurement environment. The EESC recommends that:

- all calls for public procurement in Member States - below as well as above the threshold - are published in the portal of the national contracting authority;
- SMEs are assisted either through direct capacity building initiatives, setting up of e-procurement Facilitating Support Centres by national, regional contracting authorities or constituted bodies representing SMEs through national and EU financing – to ensure that SMEs and micro-enterprises embrace and leverage e-procurement.

1.11 The EESC recommends that e-procurement architecture should be interoperable and based on open standards and open source software.

2. Introduction

2.1 On 18 October 2010, the European Commission issued a Green Paper entitled 'On Expanding the Use of e-Procurement in the EU' ⁽¹⁾. The Green Paper was accompanied by a Commission staff working document entitled 'Evaluation of the 2004 Action Plan for Electronic Public Procurement' ⁽²⁾.

2.2 The Green Paper is a first step towards the establishment of an inter-connected e-procurement infrastructure as part of

the Commission's Digital Agenda. The Paper reviews the success and issues related to e-procurement implementation amongst Member States (MS). It poses policy issues with regard to the calibration of Community action directed to support the deployment of e-Procurement by national, regional and local public administration.

2.3 In 2005, EU ministers set the target that by 2010 at least 50 % of public procurement will be carried out electronically. However, according to the Commission less than 5 % of the Member States' procurement budgets is awarded through e-procurement.

2.4 The e-Procurement Green Paper was followed by the publication on 27 January of a Green Paper entitled 'On the modernisation of EU public procurement policy: Towards a more efficient European Procurement Market' ⁽³⁾. The Committee is currently focusing on this particular issue as well as on e-invoicing and will ultimately adopt a package of three interrelated opinions.

3. European Economic and Social Committee's response to policy questions raised in the Green Paper

This is the response of the EESC to the policy questions raised in the Green Paper.

3.1 **Question 1.** The EESC ranks the challenges listed in the Green Paper as follows:

3.1.1 Public procurement is, at times, controversial – resulting in allegations of corruption and malfeasance – and given that e-procurement is a new process certain administrative entities may have hesitated to embrace it. The lack of political will may be one cause but there are other potentially contributory factors, such as the up-take of digital technologies in the Member States and the complex procedure for e-procurement in some sectors.

3.1.2 Where e-procurement was introduced, the EESC concludes that, at times, contracting authorities placed more onerous technical requirements that were not present within the traditional process.

For example, at times access to e-procurement portals demand an advanced electronic signature – a signature supported by a digital certificate – to be able to access tender publications, download tender documents, etc.

3.1.3 The approach adopted allows Member States to create their own and unique e-procurement ICT platforms.

⁽¹⁾ COM(2010) 571 final.

⁽²⁾ SEC(2010) 1214 final.

⁽³⁾ COM(2011) 15 final - *Green Paper on the modernisation of EU public procurement policy - Towards a more efficient European Procurement Market* (See page 113 of this Official Journal).

Interoperability on an entity level, let alone across Member States, can only be achieved if standards are set and adhered to. This did not take place – as each Member State adopted its own authentication mechanism.

The landscape is dominated by a fragmented approach across the Member States. This renders it difficult for **national electronic solutions** to be recognised **across Member States**. Member States should be guided by guidelines and standards issued in this regard by the Commission's working group on inter-operability.

3.1.4 An inter-EU e-procurement network demands a **standardised approach** at the ICT architecture layer⁽⁴⁾ and the **business process layer**⁽⁵⁾.

Member States apply different business processes in the traditional procurement framework. Business processes need to be standardised.

3.1.5 With the benefit of hindsight, the EESC concludes that the tolerance by the Directorate for Internal Markets and Services and the Directorate for the Information Society of a **multi-speed transition** to e-procurement implementation resulted in a plethora of approaches at regional and local levels within Member States.

If e-procurement implementation at a national and cross-border level should be a strategic objective, the EESC recommends that implementation should be given higher priority by the European Commission and this should be backed by stronger and more effective monitoring mechanism based on preventive and corrective measures as is the case in other e-government policy areas.

3.2 **Question 2.** The EESC recognises the following challenges:

3.2.1 Political and administrative leadership for e-procurement implementation. Although discussed above, the EESC identifies it as a specific issue.

Benchmarks carried out by the EU on e-government readiness show that most Member States adopted strong leadership to position themselves at the fore front of e-government services. Focus, primarily, is directed towards G2C services and traditional G2B.

⁽⁴⁾ An ICT architecture is a blueprint for systematically and completely defining the current ICT (baseline) and / or desired (target) framework directed to achieve optimal performances on the basis of efficiency, standards, scalability, inter-operability, coherency; open environment, etc.

⁽⁵⁾ For example, certain contracting authorities require tedious procedures, such as supplying authorised translations, certified, with an apostil.

A 5 % relative take up of e-procurement across the EU – which is a G2B service – shows that innovative G2B activity was absent – other than in countries such as Portugal – even when the literature demonstrates that the implementation of this channel results in cost savings, greater transparency, etc. For example, a Portuguese study compared the best bids for public works by 50 public hospitals in 2009 using traditional procurement methods and 2010 using e-procurement. The study shows cost reductions of 18 % achieved in 2010 due to the increase in competitiveness generated by e-Procurement. The Green Paper highlights examples of savings that range from 10 % to 45 % on projects covering billions of Euros. These are savings of hundreds of millions that could be used in the provision of additional services to the community⁽⁶⁾.

The EESC adds that in such a strategic initiative the EC should have championed e-procurement by introducing by the end of the e-Procurement Action Plan an e-procurement platform for all Commission directorates and agencies.

3.2.2 Moving towards a technical inter-operable environment. This is discussed in 3.1.

The decision to standardise the authentication mechanism to an appropriate level of security, today, cannot be taken in isolation of the investment made by Member States in authentication mechanisms at both national and / or service level.

Member States have already invested in partial or full (Portugal for example) e-procurement systems that may be tied to national or contracting entity authentication mechanisms.

Under the circumstances, the EESC recommends that any approach to streamline Member States onto a standardised inter-EU authentication mechanism should be based on the principle that the selected mechanism is designed to reflect the level of risks that need to be addressed across the e-procurement value chain.

3.3 **Question 3.**

The EESC agrees that national public administration and contracting authorities should be incentivised to introduce an e-procurement framework. The EESC re-emphasises that the multi-speed strategy adopted by the Commission should no longer be pursued. The EESC is of the opinion that the experience since 2005 and the poor results achieved in the absence of an effective monitoring mechanism should now cause the Commission to agree with Member States on compliance with agreed e-procurement strategies. The EESC intends however to place the emphasis on the fact that the Member States should design appropriate balanced frameworks for specific sectors, more specifically in the social economy and

⁽⁶⁾ For further examples see page 5 of the Green Paper on expanding the use of e-Procurement in the EU, SEC(2010) 1214, http://ec.europa.eu/internal_market/consultations/docs/2010/e-procurement/green-paper_en.pdf.

social services sector. Services subject to public procurement in these sectors are often complex, involving specific, one-of-a-kind features and so some freedom of action is necessary, even in e-procurement.

With regards to incentives directed to propel enterprise to use e-procurement, the EESC raises the following issues:

- a) Uptake of e-government services, including e-procurement, is dependent on ease of use. Unnecessary use of complex technologies such as PKI drives organisations against uptake and use. The inter-EU e-procurement framework design must avoid unnecessary technological over-engineering.
- b) SMEs are the entrepreneurial backbone of EU enterprise. The Commission as well as Member States should not assume that SMEs have the same capacity, resources and technology access as large enterprises.

With regards to b) above the EESC recommends that the Commission should finance initiatives across Member States directed to:

- securing access to technology which could be provided through technology hubs provided by competent authorities responsible for enterprise policy or constituted bodies representing SMEs;
- undertaking knowledge and capacity building initiatives directed at SMEs backed by advisory services provided by constituted bodies responsible for SMEs through national and EU incentives;
- undertaking use of e-procurement and skills training including the provision of training tools such as Computer Based Training through the setting up of e-procurement Facilitating Support Centres.

3.4 Question 4.

Contracting authorities are government entities and are subject to the Government's policy. Member States should provide the appropriate stewardship to their respective contracting authorities to design and introduce e-procurement. This may necessitate that Member States place e-procurement implementation strategies within their respective Enterprise and National ICT strategies – setting out incremental milestones that are to be achieved within a specific time frame (7).

The issue is should e-procurement be the only channel to participate in public procurement? The EESC is of the opinion that to the extent possible Member States should place e-procurement as the primary channel for public procurement – subject, however, to intelligent design that reflects the particular

needs of certain sectors. This applies particularly to social services, which are particularly complex as regards procurement. E-procurement for services must be designed taking the need to be met as the starting point, and factoring in the specific characteristics of the service in question.

In this regard, strategies to introduce e-procurement should also be complemented by capacity building and skills up-grading of public officers in public entities as well as easily accessible e-Procurement Facilitating Support Centres available to SMEs.

3.5 Question 5.

The undertaking of e-Auctions shows that electronic procedures for some procurement is already provided for under Directives 2004/17 and 2004/18 – should these instruments be selected.

The EESC is in favour of a procurement instrument such as e-Auction. By its very nature, it demands an e-procurement framework subject, however, to the creation of a framework supporting SMEs, as discussed in 3.3 above, and to the framework being used only when and where appropriate.

Undertaking capacity building to build the necessary supporting framework cannot be emphasised enough as this will secure an e-commerce 'level playing field' between SMEs and Non Government Organisations on the one hand and large enterprises on the other.

The EESC underlines the danger of a 'digital divide' - which will create 'unfair' competition as SMEs and NGOs may be disadvantaged in participating in public procurement because of a 'technological' barrier.

3.6 Question 6.

The EESC believes that public procurement should primarily be channelled through e-procurement subject to the condition that the design of the procurement reflects the specific features and complex needs characteristic of certain sectors – such as 'B' services procurement provision.

Be that as it may, a level playing field, however, can only be secured if SMEs and NGOs have the capacity to operate in a B2G environment. This may not be the case today and capacity building by the EC and Member States should be channelled in this regard.

(7) Best practice examples in the EU exist and include Italy, Portugal, Denmark, Austria, United Kingdom.

3.7 Question 7.

Unnecessary and disproportionate barriers to cross-border participation with regards to e-procurement will stem from, primarily, the following challenges:

- authentication mechanism,
- business processes,
- language,
- willingness to open up local market to competition.

The EESC suggests that the EC designs and adopts an agreed action plan complemented by an implementation monitoring system directed to ensure that such barriers are overcome.

3.8 Question 8.

Withholding visible notification of below the threshold tenders from the e-procurement framework is likely to limit cross border participation in an e-procurement Internal Market to primarily large enterprise.

It is pertinent to underline that the visibility of below the threshold public procurement opportunities across the Single Market is important to SMEs and micro-enterprises as too often specifications set in such tenders fall within the skill, organisational and financial capacity of such enterprise. Thus, the participation of cross border commerce through below the threshold public e-procurement by SMEs and micro enterprises will strengthen the Single Market.

Given that the e-procurement framework consists of various steps ranging from e-notification to e-invoicing the EESC recommends that the EU e-procurement policy should establish that all calls for procurement – below and above thresholds – should be visibly lodged in a Single Market as well as a national central portal supported by an e-notification service.

3.9 Question 9.

The EESC is of the opinion that the legislative framework for e-procurement is comprehensive. Failure stems from lack of implementation will.

3.10 Question 10.

Too often solutions are driven by technical architecture as against business process. The level of security applied should reflect the degree of risk faced and investment in the security framework adopted should be balanced against the said risk.

The security bias adopted in the design of authentication mechanism of e-procurement is one based on advanced electronic signatures. Advanced electronic signatures, however, are expensive to attain – in terms of setting up, cost of digital certificates, etc.

The question arises: should e-procurement be de facto tied to an advanced electronic signature authentication mechanism?

The EESC is of the opinion that there should be more debate on the risks to e-procurement by the Commission and Member States before a decision is made that the authentication mechanism to e-procurement should be tied to advanced electronic signatures.

It is pertinent to note that a debit or credit card – which if lost or stolen render a person open to financial risk – is subject to a 4 number pin. The EESC poses the following questions:

- Do all of the stages on the e-procurement value chain need advanced electronic signature authentication? Is this level of security necessary to enter the Portal, view information on tenders and enable e- or m-services such as notification *et al* required?
- If it is not required, should the authentication mechanism be two tiered: simple registration for those processes on the value chain that are in the public domain under the traditional business process and a higher level of authentication for the submission of a bid or participation in an e-Auction?
- If a two tier authentication mechanism is adopted does it so follow that the higher level of authentication is based on an advanced electronic signature or should a less complex but secure authentication mechanism be adopted?
- Should the authentication mechanism be on the basis of a strong alpha numeric password together with a strong numeric pin number; or should it include the above, together with a unique password generated by a token similar to access to e-banking?

The EESC is of the opinion that whilst a secure mechanism has to be in place with regards to e-procurement the solution must be commensurate to the risk and as least complex to implement as possible.

In the event that the decision would be that the advanced qualified certificates should be the best security model for e-procurement, the EESC proposes that work in this regard is based on the Virtual Company Dossier (VCD) that the Pan European Public Procurement Online (PEPPOL) is undertaking ⁽⁸⁾.

⁽⁸⁾ <http://www.peppol.eu/>

The EESC recognises that current Directive provides that equivalents to certificates should be recognised by Contracting Authorities. The fact is that in practice it is often difficult to find the equivalents and some Member States require tedious procedures, such as supplying authorised translations, certified, with apostille, or requiring originals only. This is cumbersome and expensive, not only for enterprises, but also for Contracting Authorities.

3.11 Question 11.

With regards to language, real barriers exist. There can be no inter-EU e-procurement framework without the ability to 'communicate' a tender issued across the 27 Member States. On the other hand, the translation of a tender document by a national contracting authority in the official EU languages let alone all languages of the 27 Member States to make a tender accessible to enterprises in all Member States is unwieldy, expensive and would bog down the public procurement.

It is important that enterprises or individuals seeking to tender are aware of what tenders are available and this information should be available without any barrier to language. It would then be up to the enquiring enterprise, large, small, medium or micro, to seek further information through the facilitating support centres as proposed in this opinion and whether to go into further expense into more detailed translations beyond what is obtainable through the use of the proposed language tools.

A potential solution could be the development by the Commission of an on-line Procurement Translation tool that is specifically designed and tailored for the technical language of tender documents – that is with special attention to how technical words as 'may', 'mandatory', etc. are translated correctly with no nuances that could lead to misinterpretation.

However, this instrument must be used only for extremely simple procurement and insofar as clarity is guaranteed, so that it does not result in a heavier administrative burden devoid of any real interest for either the contracting authority or for the tenderer.

3.12 Question 12.

The EESC recommends that the Commission should influence Member States to build e-procurement frameworks on 'Open' standards.

The EESC recommends that the Commission encourage Member States to utilise the open e-PRIOR solution which the Commission has made available as free, open source components for integration in any e-procurement solution under design.

3.13 Question 13.

The EESC recommends that the Commission should encourage and increase the provision of open source solutions for integration into existing or developing e-procurement systems.

3.14 Question 14.

The EESC agrees that the EC should continue to develop its suite of applications such as e-PRIOR solutions and render these available for use by Member States.

3.15 Question 15.

As discussed the EC and Member States must undertake sustained capacity building initiatives that will support SMEs to gear up for B2G e-commerce. The issue of 'language' is a far more difficult hurdle for SMEs to overcome if they are to participate in inter-EU e-procurement.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Reaping the benefits of electronic invoicing for Europe'

COM(2010) 712 final

(2011/C 318/17)

Rapporteur: **Mr IOZIA**

On 2 December 2010, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Reaping the benefits of electronic invoicing for Europe

COM(2010) 712 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 119 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee expresses its support and appreciation to the Commission, and agrees with the content of the Communication, which falls within the scope of the European digital agenda. The modernisation of instruments that manage economic relations and technological innovation not only bring about very significant savings, but also help to disseminate innovation and achieve the objectives set by the Europe 2020 strategy.

1.2 The completion of the digital agenda will be a key plank in the relaunch of the single market as a factor of sustainable social and economic development.

1.3 The EESC stresses the need to take particular account of the advantages that could arise from widespread dissemination of electronic invoicing. Those benefits will need to be shared fairly amongst all categories of business, but especially SMEs. Particular attention will need to be paid to their specific needs as regards digital literacy, limiting the costs of access to digital platforms and management software.

1.4 The EESC calls on the Commission to make every effort to speed up the process of the new legislation on electronic signatures as much as possible, and wonders whether it would not be appropriate to adopt a regulation rather than a directive to avoid problems with diverging transpositions that would maintain different standards in the area.

The reform of the system of indirect taxation (VAT) already takes into consideration equal treatment of electronic receipts with paper ones for the purposes of keeping accounts and invoices. The tax administrations of the Member States should bring their legislation into line with this provision as soon as possible.

1.5 With particular regard to SMEs, the EESC recommends that their interests be protected in terms of payment of VAT,

which should be linked to the payment of the electronic invoice rather than a certain date of issue. The new system will need to give due consideration to the problems that SMEs may have in managing their liquidity.

1.6 The EESC supports the widespread and rapid adoption of electronic invoicing, but believes that this should remain optional and, whilst understanding the aims of such a measure, does not consider that the conditions for making it mandatory are fulfilled.

1.7 The EESC recommends to the Commission that the steps necessary to achieve the stated objective be taken with caution and care so as to avoid creating unnecessary and burdensome problems for businesses and consumers.

1.8 The coexistence of two schemes with equal legal value, i.e. electronic and paper invoicing, should enable everyone to choose the one that best fits their specific requirements.

1.9 The EESC calls on the Commission to adopt global standards for electronic invoicing. The standardisation and interoperability of systems are essential factors for the dissemination and success of electronic invoicing. They will enable the development of the internal market and make it possible to increase the number of operators on the market.

This contrasts with the current situation of a fragmented market characterised by lack of communication, which *de facto* obstructs the development of this useful instrument at cross-border level.

1.10 The PEPPOL pilot project should be rolled out further, permanently connecting those areas where electronic invoicing is already a reality. Greater attention should be paid to the needs of SMEs.

1.11 The Communication does not consider the requirements and interests of consumers amongst the recipients of electronic invoicing. Only people who have good experience in using information technology will be able to avail themselves of the convenience of receiving electronic invoices.

1.12 The envisaged dissemination of this instrument should make it possible to create a virtuous circle: viewing the online catalogue, choosing and purchase order, despatch of goods, issuing of the invoice, payment with simultaneous transfer to the financial administration of the amount due with the automatic calculation of the applicable VAT rate depending on the type of goods and of operator.

1.13 Speeding up these processes will bring about significant savings in time, prompter payments, and a reduction in the number of false invoices.

1.14 E-business projects funded by the EU should include a mandatory requirement that a certain percentage of all pilot projects must include small and medium-sized enterprises. This could focus attention on the needs of SMEs right from the initial phases of these initiatives, and above all influence the development of innovative technologies for SMEs (for example for the PEPPOL project).

1.15 The European Commission should place more emphasis on the need for national public administrations to adopt the principle of equal treatment between paper and electronic invoices, thus removing the obstacles to cross-border trade. In particular, by removing the obligation to use specific technological solutions (including electronic signatures) that are not necessary for paper invoices, and by eliminating the burden that still exists in some Member States of having to print electronic invoices for tax inspections if all the relevant requirements have been met.

1.16 Incentives for SMEs could be developed in cooperation with local public authorities through specific programmes. The involvement of DG REGIO must be considered.

1.17 The EESC welcomes the establishment of the European forum on electronic invoicing and is open to taking part in its work.

2. Introduction

2.1 Invoices are key documents exchanged between commercial operators, and between these and end consumers. As well as its primary function as a request from the seller to the buyer for payment for goods supplied or services rendered, an invoice is an important accounting document and has potential legal implications for both trading partners. It is a contractual document in the relations between businesses and consumers. In some countries, the invoice is a key document for tax returns, for reimbursements and for completing import and export declarations.

2.2 The parties involved are the buyer and the seller. In certain circumstances the consignor and consignee can be third parties, such as in the case of a carrier or a logistics operator.

2.3 Electronic invoicing is the automated process of issuing, sending, receiving and processing invoice data by electronic means. Electronic invoicing is part of an intricate network of business processes and procedures, commonly referred to as the order-to-payment cycle, from the supplier's point of view, and the purchase-to-payment cycle from the buyer's point of view.

2.4 Amongst the seven 'flagship' initiatives promoted by the European Union with a view to putting the 2020 strategy into practice, *A Digital Agenda for Europe* deals with supporting, through appropriate regulation, the development of information technologies dedicated inter alia to the simplification and to the reduction of burdens with a view to completing the single market. More than one hundred initiatives and another thirty legislative provisions will be adopted to pursue the thirteen key performance targets over the next ten years.

2.5 The Commission communication, published following five years of preparation and in-depth consultation, deals with a very important part of the agenda: electronic invoicing. It sets the objective of electronic invoicing being the main method of invoicing by 2020. It is calculated that currently only 5 % of all invoicing transactions by businesses take place via electronic invoicing.

2.6 The Commission calculates that the potential savings could amount to EUR 240 billion over six years⁽¹⁾. The European Association of Corporate Treasurers has arrived at similar results, estimating that businesses could save up to 80 % of their operating costs by moving to automated processing of invoice data, thus eliminating paper consumption and significantly reducing labour. The development of the Single Euro Payment Area (SEPA) could make it possible to combine invoicing and payments, thus allowing for integration of systems and the possibility of setting up interoperable European electronic invoicing schemes.

2.7 The priorities identified are:

- 'to ensure legal certainty and a clear technical environment for e-invoices to facilitate mass adoption,
- to encourage and promote the development of open and interoperable e-invoicing solutions based on a common standard, paying particular attention to the needs of SMEs,
- to support the uptake of e-invoicing by setting up organisational structures, such as national e-Invoicing fora and a European Multi-Stakeholder Forum.'

⁽¹⁾ *SEPA potential benefits at stake*, Capgemini.
http://ec.europa.eu/internal_market/payments/docs/sepa/sepa-capgemini_study-final_report_en.pdf.

3. EESC comments and observations

3.1 The European Economic and Social Committee (EESC) is a committed supporter of the flagship initiative *A Digital Agenda for Europe* and welcomes the Commission's initiative. In several previous opinions ⁽²⁾, the EESC has supported the adoption of programmes and legislative initiatives aimed at promoting the use of information and communication technologies (ICT).

3.2 More than 30 billion invoices and bills are issued in Europe. In 2011, three billion bills and invoices are expected to be sent by email, but not all of these will be electronic invoices. More than 4,5 million businesses and over 75 million consumers already use this system. The main operators providing electronic invoicing services are doubling their turnover every few months.

3.3 Studies carried out by a group of experts on behalf of the Commission have estimated that the saving to the issuer in respect of each invoice can be several euros. Automated electronic despatch can save up to 60-80 % compared to traditional, paper-based processes. In overall terms, this means a saving of between 1 and 2 % of administrative costs. There is an economic return on investment in electronic invoicing systems after just six months, according to assessments by the leading experts in the sector ⁽³⁾.

3.4 In the communication, the Commission hopes that electronic invoicing will become the predominant method, but does not state why it should take so long. The EESC considers that every possible effort should be made to achieve this goal as quickly as possible.

3.5 The EESC emphasises and welcomes the significant contribution that the development of electronic invoicing can make to reducing CO₂ emissions thanks to the reduction in energy used for transport and in paper consumption.

3.6 The EESC supports the priority given to SMEs and to the comments made by them in the survey carried out by the expert group appointed by the Commission, and considers this very important.

3.7 The EESC recommends that all possible measures be adopted to facilitate the establishment of multiple specialised operators, thus avoiding the creation of little *de facto* monopolies, which would inevitably take advantage of a dominant position.

3.8 The EESC calls on the Commission to put in place such initiatives as may be conducive to implementing and adopting the standard model proposed by the UN/CEFACT ⁽⁴⁾, the inter-governmental organisation set up by the UNECE Trade Committee to develop a global-level work programme to bring about coordination and cooperation in the field of electronic standards and facilitating business-to-business trade.

3.9 The Council should encourage wide uptake of the good practice initiated by some Member States in making electronic invoicing mandatory for public contracts, as this is a useful way of encouraging their dissemination. The PEPPOL (Pan-European Public Procurement Online) project, a large-scale CIP (Competitiveness and Innovation Framework Programme) pilot project supported by the Commission, should be rolled out more widely, and the developed standards adopted and supported, thus connecting those parts of Europe where e-procurement is already a reality.

3.10 The EESC welcomes this initiative, but recommends that e-invoicing be made available to other operators, thus opening the market to other players. There are currently around 400 e-invoicing service providers, most of whom operate at local level, providing a wide range of products. Sadly, there is a long way to go before these systems are interoperable. The EESC recommends that common global standards be adopted, as these are key to speeding up the completion of the European single market and sharing its benefits amongst a large number of players, in particular SMEs, by enhancing their competitiveness.

3.11 The benefits of uniform invoicing formats are obvious. At present, the market is fragmented and does not communicate. The EESC supports initiatives aimed at converging towards increasingly integrated levels of interoperability and welcomes the fact that the UN/CEFACT CII v.2 (Cross-Industry Invoice) model had been adopted as a basis for developing the ISO 20022 invoice message standard.

3.12 Global standards should always make provision for the relevant procurement procedures so as to ensure that businesses are not forced to automate the invoicing process in isolation from that of supply or of order processing, for example. This could lead to inefficiencies. The development of CEN/IIB profiles for the entire procurement chain should be promoted and carefully monitored, given that these form the basis of PEPPOL electronic documents. Particular attention should be paid to the progressive adoption of the UBL standard in various EU Member States, particularly by the public sector. The adoption of such global standards should be encouraged.

⁽²⁾ 'A Digital Agenda for Europe', OJ C 54, 19.2.2011, p. 58; 'Transforming the digital dividend into social benefits and economic growth', OJ C 44, 11.2.2011, p. 178; OJ C 255, 22.9.2010, p. 116 and OJ C 77, 31.3.2009, p. 60; 'Improving "participative public – private partnership" models in deploying "e-services" for all in the EU 27', OJ C 48, 15.2.2011, p. 72; OJ C 255, 22.9.2010, p. 98; OJ C 128, 18.5.2010, p. 69; OJ C 317, 23.12.2009, p. 84; OJ C 218, 11.9.2009, p. 36; OJ C 175, 28.7.2009, p. 8; OJ C 175, 28.7.2009, p. 92; OJ C 175, 28.7.2009, p. 87; OJ C 77, 31.3.2009, p. 63; OJ C 224, 30.8.2008, p. 61; OJ C 224, 30.8.2008, p. 50; OJ C 97, 28.4.2007, p. 27; OJ C 97, 28.4.2007, p. 21; OJ C 325, 30.12.2006, p. 78; OJ C 318, 23.12.2006, p. 222; OJ C 110, 9.5.2006, p. 83; OJ C 123, 25.4.2001, p. 36.

⁽³⁾ <http://www.expp-summit.com/marketreport.htm>.

⁽⁴⁾ UN Centre for Trade Facilitation and Electronic Business.

3.13 In the future, once the system of electronic invoicing is in widespread use, financial administrations will undoubtedly benefit from e-invoicing with payment of VAT contemporaneously with the invoice. Integration with the Single Euro Payment Area could foster greater efficiency of the tax collection system. So as to avoid a negative impact on SMEs, particularly as regards managing their liquidity, the EESC calls on the Commission to take this issue into account.

3.14 There will above all be savings in the management of tax returns and in the cost of automatic payments. In general, the fall in collection, verification and management costs of tax services is a modernisation and improvement goal that will benefit the economy as a whole. The reduction in evasion that automating the invoicing process could bring about will ultimately help the system to find resources to reinvest in supporting economic and productive activity.

3.15 The EESC recognises the need for an urgent review of Directive 1999/93/EC on electronic signatures so as to introduce a legal system for recognising, at European level, the interoperability of a secure, guaranteed electronic signature. It calls on the Commission to stress the urgency vis-à-vis the Council and the Parliament so that they adopt the provisions soonest. Differences in transposition of the directive and the

system's mandatory use in a number of Member States have led to serious problems, especially for SMEs, which consider electronic signatures to be one of the greatest and most pointless obstacles to the adoption of electronic invoicing. With regard to the legislative instrument, the EESC wonders whether the time has come to use a regulation in order to achieve, at long last, uniform standards that meet the expectations set by the Single Market Act.

3.16 Europe's citizens do not perceive the opportunities offered by the single market because barriers, bureaucratic hurdles and administrative requirements still remain. Consumers have not yet seen the benefits that were announced with much fanfare, for example in the financial and energy sectors, where it was only European legislation that imposed rules that benefited consumers (Third Energy Package, SEPA, MIFID, etc.).

3.17 The EESC considers that the proposal contained in the Commission Communication is a step in the right direction and hopes that the overall pace of the decision-making processes and implementation of the project will quicken, so that workers, citizens and businesses will benefit from a harmonised or, better still, uniform legislative framework.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a better functioning Single Market for services — building on the results of the mutual evaluation process of the Services Directive’

COM(2011) 20 final

(2011/C 318/18)

Rapporteur: **Martin SIECKER**

On 27 January 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards a better functioning Single Market for services — building on the results of the mutual evaluation process of the Services Directive

COM(2011) 20 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 134 votes to two with three abstentions.

1. Conclusions and recommendations

1.1 The Committee supports the Commission's desire to improve the functioning of the single market for services: it goes without saying that obstacles in the form of discriminatory, unjustified or disproportionate requirements should be removed. The Committee therefore welcomes the initiative to modernise public administrations by setting up ‘points of single contact’, and can only applaud the development of administrative cooperation in cross-border matters. However, this cooperation also needs to be extended to policy areas where compliance with obligations is at stake.

1.2 The EESC considers the Commission's conclusions on the impact of the Services Directive and on the functioning of the services sector to be premature. The directive has been in force for only a few years. Not all the Member States are equally satisfied with the directive and they need to implement it in their own legislation in their own way; these are complicating factors that are not taken into account in the communication. The services sector is large and complex, with many different branches, and it will take time to streamline the single market for services by means of European legislation.

1.3 The Services Directive was drafted under the old treaty, in which economic interests were still the top priority in the single market. Under the Lisbon Treaty, other interests are regarded as equivalent, rather than subordinate, to economic interests. It is interesting to look at how legislation and case-law developed under the old treaty relates to the new treaty. In its opinion on the Single Market Act, the EESC recommended that the Posting of Workers Directive should be examined in the light of the new treaty. It would be interesting to see

whether an examination of the judgments of the ECJ that give primacy to the single market (old Article 49) could shed new light on the matter.

2. Gist of the Commission document

2.1 Although services constitute a significant economic force in the European Union, the Commission feels that the services market is not yet achieving its full potential. For example, in its communication on the Europe 2020 strategy ⁽¹⁾, it stresses that a more integrated single market for services must be created on the basis of the Services Directive, and, in its communication ‘Towards a Single Market Act’ ⁽²⁾, it highlights the need to further consolidate the single market for services. This, it claims, is necessary to help businesses in the services sector to grow and to better position themselves globally, so that they can create more jobs.

2.2 The adoption of the Services Directive in December 2006 ⁽³⁾ and its subsequent implementation marked the start of a process of improving the functioning of the single market for services: the European Commission simplified the regulatory framework, and the Member States adopted a wide range of implementing legislation to abolish hundreds of unjustified or disproportionate requirements throughout the EU.

2.3 The Services Directive established a ‘mutual evaluation process’ as a peer review mechanism. In 2010, the Member States plus Liechtenstein, Norway and Iceland evaluated almost 35 000 statutory requirements, most of which had been imposed on businesses in the services sector. These

⁽¹⁾ COM(2010) 2020 final.

⁽²⁾ COM(2010) 608 final.

⁽³⁾ Directive 2006/123/EC.

included requirements on establishment (such as authorisation schemes, territorial restrictions or capital ownership restrictions) and requirements relating to the cross-border provision of services (such as registration, notification or insurance obligations).

2.4 The most striking conclusion drawn from this process is that, in certain services sectors, the single market continues to be a work in progress. According to the Commission, the main issue is that, to date, not all discriminatory barriers have been removed by legislative means, and that the laws that do remove barriers have not yet been fully implemented, or are not being properly enforced, in all Member States. It also claims that the Member States are still making wide use of the possibility to reserve certain service activities for certain operators.

2.5 In order to move forward with the single market for services, the Commission proposes a number of measures to be implemented in the next 18 months, including:

- a 'performance check' of the single market for services, in order to assess the situation from the perspective of users (businesses, the self-employed, consumers);
- targeted actions aimed at tackling remaining unjustified regulatory barriers hindering the potential of the single market for services;
- targeted actions to make the single market for services a more concrete reality on the ground.

The Commission will assess the effectiveness of means of redress available at national level to service providers for breach of their single market rights by national administrations and decide on next steps by the end of 2012.

3. General comments

3.1 The Commission quite rightly states that the single market for services is not an end in itself but a tool to improve European businesses' and citizens' daily life and welfare. It would be advisable to take a more in-depth look at the contribution of the single market to these horizontal objectives. The Services Directive was drafted under the old treaty, in which economic interests were still the top priority in the single market. Under the Lisbon treaty, other interests are regarded as equivalent to economic interests, rather than subordinate, as previously. It is interesting to look at how legislation and case-law developed under the old treaty relates to the new treaty. In its opinion on the Single Market Act, the EESC recommended that the Posting of Workers Directive should be examined in the light of the new treaty. It would be interesting to see whether an examination of the judgments of the ECJ that give primacy to the single market (old Article 49) could shed new light on the matter.

3.2 The evaluations carried out so far have focused too closely on the regulations themselves and – partly as a result of that – have been too 'technocratic' in nature; for example, a Member State's regulation of certain professions may very well

be motivated by a desire to maintain the quality of the service provided, and thus be in the interests of public welfare. The fact that such a regulation is seen as a barrier to the freedom to provide cross-border services does not automatically mean that the 'barrier' needs to be removed; in such cases, consumers' and employees' interests may be given greater weight than considerations relating to economic freedoms. Only if a barrier really is based on unjustified and discriminatory grounds should it be abolished.

3.3 The EESC considers the Commission's conclusions on the impact of the Services Directive and on the functioning of the services sector to be premature. The directive has been in force for only a few years. Not all the Member States are equally satisfied with the directive and they need to implement it in their own legislation in their own way; these are complicating factors that are not taken into account in the communication. The services sector is large and complex, with many different branches, and it will take time to streamline the single market for services by means of European legislation.

3.4 The document refers to both freedom of establishment and the freedom to provide cross-border services, which are two different things. Requirements relating to establishment are primarily national competences, whereas cross-border services in the context of economic freedoms are covered by EU legislation. It is up to the Member States to strike the right balance here.

3.5 It would also be advisable to draw up a clear definition of what is included in 'cross-border services' and how that relates to the data given in the communication. The Commission states that the Services Directive covers 40 % of EU GDP, and then, later on, that the services sector accounts for around 70 % of EU GDP. That suggests that well over half of the services market comprises cross-border service provision, which is highly debatable.

3.6 The communication does contain a few assumptions that either cannot be tested or are at best debatable, and that the Commission is rather too quick to count on: in section 5.1, the Commission expresses high expectations regarding the outcome of the 'performance check' already being undertaken with the Member States, despite the fact that some Member States are actually hindering the completion of the single market for services.

3.7 The Commission also states, in section 2, that conservative estimates predict that the implementation of the Services Directive has the potential to bring about economic gains of up to EUR 140 billion, representing up to 1.5 % of EU GDP. This figure can be traced back to a study undertaken by the Netherlands Bureau for Economic Policy Analysis in 2007, shortly after the Services Directive was introduced and before the expected impact of the directive had been undermined by the crisis that later unfolded. It would therefore seem that this statement, too, needs to be qualified somewhat.

3.8 There are some doubts regarding the assessment, in sections 3 and 4, of the mutual evaluation process carried out in 2010: the Commission's communication states that this mutual evaluation has had an 'unprecedented Single Market effect' within Member States, without making it clear what that effect comprises. It may have given rise to a great deal of activity within parts of the Member States' civil services, but what effect and practical impact has it had on the single market for services?

3.9 The European Commission has not made its position clear concerning the possible hierarchy in the various horizontal objectives the European Union is aiming to achieve, as is evident, *inter alia*, from the vagueness concerning the Member States' authority to implement regulations in the interest of public welfare that may have restrictive effects. Questions concerning this authority deserve broader public discussion, not least given the lack of public support for the European project as raised in the Monti report.

4. Specific comments

4.1 The Committee supports the Commission's desire to improve the functioning of the single market for services: it goes without saying that obstacles in the form of discriminatory, unjustified or disproportionate requirements should be removed. The Committee therefore welcomes the initiative to modernise public administrations by setting up 'points of single contact', and can only applaud the development of administrative cooperation in cross-border matters. However, this cooperation also needs to be extended to policy areas where compliance with obligations is at stake ⁽⁴⁾.

4.2 Under the Services Directive, only electronic points of single contact are required, but a number of Member States have also set up physical points of single contact: these constitute a different, more proactive and more extensive service for businesses that want to launch activities on markets in other Member States. In the Committee's view, these contact points need to be easily accessible, including in a foreign language, and the option should also be provided of e-registration. The EESC is interested in the differences in businesses' experience and perceptions of these different approaches, and requests the Commission to examine whether these physical contact points are more popular and more highly valued than the electronic versions.

4.3 The assertion that the services sector is one of the most innovative and dynamic sectors and therefore has the potential to make a significant contribution to economic growth needs to be put into context. The Services Directive does, of course, make a significant positive contribution to employment trends in the EU, and a considerable number of high-quality jobs have been created, but many of the 'new' jobs in the services sector are low-skilled, repetitive and poorly paid; the increase in the number of working poor – a phenomenon that a number of studies have linked to these new services – does not help to increase the welfare of European citizens.

4.4 The freedom to provide services is not the same as the free movement of labour; nonetheless, various studies have shown that the freedom to provide services is regularly used as a pretext for recruiting workers. Cross-border services with the sole purpose of recruiting cheap labour must be prevented: the country-of-work principle must apply in full to cross-border labour recruitment, in order to protect the interests of both employees and *bona fide* employers and to prevent unfair competition due to the use of pseudo-self-employment or other ways of evading national labour regulations.

4.5 The European Union cannot define the monitoring and enforcement of compliance with the working conditions applicable in the country of work as 'obstacles' or 'barriers' to the functioning of the single market for services unless such practices are used to stifle competition: not only do they relate to the fundamental rights of employees, which must be respected, but it is also in the interests of *bona fide* employers that compliance with collective contracts be monitored. This applies both to large multinationals and also to small and medium-sized enterprises. The registration and notification requirements needed in order to monitor compliance with these basic rights are fundamental elements of the obligations attached to the provision of cross-border services. Better cooperation between Member States in this respect is in the interests of all parties concerned, and can only be of benefit to the cross-border provision of services.

4.6 The European Commission states, in its communication, that the share of cross-border services in intra-EU trade is lagging behind the scale of national services sectors. Many services are local and location-specific, and cannot easily be sold remotely; the Commission does mention this in passing, but does not do justice to the scale and significance of this aspect. Nor do the examples that the Commission gives in the communication do much to clarify its intentions: they appear to relate to incidents in a small number of Member States where the Services Directive has clearly not been adequately implemented, rather than to fundamental weaknesses in the directive itself.

4.7 The Commission focuses primarily on competition, claiming that it brings advantages for consumers in terms of choice and price. But consumers also expect other key things from services, such as safety, security, quality, transparency of prices, fair contractual conditions, clear, easily understandable information and a money-back guarantee if the services provided are unsatisfactory. Sectoral regulations are also needed, to ensure that consumer rights are not harmed as they were when the energy and telecommunications markets were liberalised.

4.8 In order to avoid cowboy operators, to guarantee service quality and to provide the option of legal redress if a service provider fails to meet its obligations, recognised professionals in each sector need to be listed in a publicly accessible register. The qualifications of service providers included in this register must meet set criteria and their vocational skills must be

⁽⁴⁾ COM(2008) 703 final.

checked periodically. This will enable consumers to make safe and informed choices, which will increase confidence in the single market.

4.9 In the legal field, the communication repeatedly advocates creating means of redress for service providers, particularly for small and medium-sized enterprises. This approach is too one-sided: means of redress developed in this connection should be available not only to businesses but also to consumers and employees.

4.10 The barriers caused by Member States' national regulations to which the Commission refers in section 5.2 should not and cannot be seen solely from the perspective of service providers. Reserved activities, capital requirements and insurance requirements are also justified by quality requirements laid

down by society and, moreover, such requirements also serve to guarantee both civil liability and the availability of legal redress to consumers and employees.

4.11 Authorities and institutions responsible for monitoring and enforcement regularly raise the issue of 'letterbox companies' in cross-border trade, which abuse the single market for services to evade or side-step regulations in a number of countries. A similar problem arises where self-employed status is widely used in cases that are in fact pseudo-self-employment. The Committee recommends that the European Commission undertake further research to analyse this distortion of competition – which is particularly harmful to *bona fide* businesses, both large and small – and to take appropriate action if necessary.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Green Paper on the modernisation of EU public procurement policy — Towards a more efficient European Procurement Market’

COM(2011) 15 final

(2011/C 318/19)

Rapporteur: **Mr van IERSEL**

Co-rapporteur: **Mr CABRA DE LUNA**

On 27 January 2011, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green Paper on the modernisation of EU public procurement policy — Towards a more efficient European Procurement Market

COM(2011) 15 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 164 votes to 1 with 4 abstentions.

Definitions

Directive Directive 2004/18/EC – procedures for award of public contracts

Authorities Contracting authorities as defined in Article 1.9 of the Directive and subject to the Directive

Utilities Contracting entities subject to directive 2004/17/E

Gold Plating Made more onerous when implementing directives into national law ⁽¹⁾

of the Directives took place in 2004. The EESC insists that any further revision should be prepared with the same care and precision as in 2004.

1.3 An overall analysis of the effects of the Directive and how it is implemented in Member States as well as of the judgments of the ECJ since 2004 is crucial for any revision. It should also be taken into account that a broad experience with the Directive across Europe is rather recent.

1.4 Unnecessary bureaucracy has to be reduced for the best results for everybody. Complicated legislation and widespread Gold Plating in Member States as a consequence of incorrect implementation of the Directive must be avoided. Europe 2020 implies a larger monitoring role of the Commission.

1. Conclusions and recommendations

1.1 The EESC welcomes the debate initiated by the Commission in its Green Paper in view of a modernisation of EU public procurement policy with a higher degree of efficiency in the context of a better functioning Single Market that is more innovative, greener, and more social. The Committee envisages drafting an additional opinion after the Commission's evaluation of the effects of Directive 2004/18/EC so far in order to complete the present opinion in the light of this evaluation.

1.2 The public procurement directives ⁽²⁾ seek inter alia to promote quality in public procurement. The last overall revision

1.5 The EESC emphasises that the principles of openness and transparency as well as efficiency, legal certainty, value for money, competition, accessibility to the market for SMEs and liberal professions, proportionality, increasing cross-border contracts, avoidance of discrimination and corruption, and the need for professionalism remain as valid as before.

1.6 The EESC underlines the impact and importance of innovative, environmental and social aspects of Europe 2020 also for public procurement.

1.7 In order to increase engagement of the Member States to implement correctly the Directive as well as to incorporate Europe 2020 objectives in public procurement contracts, the EESC insists on special attention for this issue that should be discussed annually in the (Competitiveness) Council.

⁽¹⁾ See EESC Opinions OJ C93/25, 27.4.2007, p. 25 and OJ C 24, 31.1.2006, p. 52.

⁽²⁾ See the classic Directive 2004/18/EU and the Utilities Directive 2004/17/EU. This Opinion discusses in particular the classic Directive, hereafter the Directive.

1.8 Intensified interest is shown in Member States concerning the role of public procurement in a smart economy. National authorities formulate, in varying degrees, environmental and social criteria to be taken into account by the purchaser. The special requirements of public procurement for non describable services ⁽³⁾ must be taken into account. Best practices and experiences should be part of the annual debate in the Council.

1.9 The EESC considers it a significant shortcoming that the Green Paper discusses neither the need for satisfactory professionalism nor the risk-aversion of public authorities. Professionalisation is key to promote innovation. Training programmes for purchasers in Member States should be drawn up. The Committee advocates benchmarking and exchange of good practices.

1.10 The purchaser must take full responsibility for the economic, social and financial consequences in defining the characteristics of the works, products or services. This can imply to require a self-certificate or statement of compliance from the bidder concerning relevant national legislative provisions, e.g. regarding social aspects, restricting official certificates to the winner.

1.11 Especially in large projects the EESC is, given the need of promoting sustainable development, in favour of the application, wherever appropriate, of the principle of life-cycle costs.

1.12 The EESC is in favour of maintaining the difference between A and B Services under the condition of legal certainty and the possible extension of cross-border contracts of B Services. It recommends a periodic review of the list of B Services by the Commission to examine whether some B Services could, with advantage, be shifted to A Services.

1.13 Participation of SMEs, including social enterprises, must increase. Given diverging opinions among stakeholders the EESC is not in favour of changing the thresholds. Improvements must be achieved by using properly the principle of 'proportionality', adjustment of publication methods, proper application of e-tendering, and, if practically applicable, splitting up contracts. The EESC recommends also programmes to support expertise of SMEs.

1.14 One of the objectives of the Directives is to combat favouritism, fraud and corruption. In modernising the Directives, anything which dilutes their rigour should be avoided. The Committee considers that advertising all public contracts through an e-Tendering process in advance would help to prevent abuses.

1.15 Since 1971, a main objective of the Directives was to promote European cross-border contracts in public

procurement. The record is poor. The EESC recommends an analysis of (best) practices and examples in Member States followed by measures to open up markets ⁽⁴⁾.

1.16 The EESC recommends that a decision concerning jurisdiction in cross-border contracts should form part of the contract from the outset.

2. Introduction

2.1 The Commission presents Public procurement as one of twelve initiatives as a lever for a Single Market which is greener, more social and more supportive to innovation ⁽⁵⁾. In its Green Paper the Commission also underlines the need for efficiency and simplification, easier access for SMEs, and promotion of cross-border contracts.

2.2 Public procurement in the EU has a long history. It embraces the ways and means by which Public Authorities and Utilities ⁽⁶⁾ meet their needs through procuring Works, Supplies and Services. A main goal was and is a European level playing field. However, the number of cross-border contracts remains very poor. This Opinion concentrates on the directive ⁽⁷⁾ where, as implied in the Green Paper, improvements should yield the greatest relative benefit.

2.3 Essentially the Directive is procedural, with specific legal provisions and guarantees, governing the process of inviting tenders and awarding contracts. The content of a contract awarded under the Directive is entirely a matter for the awarding Authority.

2.4 Following the original Public Purchasing (1972) and the Utilities (1993) directives, the 2004 versions of the directives introduced substantial modernisations, especially in the Authorities directive (2004/18/EC), as well as minor changes to the more up-to-date Utilities directive (2004/17/EC). The revision was the outcome of long and deep discussions between stakeholders. Implementation differs from country to country because of various cultural backgrounds, different legal traditions, and 'gold-plating'.

2.5 Many issues were taken into account in order to create an open, pan-European and transparent market including legal certainty, cost-awareness, value for money, quality, better

⁽³⁾ Independent professional activity whose subject matter is a task that cannot be described beforehand in clear and exhaustive terms.

⁽⁴⁾ See Recital 2 of the Directive: '... and to guarantee the opening-up of public procurement to competition'.

⁽⁵⁾ 'Communication of the Commission on the Single Market Act, Twelve levers to boost growth and strengthen confidence', COM(2011) 206 final, section 2.12 Public procurement.

⁽⁶⁾ Entities in the water, energy, transport and post sectors.

⁽⁷⁾ 2004/18/EC (public purchasing directive).

competition, access to the market for SMEs, proportionality, innovation, sustainability – now Europe2020 – life-cycle costs, avoidance of discrimination and fraud, a level playing field and cross-border contracts.

3. Developments since 2004

3.1 In the time since the directives were first introduced many changes have taken place in procurement generally, and that process continues. The Green Paper contemplates whether some of the aspects which are commonplace in the commercial world and the Utilities should be introduced, enabled or enhanced.

3.2 The major techniques are innovation, negotiation and market awareness. Always used in the Utilities, and with some limitations, possible under the Directive they have not been widely practiced. Where such techniques are not practised and a significant level of experience is lacking, there is no pool of expertise and thus no realistic prospect of their becoming normal.

3.3 In an effort to be consistent with modern techniques, the Directive includes other techniques such as e-procurement and reverse auctions. Whilst the former has fairly wide application, the latter is really only suitable where price and delivery are the only criteria. The EESC draws attention to the need to improve cross-border electronic interoperability.

3.4 In long discussions on Services of General Interest (SGIs), it was concluded that these are not procurements as such but services provided by or on behalf of Authorities. The EESC reconfirms that Authorities are entirely free to carry out by themselves all or any of their functions, or to outsource those that they choose. National systems reflecting the principles enshrined in primary law of equal treatment, non-discrimination and transparency and providing for a general right to provide services should also be taken into account. The SGI ⁽⁸⁾ itself is thus not in principle covered by the directive but any outsourcing or procurement by or on behalf of the Authority in connection therewith would indeed be subject to the Directive.

Article 14 and the Protocol N. 26 on Services of General Interest of the TFEU recognise the specific nature and importance of public services, and the wide discretion of national, regional and local authorities to decide on how they are provided, commissioned and organised. This includes in-house and public-public co-operation. Ensuring a high level of quality, safety, affordability, equal treatment and the promotion of universal access and user rights is paramount.

3.5 The Directive does not in any way dictate what an Authority should or should not procure or outsource; it only sets out the procedures for that procurement or outsourcing. The EESC believes that this freedom must not be impaired.

3.6 Negotiation

3.6.1 The EESC urges the Commission to clarify in the Directive the circumstances in which an Authority may award a contract directly to an entity over which it exercises a control analogous to that exercised over its own internal departments. The EESC asks that the Directive should be amended to set out the relevant conditions for exemption from its requirements.

3.6.2 With the increased emphasis on innovative proposals and 'outcome-based' specifications, discussion between purchasers and tenderers during the tender procedure is essential. For that reason a general negotiated procedure similar to that in the Utilities directive, or to Competitive Dialogue but without the 'exceptionally complex' restriction, is needed. This includes already existing rules for public procurement of non describable services.

3.6.3 It is said that such a procedure could enable the various tenderers to put forward their proposals and that the purchaser could then pick the best elements from them ('cherry-picking') and issue the resulting hybrid specification as a new call for tenders, to be carried out without 'negotiation'. Such a concept is false. Tenderers must be able to protect their intellectual property – whether patented or not – at all times, and thus their ideas should not be offered to other suppliers to exploit, even in a limited fashion, without their express consent.

3.6.4 Negotiation of contracts – especially complex ones – obviously requires substantial skill on the part of the purchaser. The introduction of a general Negotiated procedure must be accompanied by measures to ensure availability of people on the purchasing side with the necessary skill and experience.

3.7 Innovation

3.7.1 Innovation in public contracts is discussed in the Green Paper. In procurement there are three main levels:

- the willingness to accept a novel solution to a traditional requirement;
- participation in the development of a solution; and
- sponsorship of a development project.

3.7.2 The easiest and probably most productive aspect is willingness to accept a novel solution. The EESC recommends that openness by the purchaser who should dispose of sufficient competences, to proposals for a novel solution must be promoted. Therefore the purchaser should be willing to consider alternatives unless it expressly states otherwise. But public officials are often reluctant to do so because of risk aversion rather than through any administrative or legal impediment.

⁽⁸⁾ See Art. 14 and 106 TFEU and protocol nr. 26 TFEU.

3.7.3 There are barriers even to the concept of alternative proposals. The ability to offer innovative proposals is made much more practical if the purchaser states its requirements in terms of the problem to be solved rather than in terms of the solution. Such an approach enables the tenderer to use its proper skills to propose the best solution, either traditional or innovative.

3.7.4 Where an Authority participates in an innovative solution, as for example in the development of a major database system, participation and support by the Authority at all levels is essential. Without it, the risk of failure is high.

3.7.5 In the concept of Pre-Commercial Procurement ⁽⁹⁾ it is proposed that Authorities should sponsor new developments and act as early adopters. Potential failure makes this a risky affair. Experience shows that few Authorities are by their constitution, organisation or experience well suited to that activity, which should only be embarked upon with caution.

3.7.6 Sustainability of production and consumption is high on the agendas. It is widely recognised that innovation in sustainable development is of huge significance in relation to the scope for promoting good jobs and companies within the EU as part of the EU 2020 Strategy. Properly achieved, it provides strong economic benefits. In many procurements, life cycle costs need to be taken into account. They include quality, the original price, maintenance, operation and final disposal, as may be applicable. An approach based on quality will encourage innovation and good working practices and conditions, which lead to greater efficiency and cost savings in the long run. The techniques for making such assessments are well established. The EESC recommends that steps should be taken to encourage public purchasers to adopt and use such techniques.

4. Reasons for further modernisation

4.1 Legal aspects

4.1.1 Good transposition into national law is essential, but it remains a thorny issue. It should have been given explicit attention in the Green Paper. Too few Member States tend to transpose well. Correct implementation serves the interests of all stakeholders. Gold Plating leading to enhanced administrative burdens and bureaucracy creates unnecessary obstacles, in particular for SMEs - the concept of SMEs and the reference to businesses must include all forms of actors, be they profit or non-profit, under fair competition in compliance with the rules - as well as rising costs for the Authority. The Directive is clear and not very complicated. Despite differences in legal systems and approaches, additional requirements and formalities should be avoided. According to the EESC, the Commission should

monitor more actively the implementation process, endeavouring to encourage simplicity and clarity in national legislation.

4.1.2 There is a systemic problem in the application of the Remedies directive in cross-border contracts. In cross-border contracts it is not clear which jurisdiction should apply, that of the purchaser or that of the supplier. The EESC suggests that such a decision should form part of the contract at the outset.

4.1.3 In some contracts, especially those of long duration, circumstances arise requiring changes to some part of the contract provisions. Whilst those situations are sometimes unavoidable, the opportunity for corruption is increased. The Directive restricts the changes which may be permissible in framework contracts (Article 32) but is otherwise silent. In the EESC's view, the risk of corruption and/or a lack of contractual certainty if the rules were relaxed to afford generally more flexibility, has damaging effects. Therefore the Directive should remain in that aspect unchanged.

4.1.4 In the Directive, Services are divided in two categories, A and B. A services must comply whilst B services have, generally, a lighter regime. The Green Paper asks whether, in view of the increasingly cross-border nature of many types of service, the division is any longer appropriate. The EESC is in favour of maintaining the difference between the two categories subject to legal certainty and the possible transfer of cross-border B services to the A list. It recommends a periodic review of the list of B services by the Commission to examine whether some could, with advantage, be moved to A services.

4.2 Practices

4.2.1 A significant barrier to progress in well functioning public procurement is a lack of satisfactory professionalism and expertise of public Authorities. It is a shortcoming that the Green Paper does not discuss this basic condition for any public purchasing. There are too few incentives to improve. The EESC strongly recommends campaigns of training of officials - in particular at local and regional level - in negotiating and putting viable contracts ⁽¹⁰⁾ on track.

4.2.2 Furthermore the culture of public procurement needs to change. Procurement is not simply a clerical exercise, and all levels and branches of management need to be involved as may be appropriate to the contract as is the case in many commercial companies. Only commitment to modern

⁽⁹⁾ 'Pre-Commercial Procurement - driving innovation to ensure sustainable high quality' - COM(2007) 799.

⁽¹⁰⁾ An illustrative example is the Dutch foundation PIANNO. In the same vein, the Confederation of Dutch industries and the Association of Dutch Municipalities are planning a broad common campaign among civil servants responsible for public purchasing across the country.

procurement practices, in particular risk management, from the very top to the bottom of an Authority can ensure success. Practices in the Utilities provide positive examples.

4.2.3 Professionalisation of the procurement function within the public sector must be fostered through internal development and the recruitment of professionals, thereby raising the role and the profile of the function. In a number of cases two additional measures have been successful: the recruitment of experienced purchasing executives from other industries, and the establishment of purchasing agencies providing expertise to the Authority for the duration of the tendering process. The quality of purchasers differs from country to country. The EESC advocates benchmarking and exchange of good practices.

4.2.4 During the pre-tender period an Authority's senior buyers or project managers should inform themselves about what is currently available in the market before preparing the tender documentation. Such research typically includes technical magazines, trade exhibitions and talking to suppliers in the relevant field.

4.2.5 There is also a need for increased professionalism in SMEs. Special courses and people experienced in tendering can help to upgrade qualifications and knowledge.

4.2.6 One aspect of risk-aversion is the excessive use of the 'lowest price' award criterion. Whilst some procurements have no realistic criteria except price – and perhaps delivery – the majority have other valuable characteristics contributing to a better outcome. Lowest price criterion inhibits innovation and the pursuit of better quality and value, responding to the requirements of Europe2020 and does not necessarily lead to more value.

4.2.6.1 Use of the lowest price criterion should therefore be made an exception rather than the rule. By extending the 'most economically advantageous' criterion to assess the sustainably most advantageous tender, Authorities can achieve the optimum sustainable environmental and social as well as economic value. The EESC encourages Authorities to use life-cycle costing wherever possible and appropriate.

4.2.7 Given the multitude of medium-sized and, notably, small municipalities, these should be recommended, if not obliged, to cooperate in projects with a critical scale for reasons of professionalism, efficiency and financial aspects. The EESC asks special attention for this aspect and it recommends exchange of best practices anyway, and clarification on the public purchasing rules in this context.

4.2.8 Statistical analysis shows that in particular SMEs are underrepresented in public procurement above the EU-thresholds. The EESC is in favour of creating a level playing field in public procurement enabling SMEs 'to secure a "fair share" of public contracts'. The EESC is not in favour of measures of positive discrimination in relation to SMEs, amongst others because of artificial constructions and, consequently, possible corruption. Notwithstanding this, where practical, Authorities should be encouraged to subdivide contracts into lots to make opportunities for SMEs more visible and, thus, more accessible.

4.2.9 There are conflicting views over thresholds. They were established after extensive discussion and careful consideration, are consistent with those in the GPA and have been adjusted periodically in the light of inflation and exchange rate variances. There have been calls for the thresholds to be raised and also for them to be lowered. None of those arguments is strongly convincing and the EESC recommends that the present practical levels should be maintained. Below the thresholds, national procedures apply, subject to Treaty obligations. It is desirable that they should be as nearly consistent with the Directive procedures as possible, for the avoidance of doubt and confusion and so that the purchasers only have to use effectively one set of procedures.

4.2.10 To encourage transparency and reduce malpractice the EESC recommends that all public contracts, without exception, should be advertised in advance. Notices of contracts below the thresholds and for B-services should be in a very simple form on an EEA-wide e-Tender website ⁽¹⁾.

4.2.11 The drive for more professionalism can also help to simplify national procedures which at present often lead to disproportionate costs. Concrete situations vary greatly, confusion and fights over interpretation should be avoided. More straightforward national approaches should act as examples for others.

4.2.12 A tendency for Authorities to require financial guarantees, insurances and performance bonds presents a further barrier to SMEs. Moreover, financial resources tend to be less accessible today and it is wasteful to use limited funds of SMEs to support such guarantees. Authorities need to be reminded of their obligation to avoid disproportionate qualification and financial requirements, rather than relying on guarantees.

4.2.13 Initiatives in these fields are being taken in order to improve the situation in the Member States. The EESC advocates strongly a list of best practices and, in line with practices in some Member States, regular panels with purchasing authorities and experienced experts at EU-level.

⁽¹⁾ See for e-Procurement, OJ C 248 of 25.8.2011, p. 149.

4.2.14 As an aid to SMEs, Authorities could set up electronic portals to:

- widen access on information on public procurement opportunities below the EU threshold;
- allow SMEs to register an interest in partnering opportunities with other interested SMEs, and
- develop a secure section on a central e-Tender website where SMEs could upload and edit/update administrative information to be used by contracting authorities.

5. Interaction between procurement and other agendas

5.1 In addition to the objective of increasing the efficiency of public spending⁽¹²⁾, the Green Paper asks for views on enhanced interaction between public procurement and other agendas, notably innovation, environmental and social.

5.2 Since 2004 sustainable development and inclusive growth have been alongside enhanced competitiveness priorities and confirmed again by Europe 2020. These aspects should also be taken into account in public procurement contracts.

5.3 The EESC agrees that national and regional authorities should be encouraged to take societal aspects into account which means that in preparing contracts there should be free room for such elements.

5.4 ILO Convention C94 on Labour Clauses in public contracts adopted in 1949 is currently binding in 10 EU Member States, though others including Ireland, apply the Convention voluntarily in public contracting. The EESC takes note of the principles contained in the Convention and suggests that Member States should be encouraged to ratify the convention and follow its principles.

5.5 The EESC underlines that the Directive gives shape to a set of procedural rules which establish the relationship between contracting parties in public procurement. In earlier documents the Commission concluded on the basis of extensive consultations the way in which innovative products/services/processes, and environmental and social goals can be considered by purchasing Authorities in preparing contracts⁽¹³⁾ or in using pre-commercial procurement.

5.6 Concerning innovation and public procurement the pioneering Aho Report and 'A Lead Market Initiative'⁽¹⁴⁾ are worth mentioning. Innovation can concern a very wide range of issues: high-tech, low-carbon, low-energy, new and alternative

methods for health care and social services, construction, transport, infrastructure and others. The EESC underlines that demand can have a critical role as driver of innovation⁽¹⁵⁾ which has been neglected or downplayed for many years. It can indirectly promote engagement of universities and R&D Centres together with the continued innovation of, for example, SMEs and actors in the social economy.

5.7 In response to questions in the Green Paper the EESC underlines that the primary public procurement responsibility is with national, regional, local and European authorities who have on a case-by-case basis to consider the right mix between societal requirements of any kind – innovation, environment, social⁽¹⁶⁾ (including social regulations in relation with disabilities) aspects and efficiency, production periods, costs, number of suppliers, possible outcome of contracts, etc. within the framework of the directives.

5.8 Authorities are free to define specific requirements, including environmental and social ones. In a number of cases they will do so because EU- and/or national legislation requires them to do so, for example in case of general or sector-bound environmental standards. In other cases such requirements can be linked to the realisation of concrete projects, such as large infrastructure works.

5.9 Technical specifications should where appropriate be broadened to include production/process characteristics. This would simplify and make more transparent the scope for contracting authorities to be able to make important choices in promoting sustainable objectives including environmental sustainability, enforcement of collective agreements, labour standards, working conditions and equal pay for equal work. The green electricity case is a clear case example of how and why production characteristics should be included as technical specifications and not relegated to performance conditions only⁽¹⁷⁾.

5.10 The EESC recommends that the Commission should provide, as necessary, a consolidated document, incorporating the Directive and relevant ECJ jurisprudence. Such a document will enhance accessibility and be of great help in providing a single source to aid legal certainty.

5.11 In line with the general debate on the need for a smart European economy, intensified discussions are taking place in Member States on the role of public procurement in this process⁽¹⁸⁾. In varying degrees Member States are formulating

⁽¹²⁾ Green Paper, page 4, 3rd paragraph.

⁽¹³⁾ See the notes in the Green Paper on page 34. See also the guide 'Build for All', November 2006, for including accessibility criteria into public procurement procedures.

⁽¹⁴⁾ See the Aho Group Report 'Creating an Innovative Europe', 2006 and of 'A Lead market Initiative', EC - October 2010.

⁽¹⁵⁾ See amongst others: Public procurement and innovation – Resurrecting the demand side, Jakob Edler, Luke Georghiou, www.sciencedirect.com, Research Policy (2007) 949-963.

⁽¹⁶⁾ See the handbook Buying Social – A Guide to taking account of social considerations in public procurement – SEC(2010) 1258, elaborated by the European Commission on October 2010.

⁽¹⁷⁾ See case C-448/01 EVN AG v Austria (2003) ECRI – 14527 (EVN – Wienstrom)

⁽¹⁸⁾ See a broad overview in 'Corporate Social Responsibility, National Public Policies in the European Union', November 2010.

environmental, and to a lesser degree, social criteria that have to be taken into account by purchasers. Labour agreements and national legislation differ considerably in the various Member States. It is the responsibility of each country to ensure compliance with its own relevant laws.

5.12 The EESC recommends that this ongoing process should be discussed annually in the (Competitiveness) Council. Best practices and experiences should be highlighted. Increasing convergence of practices will also improve the conditions for cross-border contracts.

5.13 Whatever social or environmental requirements are put forward as award criteria, it must be possible to evaluate them and give them a weighting relative to other criteria.

5.14 A condition would be, within the procurement competence, for awarding bodies to make sure that bidders meet, in addition to the criteria set out in the articles 44 to 51 of the Directive ⁽¹⁹⁾, the social regulations (among others, in relation with the integration of disabled persons ⁽²⁰⁾), as it would be against the European and national regulation for the public authorities to contract with entities which do not comply with the legislation.

5.15 Member States should require a self-certification or statement of compliance from the bidder, stating that the applicable legislation is complied with in each State in terms of labour integration of disabled persons, such as the obligation to recruit a specific number or percentage of disabled persons, in the countries where such obligation legally exists.

5.16 Another social measure must, where appropriate, clearly be for technical specifications to be defined in a way to consider accessibility criteria for persons with disabilities and design for all users.

5.17 Another aspect that must be born in mind, to ensure equal opportunities for the benefit of all and for social insertion, refers to the adjudication of contracts reserved for sheltered workshops of disabled persons. This possibility is explicitly foreseen in recital 28 and Article 19 of Directive 2004/18. The EESC is of the opinion that the Commission should expressly recommend that a percentage or number of such contracts be made enforceable in those Member States where this is justified, for example if there were substantial numbers of disabled people capable of working who remained inactive.

5.18 One specific issue which needs to be addressed is the complexity of public procurement regulations in relation to social services of general interest. The Green Paper (section 4.4) puts the question whether the applicable thresholds for such services should be raised, in order to take better account

of the specificities of social services. The Committee looks forward to closely following the ongoing work in this area, notably through Communication (COM)2011 206 final, being aware of the undesirability of selective changes in the thresholds.

5.19 Under the Europe 2020 strategy the Commission should be given the competence to monitor closely this modernisation process in the Member States. Publication on a website of all Contract Award Notices, regardless of value, to include the type of company was awarded the contract (micro, SME or large) and the contract value of contract would aid that activity.

6. Unsatisfactory practices

6.1 One of the objectives of the Directive is to combat favouritism, fraud and corruption. These practices are not unique to public procurement but the absence of commercial disciplines, as noted in the Green Paper, provides an additional dimension, as the State may well not always police such practices conducted by its own agencies. The Directive is not a substitute for corruption or competition law but, by their rigorous procedural discipline, they provide an additional line of defence.

6.2 The EESC believes that provisions in terms of subcontracting need strengthening. Multiple layers of subcontracting may create difficulties in enforcing collective agreements, working conditions and health and safety procedures. Public authorities should be given more scope to influence the contract to meet quality, social and environmental objectives. Details relating to principal subcontractors should be declared before the contract is awarded, and the public authority should be clear on the responsibilities and liabilities to enable its effective monitoring of the contract. There should be mechanisms in place for public authorities to vet and reject subcontractors where they have concerns

6.3 A contract is normally placed with a prime contractor skilled and experienced in the performance of the work, supply or service required. The prime contractor takes responsibility for the entire contract and is answerable to the purchasing Authority for performance thereof. That responsibility includes inter alia management of the acquisition of materiel and of any subcontracts which it enters into. The procedures for penalising and excluding bidders under the abnormally low tender article should be less complex, particularly in relation to compliance with employment protection and working conditions in force. Currently there is a mandatory and complicated procedure of requests in writing before a tender can be rejected. Provisions for information on the economics of the construction method, the manufacturing process or the services provided, also need revisiting. Mandatory requirements should be established for bidders to provide information to the contracting authority rather than the authority having to seek this information. The Directives should be amended to include these changes in the interests of promoting decent work, equal treatment of workers, and wider sustainability objectives.

⁽¹⁹⁾ Art 44: Verification of suitability; Arts 45-51: Criteria for qualitative selection.

⁽²⁰⁾ 'European Disability Strategy 2010-2020' - COM (2010) 636 final.

6.4 Anecdotal evidence indicates that the main unsatisfactory practice is favouritism, where the contracting authority places contracts, sometimes without even advertising the intention, with a favoured supplier. Such covert activities are difficult to identify as they do not become apparent until after the event. The EESC considers that through an e-Tendering process advertising all public contracts in advance would help to prevent this abuse without putting an undue burden on public authorities.

6.5 The EESC points out that more must be done to support the monitoring of compliance with the terms of the contract post award, including contract performance clauses. Authorities are currently under increasing financial and resource pressure as a result of the financial crisis and, simultaneously, agencies monitoring health and safety, labour standards and environmental protection are also seeing cut-backs. As cancelling a tender and re-tendering can be very expensive, Authorities can seem powerless when faced with a non-compliant or defaulting supplier. Costs of ensuring compliance should be factored in to procurement budgets, and a range of other penalties for failing to comply with the terms of the contract should also be considered.

6.6 Strict precautionary measures are needed within businesses to prevent corruption. This should be promoted by supporting businesses in taking internal remedial measures after misconduct has occurred. Businesses that follow best practice should be allowed to re-enter the market once they have concluded such a process. The strict requirements applicable to such cases should be laid down in the directives, in order to avoid the current variability in practices between the Member States.

7. External dimension

7.1 The external dimension of EU public procurement cannot ignore the EU's obligations to promoting decent work, equality, respect for fundamental rights, freedoms and labour

standards and environmental protection and energy efficiency in third countries. These are not principles we leave behind when we move outside our borders. Any revision of public procurement rules must reinforce these principles externally as well as internally. More has to be done at EU level to improve social and environmental standards in supply chains, and needs to be addressed simultaneously in trade policy. The EU Commission has to seriously engage with the key actors involved such as trade unions and NGOs to developing workable strategies and structures.

7.2 The Agreement on Government Procurement (GPA) is the framework and the platform to create a world level playing field for public procurement. As many countries as possible should be encouraged to join as members.

7.3 Open international public procurement markets are advantageous for European tenderers as many European companies, including SMEs, are global leaders in construction, public works, alternative energy and environmental protection⁽²¹⁾. The EESC insists that the EU must aim at improving access to third countries' public markets. Reciprocity must be ensured⁽²²⁾.

7.4 The EESC considers it of high interest that third country (State-owned) companies respect the same public purchasing rules as European-based companies, particularly as regards prohibited direct or indirect state aid, price calculation and precautionary consideration of costs and risks, when they apply for public contracts in the EU. Enforcement of compliance is not easy. This issue has to be satisfactorily arranged in reviewing the 2004 Directive⁽²³⁾.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽²¹⁾ See EESC opinions 'International public procurement' (OJ C 224 of 30.8.2008, p.32). and 'Third country state-owned enterprises in EU public procurement markets' (OJ C 218 of 23.7.2011, p. 31).

⁽²²⁾ Concerning social aspects see the recently adopted Opinion on Industrial policy in a globalised era, points 6.29 and 6.30, on ILO-norms and Corporate Social Responsibility, (OJ C 218 of 23.7.2011, p. 38).

⁽²³⁾ See OJ C 218 of 23.7.2011, p. 31, which amply deals with this particular issue (not yet published in the Official Journal).

Opinion of the European Economic and Social Committee on the ‘Green paper — From Challenges to Opportunities: Towards a Common Strategic Framework for EU Research and Innovation Funding’

COM(2011) 48 final

(2011/C 318/20)

Rapporteur: **Mr WOLF**

Co-rapporteur: **Mr SVENSSON**

On 9 February 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Green paper — From Challenges to Opportunities: Towards a Common Strategic Framework for EU Research and Innovation Funding

COM(2011) 48 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 122 votes in favour, with 5 abstentions.

1. Summary and recommendations

1.1 While welcoming the Commission green paper and the goals it formulates, while confirming previous opinions on the matter, and referring to the report of the expert group on the interim evaluation of the Seventh Framework Programme, the Committee recommends that the European Commission should in particular:

1.1.1 develop an integrated strategy for research and innovation taking additional structural measures within the Commission and the consultative bodies that support it, while preserving their individual identity and specific working conditions;

1.1.2 finally raise the future budget for research and innovation to the level in the overall EU budget that truly reflects their stated importance and key role within the Europe 2020 strategy and the leverage they exert in stimulating and integrating the required Member State support policies;

1.1.3 simplify the required administrative procedures, apply more flexibility and speed in the decision processes, and adapt the expertise and mandate of the Commission officers accordingly;

1.1.4 concentrate on transnational tasks – such as collaborative research in particular – which provide European added value through their crossborder pooling of resources and expertise;

1.1.5 target structural funds to as yet under-represented regions in order to build up the excellence base and the

structures needed there, and to improve connections between the Structural Funds and the Framework Programme;

1.1.6 support the development of ‘key enabling technologies’, without which the challenge of global competition cannot be met nor the major societal themes successfully addressed;

1.1.7 assign 20 % of the total FP8 budget to that part of the programme which is governed by the European Research Council;

1.1.8 support construction and maintenance of large R&D infrastructures (ESFRI list);

1.1.9 support innovations to their full scope, including social, economic, workplace and ‘creative industry’ innovations;

1.1.10 improve the rules for support to SMEs and micro-companies to ease their access to and participation in the support programmes and their instruments;

1.1.11 establish and develop a risk capital framework, with easy access in particular for SMEs, and extend and adapt the Risk-Sharing Finance Facility to this end;

1.1.12 reconsider the role of state aid, public procurement and competition laws in view of their effect on the full innovation process, on establishing specialized expertise and on public-private partnerships;

1.2 Moreover, the Committee appeals to the Member States to fulfil their essential part of the Europe 2020 strategy by investing more – even at a time of budgetary constraints – in education (especially universities), R&D and innovation, and finally reaching or preferably exceeding the famous 3 % R&D goal, which dates back to the Lisbon Strategy.

2. Gist of the Communication

2.1 The purpose of the green paper is to stimulate public discussion on the main points that will play a role in future EU funding programmes for research and innovation.

2.2 The Commission proposes to strive for improvements in the following areas:

- Clarifying objectives and how they are implemented
- Reducing complexity
- Increasing added value and leverage and avoiding duplication and fragmentation
- Simplifying participation
- Broadening participation in EU programmes – increased accessibility
- Increasing the competitiveness and societal impact from EU support.

2.3 The Commission wants to develop a common strategy covering all relevant EU research and innovation funding currently provided through the FP7, CIP and EU innovation initiatives such as the EIT.

2.4 The green paper asks 27 specific questions, which deal with the following thematic areas:

- Working together to deliver on Europe 2020
- Tackling societal challenges
- Strengthening competitiveness
- Strengthening Europe's science base and the European Research Area.

2.5 The current financing of those programme components in the present programming period (2007–2013) includes:

- 7th RTD Framework Programme: EUR 53.3 billion
- CIP - Competitiveness and Innovation Framework Programme: EUR 3.6 billion
- EIT - European institute of innovation and technology: EUR 309 million
- Cohesion policy: approx. EUR 86 billion (almost 25 % of the total budget of the Structural Funds).

3. General comments

3.1 In the light of the Council decisions of 26 November 2010 and 4 February 2011 and the earlier Committee opinions referred to below, the Committee welcomes and supports the green paper published by the Commission and the intention to make the full range of EU instruments for research and innovation work together in a Common Strategic Framework. A heavyweight and effective EU support programme that meets these goals is a critical prerequisite for boosting Europe's competitiveness, safeguarding its prosperity and social achievements, and coping with the grand societal challenges.

3.2 However, this means in the first place that these priority aims are allocated the right and sufficient proportion of the total future EU budget. The future budget to underpin research and innovation has to be brought up the level within the overall EU budget that truly reflects their stated importance and weight within the Europe 2020 strategy and the leverage they exert in stimulating and integrating the required Member State support policies.

3.3 The title of the Committee's exploratory opinion *Unlocking and strengthening Europe's potential for research, development and innovation* ⁽¹⁾, adopted back in 2007, summed up even then the key task for the Europe 2020 strategy. And it is precisely for this purpose that a joint strategy for EU research and innovation funding must be designed.

3.4 However, this does not mean mixing the two categories or making one of them subordinate to the other; rather, it is about making sure that, thanks to a common strategy, research and innovation mutually support and cross-fertilise each other as effectively as possible.

3.5 Accordingly, and based on this premise, the Committee also supports the aims mentioned in point 2.5.

3.6 In recent years, the Committee has issued several further key opinions on these aims and the complex issues relating to them. They include:

- Green Paper on the European Research Area – New Perspectives ⁽²⁾
- Cooperation and transfer of knowledge between research organisations, industry and SMEs – an important prerequisite for innovation ⁽³⁾
- Community legal framework for a European Research Infrastructure (ERIC) ⁽⁴⁾
- Towards joint programming in research: Working together to tackle common challenges more effectively ⁽⁵⁾

⁽¹⁾ OJ C 325, 30. 12. 2006, p. 16.

⁽²⁾ OJ C 44, 16.2.2008, p. 1.

⁽³⁾ OJ C 218, 11.9.2009, p. 8.

⁽⁴⁾ OJ C 182, 4.8.2009, p. 40.

⁽⁵⁾ OJ C 228, 22.9.2009, p. 56.

- A strategic European framework for international science and technology cooperation ⁽⁶⁾
- Moving the ICT frontiers – a strategy for research on future and emerging technologies in Europe ⁽⁷⁾
- Reviewing Community innovation policy in a changing world ⁽⁸⁾
- Investing in the Development of Low Carbon Technologies (SET Plan) ⁽⁹⁾
- Developing a common strategy for key enabling technologies in the EU ⁽¹⁰⁾
- Simplifying the implementation of the research framework programmes ⁽¹¹⁾
- Europe 2020 Flagship Initiative: 'Innovation Union' ⁽¹²⁾
- Innovative workplaces as a source of productivity and quality jobs ⁽¹³⁾
- Interim Evaluation of the Seventh Framework Programme for Research, Technological Development and Demonstration ⁽¹⁴⁾.

These opinions at the time made concrete recommendations regarding most of the goals and questions mentioned in the green paper. **For this reason, the Committee explicitly refers to these previous opinions, reaffirms their content and requests that they be considered as a part of this opinion.** Referring also to the report of the expert group on the interim evaluation of the Seventh Framework Programme ⁽¹⁵⁾, some comments that reiterate or complement the statements made in those previous opinions are set out below.

3.7 The list of questions included in the green paper and discussed in chapter 4 of this opinion gives the impression that the Commission is considering radical changes to the current financing arrangements and priority-setting. The Committee refers to its opinion *Simplifying the implementation of the research Framework Programmes* and firmly underscores its earlier recommendation that the much-needed continuity and

stability of current successful EU funding instruments (emphasising in particular collaborative research) be essentially maintained ⁽¹⁶⁾ and strengthened and not undermined by excessive changes.

3.7.1 Instead, the Common Strategic Framework should be achieved primarily through additional structural measures within the Commission and the consultative bodies that support it. As one of the ways to achieve this, measures under the existing framework programme for research, the Competitiveness and Innovation Framework Programme (CIP) and the European Institute of Innovation and Technology (EIT) should be merged in terms of programmes and administration.

3.7.2 As the Committee has repeatedly emphasised, this additionally requires that the Commission officials, but also the actors in the agencies working for the Commission, who are responsible for each of the programmes be internationally recognised experts in the relevant field on the basis of their own achievements, and have sufficient room for manoeuvre in decision-making and opportunities for initiative so that they can use their expertise and judgement to make this common strategy a success ⁽¹⁷⁾. This aim cannot be achieved – and certainly not exclusively – through narrow, inflexible rules ⁽¹⁸⁾, but rather through stable yet flexible systems combined with expertise and experience.

3.7.3 The Committee has repeatedly emphasised the crucial importance of innovation to the Europe 2020 strategy. However, it also repeats that innovations are not necessarily the outcome of a linear sequence, i.e. first research, then innovation, but derive in a complex process from the *networking and interplay of various initial positions* ⁽¹⁹⁾ and also involve social and societal aspects. This is especially true for service innovations most often driven by new customer needs, and social economy enterprises responding to societal needs. It is also true, for example, for workplace innovations ⁽²⁰⁾, developed or negotiated between the social partners, but equally for innovations in the design and creativity field. The European Disability Strategy 2010–2020 (Commission Communication) is yet another example of an important field for innovation for public and commercial service providers caring for the accessibility of products and services so that also people with disabilities can be fully integrated into EU society.

3.7.4 The Committee also points out that research and science are key cultural elements that characterise the way Europe developed following the Enlightenment. Whilst they are an important prerequisite for innovation, they must also be recognised, preserved and supported as a category of European civilisation and culture of its own. Innovation must not be subsumed to research, nor may research be subsumed to innovation ⁽²¹⁾. That would constitute a cultural impoverishment of fundamental European values.

⁽⁶⁾ OJ C 306, 16.12.2009, p. 13.

⁽⁷⁾ OJ C 255, 22.9.2010, p. 54.

⁽⁸⁾ OJ C 354, 28.12.2010, p. 80.

⁽⁹⁾ OJ C 21, 21.1.2011, p. 49.

⁽¹⁰⁾ OJ C 48, 15.2.2011, p. 112.

⁽¹¹⁾ OJ C 48, 15.2.2011, p. 129.

⁽¹²⁾ OJ C 132, 3.5.2011, p. 39.

⁽¹³⁾ OJ C 132, 3.5.2011, p. 22.

⁽¹⁴⁾ OJ C 218, 23.7.2011, p. 87.

⁽¹⁵⁾ Available online at <http://ec.europa.eu/research/evaluations>.

⁽¹⁶⁾ OJ C 48, 15.2.2011, p. 129, point 3.12.

⁽¹⁷⁾ OJ C 48, 15.2.2011, p. 129, point 3.10.

⁽¹⁸⁾ OJ C 256, 27.10.2007, p. 17, point 6.4.

⁽¹⁹⁾ See footnote 12.

⁽²⁰⁾ OJ C 132, 3.5.2011, p. 22.

⁽²¹⁾ See footnote 12.

3.7.5 One major difference between research and innovation are the different 'ground rules' applicable to stakeholders and working environments ('cultures') in science and research on the one hand and innovation on the other. On this subject, we refer to the opinion *Cooperation and transfer of knowledge between research organisations, industry and SMEs – an important prerequisite for innovation*, which discusses the various aspects⁽²²⁾. Solutions must therefore be sought in the Common Strategic Framework that respect these differences, reflect them and yet make it possible to support the entire innovation process.

3.7.6 It is precisely for this reason that good contacts and the pooling of staff and expertise between the two categories are particularly important and need support. The Committee would draw attention to its opinion on the Interim Evaluation⁽²³⁾, in which it discusses the three proposed funding pillars, namely: Science for knowledge – the researchers set the agenda; Science for competitiveness – industry sets the agenda; and Science for society – civil society actors set the agenda.

3.8 With reference to its earlier comments on the Commission's repeated sweeping assertions about the fragmentation of European research and development, the Committee concedes that there may be examples of such kind of fragmentation, but these do not reflect the general situation. Therefore, the Committee repeats⁽²⁴⁾ that there have long been European – and in many cases even worldwide – links and cooperation networks which are continuously fine-tuning and redefining their boundaries in the interplay between cooperation and competition. These are important processes of self-organisation by the respective stakeholders and their organisations, to which the Commission should finally give proper recognition rather than ignoring them, especially since the R&D Framework Programmes (particularly collaborative research) have for their part significantly contributed to these achievements.

3.9 The Committee also recommends more attention and support be given to the creation of world-class European research and innovation clusters. These represent an attractive self-amplifying network of universities, research institutes and businesses, including the productive connection between the specialist firms themselves that have been set up there. In this connection, the Committee again underscores the need to create more world-class universities within the EU and appeals particularly to the Member States to act more decisively on this.

3.10 The Committee reiterates its recommendation – addressed particularly to the Member States – to facilitate start-ups, improve their resilience and market opportunities and create the environment needed for this (see also point 4.7.1). Less red tape and adequate risk capital are what makes the difference here. While the creation of the Risk-Sharing Finance Facility – set up jointly by the European Commission

and the European Investment Bank – was a good beginning at EU level, major improvement is still needed in access to sufficient risk capital, especially for SMEs.

4. Specific comments

This chapter deals with some of the 27 questions asked by the Commission. They are not repeated here, but are implicitly addressed below.

4.1 Users of EU funding instruments need a well-structured table of contents and a comprehensive handbook, both in printed form and online. In addition, for the sake of maximum continuity, a proper balance should be ensured between tried, tested and successful existing instruments and underlying principles on the one hand, and the fewest possible new approaches on the other.

4.2 The balance between a uniform set of rules and the need for flexibility, including consideration of specific requirements, necessitates, alongside the harmonisation of the rules, complete recognition of national procedures in the joint strategic framework for research and innovation. Concerning working practices within the Commission, the Committee refers to point 3.7.2; officials should, during a period of gaining experience with novel concepts, be given enough room for manoeuvre to be able to use the exceptions, special regulations and/or derogations⁽²⁴⁾ that have yet to be defined, as experience first needs to be gained in this area⁽²⁵⁾. The Committee would also draw attention to its opinion on Simplification⁽²⁶⁾, in which it recommends that an approach based on trust be pursued and a greater margin of error be tolerated.

4.3 In view of the required national and regional funding of research and innovation by the Member States, including their relevant reform programmes, EU funding should concentrate on transnational cooperation, especially collaborative research. By bringing together the expertise and resources of different Member States, collaborative research delivers a clear European added value, provides leverage for Member State support policies and promotes European integration.

4.4 Since excellence has to remain the guiding principle for R&D also within the Europe 2020 strategy, structural funds should be more targeted to regions as yet under-represented in order to build up an excellence base and required structures urgently needed there. In that vein the Committee supports this statement from the Commission: 'In the long term, world class excellence can only thrive in a system in which all researchers across the EU are provided with the means to develop into excellence and eventually compete for the top spots. This requires Member States to pursue ambitious modernisation agendas for their public research base and sustain public funding. EU funding, including through the Cohesion policy Funds, should assist to build up excellence where and as appropriate'.

⁽²²⁾ OJ C 218, 11.9.2009, p. 8, points 4.1 to 4.4.

⁽²³⁾ OJ C 218, 23.7.2011, p. 87.

⁽²⁴⁾ See footnote 12.

⁽²⁵⁾ OJ C 256, 27.10.2007, p. 17, point 6.4.

⁽²⁶⁾ See footnote 11, point 3.6.

4.5 To achieve synergies with the Structural Funds and optimum coordination with the support policy of the Member States, it is crucial to have effective links ⁽²⁷⁾ between the future common strategic framework for research and innovation funding and the future common strategic framework for cohesion (question 8). 'Smart specialisation' should be the guiding principle for the development of regional strategies.

4.6 In order to support the whole innovation cycle more effectively, the Committee calls for the rules on state aid, budgets, procurement and competition, which could prove an obstacle ⁽²⁸⁾ to this goal, to be thoroughly reviewed in collaboration with the relevant stakeholders (see question 19). This is because of the balance and/or possible conflict between competition law and promoting innovation. For this reason, competition, state-aid and public procurement law should not be drafted and implemented in such a way that it becomes an obstacle to innovation; there may even be a need for reforms. Innovations sometimes also need to be protected so that they are not acquired by competitors wishing to block the innovation process.

4.6.1 The innovation process from publicly funded research to marketing requires, where applicable, long-term, established partnerships, which are difficult to achieve under the current rules (e.g. disclosure, intellectual property, rules on state aid and public procurement) (question 20). New approaches and rules should be sought in this area so as to resolve the possible conflict between 'more innovation' and 'more publicity and fairer competition'. Since pioneering or fundamental research is generally not affected by this conflict of interest, a sufficient proportion of this kind of research could make a significant contribution to this aim (see also point 4.7.3).

4.7 Another key question raised by the Commission relates to the distribution of funding between:

- SMEs, social economy enterprises and large businesses corporations;
- fundamental research and research aimed at societal objectives;
- research and the further innovation process;
- technical, service, societal and business innovations;
- top-down and bottom-up.

Since no comments have been made on this so far in this opinion, the Committee would make the following suggestions:

4.7.1 For a wide variety of reasons, SMEs – and particularly the smaller enterprises – need special consideration when designing the thematic areas to be funded and the instruments to be used ⁽²⁹⁾:

- SMEs should have the possibility of joining programmes for a period which is suitable for the company (as in the current FET actions).
- Special attention and more relaxed entry criteria should be given to young companies and micro-companies (fewer than 10 employees) with great innovation potential.
- Funds should be used to support innovation processes in their entirety (especially important for entrepreneurs).
- Increased focus on service-innovations.
- Moderators/facilitators and easier access will be needed to help smaller companies to take benefit from the innovation programmes – the Enterprise Europe Network could play an important role in this context.
- Social economy enterprises must be included when funding models are designed.

4.7.2 The big breakthroughs to fundamentally new knowledge – and to the resulting modern innovations such as the internet, GPS, magnetic resonance imaging, lasers, computers, nanotechnology and so on – were the result of fundamental research and the following applied research. Basic and applied research are the essential seedbeds for future innovation ⁽³⁰⁾. The Committee has also addressed the question of how these 'seedbeds' can reach the organisations that can nourish and develop the innovations ⁽³¹⁾.

4.7.3 For this reason, the Committee recommends that measures supported by the European Research Council (ERC) be boosted in the eighth R&D framework programme to account for at least 20 % of total support and that sufficient weight also be given to fundamental issues in the other parts of the programme. The ERC has proved itself outstanding in supporting new ideas and top-flight research. In its future procedures, it should also pay more attention to the careers of young researchers so that they remain with European research or can be attracted back to it.

4.7.4 As the core of the current Cooperation ⁽³²⁾ programme, collaborative research is the main pillar of the current seventh R&D framework programme (and its predecessors) and has an excellent track record. It is the key funding instrument for joining up research activities in the Member States and preventing fragmentation. Its significance in the future common strategic framework should therefore be maintained and strengthened without fail ⁽³³⁾. This is all the more true since it is collaborative research in particular

⁽²⁷⁾ See also point 3.7.1.

⁽²⁸⁾ OJ C 218, 11.9.2009, p. 8, point 4.8.

⁽²⁹⁾ See footnote 12, point 4.10.

⁽³⁰⁾ OJ C 354, 28.12.2010, p. 80, point 3.2.3.

⁽³¹⁾ See footnote 3.

⁽³²⁾ Notwithstanding this, new concepts could be used in the awaited proposal for the eighth R&D framework programme to refer to the measures that have hitherto been described as 'collaborative research' and 'cooperation'.

⁽³³⁾ See also point 4.3 here.

that is aimed at resolving the grand societal challenges (questions 9 and 11). It also makes a significant contribution to developing the key technologies that are crucial to Europe's global competitiveness.

4.7.5 All in all, support for bottom-up projects (see also 4.7.10) should be given a bigger role (questions 9 and 10) so as to give more room to innovative ideas that are not envisaged in the thematic list or, for example, are not being developed by existing industries (see also point 3.7.6 – industry sets the agenda): after all, it was not the ship-building industry that invented the aeroplane.

4.7.6 While top-down approaches result from a strategic perspective of the leading decision-makers based on their present knowledge, bottom-up approaches use the creative potential of scientists, engineers and other stakeholders working directly on the objects to be investigated or improved. Even where the major societal challenges are concerned, more emphasis should be placed on ideas and proposals emerging from the broad knowledge community rather than only on directives from above. '[...] Innovation policy should be targeted at organisational and employee-driven innovations in the workplace ... ⁽³⁴⁾'.

4.7.7 The balance needed between bottom-up and top-down first requires more differentiation: even within specified thematic areas (e.g. key technologies or grand societal challenges), a sufficient proportion of bottom-up processes is needed to allow sufficient scope for new ideas for solutions that were not proposed from the top down. Beyond this, however, a chance must be given to entirely new approaches for issues

and problems that may not immediately have been recognised. Whilst such approaches can already be put into practice in the Ideas programme, they should also be given significantly more scope in collaborative research, as is currently happening successfully in the Future and Emerging Technologies programme of the ICT theme, for example. For this, greater flexibility and leeway is needed for the officials concerned.

4.7.8 With regard to European R&D infrastructure (ESFRI list), the Committee repeats its recommendation ⁽³⁵⁾ that these be supported through contributions to construction and maintenance. The People programme, which includes, for example, the Marie Curie actions (question 23) has also amply proved its worth and should therefore be retained in full or even expanded.

4.7.9 Given the significant problems entailed in a common European economic, monetary and financial policy, which are currently a matter of keen political debate, and the related macroeconomic issues, the Committee recommends that sufficient weight in the support programmes falls to research in this field.

4.7.10 With regard to the questions going beyond R&D (question 17), the Committee above all recommends drawing on the experience with the instruments that have just been set up for this purpose, but not creating yet more new instruments ⁽³⁶⁾. Regarding indicators and innovation partnerships, see the opinion on the Innovation Union ⁽³⁷⁾. Regarding capitalisation, the Committee refers to the same opinion ⁽³⁸⁾.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽³⁴⁾ OJ C 132, 3.5.2011, p. 5.

⁽³⁵⁾ Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: *Europe 2020 Flagship Initiative - Innovation Union*, OJ C 132, 3.5.2011, point 3.8.4.

⁽³⁶⁾ See also footnote 12.

⁽³⁷⁾ See footnote 12, points 4.2 and 4.4.

⁽³⁸⁾ See footnote 12, point 4.8.

Opinion of the European Economic and Social Committee on the following: ‘Proposal for a Council Regulation (Euratom) laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)’

COM(2011) 71 final — 2011/0045 (NLE)

‘Proposal for a Council Decision concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)’

COM(2011) 72 final — 2011/0046 (NLE)

‘Proposal for a Council Decision concerning the specific programme, to be carried out by means of indirect actions, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)’

COM(2011) 73 final — 2011/0043 (NLE)

‘Proposal for a Council Decision concerning the specific programme, to be carried out by means of direct actions by the Joint Research Centre, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012-2013)’

COM(2011) 74 final — 2011/0044 (NLE)

(2011/C 318/21)

Rapporteur: **Mr WOLF**

On 22 March 2011 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Regulation (Euratom) laying down the rules for the participation of undertakings, research centres and universities in indirect actions under the Framework Programme of the European Atomic Energy Community and for the dissemination of research results (2012-2013)

COM(2011) 71 final — 2011/0045 (NLE)

Proposal for a Council Decision concerning the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013)

COM(2011) 72 final — 2011/0046 (NLE)

Proposal for a Council Decision concerning the specific programme, to be carried out by means of indirect actions, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 - 2013)

COM(2011) 73 final — 2011/0043 (NLE)

Proposal for a Council Decision concerning the specific programme, to be carried out by means of direct actions by the Joint Research Centre, implementing the Framework Programme of the European Atomic Energy Community for nuclear research and training activities (2012 to 2013)

COM(2011) 74 final — 2011/0044 (NLE).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 92 votes to none, with 5 abstentions.

1. Conclusions and recommendations

1.1 The accident in the nuclear fission reactor blocks in Fukushima caused by the tsunami and its consequences show the great vulnerability of such reactors to a breakdown in emergency cooling systems. This has already led to energy policy decisions being taken in Member States regarding the further use of such technology and to the beginning of a debate at EU level. There is a need for a reassessment of the research and development objectives of the Euratom R&D framework programme under consideration in this opinion (2012-13 period). The following comments take this into account.

1.2 For a number of reasons, the Committee believes that the level of knowledge about nuclear technologies, their use and their consequences must be maintained and developed. Given that it plays a coordinating role in pooling resources and integrating joint efforts, the Euratom R&D framework programme offers significant European added value in this connection.

1.3 The Committee thus recommends the following:

- research on fission reactor technology should concentrate on improving reactor safety, reducing and disposing of long-lived radioactive waste, monitoring fissile material and radiation protection;
- expertise in dealing with incidents beyond design and in relation to forthcoming stress tests on existing facilities should be maintained and developed;
- development work on energy production from nuclear fusion should be pursued vigorously in view of the potential safety and other advantages of this technology, with the international partnership-based ITER project playing the central role. The 'associations' are the foundation of the fusion programme;
- appropriate training should be provided to ensure that there are enough highly-skilled specialists in key fields and that enough basic knowledge is taught in schools about these technologies and radioactive emissions, the risks they pose and how they are measured.

1.4 The documents available to the Committee suggest that the Commission's proposals and plans broadly correspond to the recommendations mentioned above. However, the Committee suggests that the Commission check whether sufficient resources have been allocated in the light of the new situation and whether individual subjects require further development.

1.5 Taking account of its other recommendations, the Committee supports the Euratom R&D framework programme and its instruments as a key element of the European Research Area.

2. Communication from the Commission

2.1 The Commission's Communication extends over four separate documents with proposals for Council regulations or decisions on the Euratom programme for 2012 to 2013. That new decisions or regulations are even necessary at all for this period stems from the fact that the seventh framework programme of the European Community for research, technological development and demonstration activities (2007-2013) and the seventh framework programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011) cover different periods. A gap of two years must therefore be bridged.

2.2 The four Commission documents cover all the relevant aspects, namely:

- rules for participation;
- the framework programme;
- the specific programme - indirect actions;
- the specific programme - direct actions of the Joint Research Centre.

Including the appendices these documents are 120 pages long; it would therefore be impossible to even summarise their content here or to comment on all aspects.

2.3 Thematically these documents are concerned with EU-supported research in the fields of fusion (focusing on ITER), fission and radiation protection. The Commission feels that research over the next two-year period should build on and continue the activities carried out successfully during 2007-2011.

2.4 Total funding amounts to around EUR 2 560 million, with the largest share going to the fusion programme with ITER.

3. General remarks

3.1 Fukushima – new point of departure

The above-mentioned Commission documents were drawn up before the events in Fukushima. In view of the impact of the tsunami on the nuclear fission power plants based there and the resulting damage and effects on the public and the environment, the Committee feels that the research and development objectives of the Euratom R&D framework programme being discussed here should be reviewed taking into account

this aspect as well, with a view to adapting the focus of the programme if necessary. Therefore this opinion, which is geared exclusively towards research and development, is about more than just aligning the timeframe of the Euratom R&D framework programme with that of the general seventh R&D framework programme.

3.1.1 Even though the Committee believes it is too early to draw general energy policy conclusions from this event, it respects the decision of those Member States which have decided, in accordance with the precautionary principle, not to use nuclear fission any more in the future as an energy source. The Committee welcomes the fact that Fukushima will also be discussed at EU level ⁽¹⁾ and has been included on the energy policy agenda, with each Member State being able to decide for itself, in accordance with the Lisbon Treaty, what is its preferred energy mix.

3.2 Euratom R&D framework programme

Geared primarily towards energy research, the Euratom R&D framework programme supplements the energy research covered by the general R&D framework programme ⁽²⁾, which focuses in particular on research and the development of renewable energy sources and other non-nuclear technologies for low-carbon energy production. This is supposed to ensure that all useful technologies for a sustainable energy mix and their characteristics are researched and assessed within the EU.

3.3 European added value

For many reasons (see below), the Committee feels that there must be more in-depth knowledge of nuclear technologies, their use and their impact. In the light of the fact that it plays a coordinating role in pooling resources and integrating joint efforts, the Euratom R&D programme offers significant European added value in this connection. Taking account of its recommendations below, the Committee fully supports the Euratom R&D framework programme and its instruments as a key element of the European Research Area ⁽³⁾.

3.4 Focusing on maintaining knowledge and research in the field of nuclear safety

Irrespective of possible future decisions by the Member States and the EU on the future use of nuclear fission energy production, in view of the following considerations the Committee feels it is imperative to prioritise the development and dissemination of our knowledge within the EU on safety issues and the associated technologies:

- 1) the possible cross-border impact of nuclear incidents, and

- 2) the global migration of experts and technologies, as well as
- 3) existing sites and their radioactive waste,
- 4) the existence of nuclear weapons together with the associated production facilities and very serious political risks, etc.

The abandonment of comprehensive knowledge would be dangerous and tantamount to burying one's head in the sand. For this reason and with a view to ensuring that knowledge about these technologies and their impact is not collectively forgotten, it is especially important to systematically and continuously train and support in sufficient numbers the future scientists and technicians needed here.

3.5 Nuclear fission

As regards nuclear fission technology the Committee stresses safety aspects in particular:

- radiation protection, medical treatment, preventive medical and technical measures;
- safer low-waste nuclear fission power stations ⁽⁴⁾;
- management (disposal) of long-lived radioactive waste;
- extraction and processing of fissile materials (nuclear fuel);
- measures to prevent theft and abuse of fissile and/or radioactive material;
- incidents beyond design at existing sites and consequences of the forthcoming necessary stress tests ⁽⁵⁾.

3.6 Controlled nuclear fusion

The fusion programme has been promoted from the very start ⁽⁶⁾ in particular because of its considerable safety advantages (extremely low fuel inventory, no emergency cooling, no chain reaction, no fission products and no actinides) and because of the other advantages of this technology. The progress made has enabled a site to be constructed (ITER) with considerable fusion power (500 MW). Even though according to

⁽¹⁾ e.g. in the European Nuclear Energy Forum (ENEF) http://ec.europa.eu/energy/nuclear/forum/forum_en.htm.

⁽²⁾ See OJ C 65, 17.3.2006, p. 9.

⁽³⁾ See OJ C 44, 16.2.2008, p. 1.

⁽⁴⁾ See also the memorandum of the Nordrhein-Westfälische Akademie der Wissenschaften und der Künste (North-Rhine Westphalia Academy of Science and Arts) on the safety of nuclear power stations after the accident in Fukushima, 26 May 2011.

⁽⁵⁾ See EESC press release No 60/2011 of 30 May 2011.

⁽⁶⁾ See OJ C 302, 7.12.2004, p. 27.

current levels of knowledge and research, fusion reactors will only be able to contribute to energy production in the second half of the century, and even though considerable research and development is still required to develop it into a usable energy source, controlled nuclear fusion represents the only known energy option offering internationally available and practically unlimited potential which is not already being used in one way or the other at present⁽⁷⁾. The Committee therefore recommends that particular importance be attached to this programme. Many extrapolations agree that global energy needs and the problem of an internationally sufficient, environmentally-friendly and sustainable energy supply will become ever more acute in the course of this century. There is therefore an especially urgent need for another environmentally-friendly source of energy such as nuclear fusion.

3.7 On the Commission's thematic proposals – full support

In the light of the remarks under point 3.1, we are pleased to note that to the largest possible extent the Committee's recommendations mentioned in this opinion have been incorporated into the Commission's thematic proposals; we therefore wholeheartedly approve those proposals. However, given the documents at its disposal the Committee is not in a position – nor does it consider it to be its role – to evaluate whether the resources provided in terms of equipment, personnel and funding are adequate to precisely meet the goals set. It therefore recommends that the Commission instruct its expert groups, which are accompanying the programme, to carry out such a review under individual programme headings and, if necessary, to allocate additional resources.

3.8 Further studies on safety and risk issues

Since the problem of safety and risk issues concerns not only the Euratom R&D framework programme, the Committee would recommend that studies of relevant safety and risk issues be carried out in conjunction with energy research under the general seventh R&D framework programme and as far as possible in cooperation with other international partners, in view of the natural disasters currently in the spotlight. These should address the following aspects:

- Technical risks of various critical energy technologies such as nuclear fission, carbon dioxide capture and storage, water reservoirs, pneumatic accumulators, fossil fuel technologies, promotion, transport and processing of fossil fuels, hydrogen storage systems, and, particularly for mobile use, hydrogen fuel cells, etc.
- Environmental risks stemming from failure to meet CO₂ reduction targets⁽⁸⁾ and the more advanced climate change associated with this.

- The social, political and possibly military risks (i) of a serious global energy shortage and the resulting crisis situation and (ii) the potential dangers of climate change⁽⁹⁾.

3.9 Educating the population

In addition, the Committee feels that, alongside specialist training (see point 3.4) in the fields of physics, chemistry and engineering, which is necessary in any case, all members of the public should from childhood on be made familiar in schools and higher education institutions with radiation measurement and taught to distinguish between natural/acceptable and dangerous radiation levels. The Committee feels this is the best way to ensure that the public is sufficiently able to assess nuclear threats and react with the necessary objectivity, particularly in the event of a crisis situation in which panic must be avoided and sober, targeted action is needed.

3.10 Questionable funding levels

Although the Committee is not in a position to assess this issue quantitatively on an ad hoc basis, in view of the above-mentioned new considerations it is inclined to be sceptical (see also point 3.7) whether current funding levels are sufficient during the period under discussion to address the issues raised with sufficient emphasis in line with the Committee's recommendations on the SET-Plan⁽¹⁰⁾ and on the Roadmap 2050⁽¹¹⁾. It therefore recommends that, insofar as the budget until 2013 can be determined with no possibility of it being changed, at least for the new post-2013 funding period (i) research needs be determined on the basis of the far-reaching implications of an energy shortage and failure to meet a CO₂ reduction target for the 2020 strategy and beyond and (ii) and sufficient resources be allocated for this purpose. The Committee reiterates that energy research as a proportion of funding for the R&D framework programmes has long ceased to reflect the fundamental importance of energy for society and the climate issues associated with this.

3.11 Opinions on the seventh framework programme

With reference to its comments in point 3.7, the Committee agrees with the Commission that the proposed programme over the next two-year period should build on and continue in a suitable way the activities carried out successfully during 2007-2011; the Committee points to the importance - highlighted in many opinions - of adequate continued support for the success of research. It therefore also refers to its opinions both on the

⁽⁷⁾ See OJ C 107, 6.4.2011, p. 37.

⁽⁸⁾ See http://www.iea.org/index_info.asp?id=1959 of 30 May 2011.

⁽⁹⁾ See footnote 5 as well as research*eu results magazine – No 2 – May 2011, page 20.

⁽¹⁰⁾ See OJ C 21, 21.1.2011, p. 49.

⁽¹¹⁾ See OJ C 107, 6.4.2011, p. 37.

seventh framework programme (2007-2011) of the European Atomic Energy Community (Euratom) for nuclear research and training activities, and on the component specific programmes and the accompanying rules for participation; it re-confirms the recommendations made in those opinions and would add the considerations set out here. This reference to existing Committee opinions is particularly important given that for obvious reasons the current opinion is not in a position to discuss all the details of the Commission's proposals.

4. Specific comments

4.1 Solving the problem of waste management and disposal

With reference to previous Committee opinions on nuclear energy, on the roadmap for achieving a low-carbon energy system by 2050 and on nuclear waste disposal problems⁽¹²⁾, the EESC reiterates the importance of efforts to reduce the amount and lifetime of hazardous waste. It would be a decisive step forward if we actually succeeded in reducing the lifetime of radioactive waste through effective transmutation from a 'geological timescale' to a 'historical timescale'. This would open up an entirely new approach to solving or reducing the waste and disposal problem. All options for conducting scientific and technological research and achieving success in this area should therefore be strongly supported.

4.2 Reducing the risk of a MCA/super-MCA

In the Committee's view man-made technical facilities can never be entirely safe. However, one possible development objective could be in the distant future to only build and operate facilities which are safe in the event of internally caused incidents and are only vulnerable to extremely rare external events (e.g. meteor impact), which would in any case result in damage on such a scale that damage or destruction of the site itself would not considerably increase the harmful consequences.

4.3 Nuclear fusion programme

Given the importance of the future availability of fusion energy, the Committee recommends:

- carrying out preparatory activities to develop a demonstration reactor (DEMO), which as a successor to ITER should for the first time demonstrate generation of electrical energy through nuclear fusion within a comprehensive system, with the necessary breadth and depth of research, and
- researching, in connection with design developments, also alternative magnetic configurations (especially Stellarators); at the same time, the requisite focus on the leading Tokamak approach should be maintained with ITER as the flagship.

In addition, we need to consider what conditions should be put in place to bring DEMO closer, and how - in view of experiences acquired with the global organisation of the ITER project - a strong and effective European fusion programme can be developed further. The Committee stresses that Europe will be able to develop ITER and use the results it produces only by means of a strong infrastructure of fusion research laboratories with adequate links to relevant industries.

4.4 Participation rules for nuclear fission and radiation protection

The Committee sees no significant differences here to existing participation rules for the 2007-2011 programme. It therefore refers once again to its previous positive opinion⁽¹³⁾, as it has nothing more to add here.

4.5 Participation rules for the fusion programme

Currently, there are specifically adapted participation rules for the European fusion programme, a key part of which are the now 26 'contracts of association' with participating research centres or their relevant Member States, called 'associations'. In addition to this, there is the Joint European Torus JET programme with its own especially developed support rules. On the basis of this successful infrastructure, the EU has been able to have a major say in the international ITER project and won the competition to host it.

4.5.1 Contracts of Association

In the above arrangements the appropriate construction of Contracts of Association geared towards development goals with their decisive leverage effect on Member States' support policy and political support played a key part in ensuring the current rapid and steady progress of this programme. Only this has made ITER possible, which the Committee strongly supports as the most important project in the current development of fusion research. Owing to the considerable rise in ITER costs, whose causes the Committee is unable to discuss here, there is extreme pressure to save money on other aspects of the programme, especially activities relating to contracts of association. The Committee would like to warn against making such savings to the point where the leverage effect of contracts of association is jeopardised and thus the programme's effectiveness, the knowledge base needed and - more generally - Member States' political support are compromised. These are necessary in order to help ITER to succeed, and to ensure that the European side can reap the expected benefits. The 'associations' are the foundation and 'think-tanks' of the fusion programme, preparing the operation and use of ITER, developing and investigating new ideas, training the urgently needed new scientists and engineers, and connecting with EU citizens.

⁽¹²⁾ See OJ C 218, 23.7.2011, p. 135.

⁽¹³⁾ See OJ C 309, 16.12.2006, p. 41.

4.6 *Joint research centre*

The Joint Research Centre, which is institutionally supported by the Commission, promotes the following development objectives concerning the Euratom programme: a) disposal of nuclear waste, environmental impact and basic knowledge, b) nuclear safety and c) nuclear security. Thematically this corresponds to the recommendations put forward at the start of this opinion as well as the Committee's recommendations in the opinion on the 7th framework programme ⁽¹⁴⁾ and thus is fully supported by the Committee.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁴⁾ See OJ C 185, 8.8.2006, p. 10.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property'

COM(2011) 142 *final* — 2011/0062 (COD)

(2011/C 318/22)

Rapporteur: **Ms MADER**

On 18 April 2011 and 10 May 2011 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property

COM(2011) 142 — 2011/0062 (COD).

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion by 113 votes to 4 with 7 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee is interested to see the Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property, but would express a number of reservations in this connection. The financial crisis, which has led to the insolvency of many home-buyers, forced to sell on their properties at rock-bottom prices, has highlighted the need for adequate European legislation in this field.

1.2 The Committee supports the Commission's objective of creating the necessary conditions for the development of an efficient and competitive single market in order to restore consumer confidence and bolster financial stability. It nevertheless fears that what is contained in the proposal is not enough to achieve this objective.

1.3 The Committee stresses the need to ensure coherence amongst the existing texts, in particular Directive 2008/48/EC ⁽¹⁾ on credit agreements for consumers.

1.4 The Committee feels that, by its very nature, the proposal should have Article 169 of the Treaty as its legal basis and not Article 114.

1.5 The EESC would point out that, when rules are harmonised at EU level, a high level of consumer protection should be maintained, and hence consumer rights protected by national laws must not be jeopardised. With this objective in mind, therefore, the Committee believes that harmonisation should be suitably targeted.

1.6 The Committee welcomes the provisions enhancing comparability, particularly those aimed at harmonising definitions and the calculation of the annual percentage rate of charge.

1.7 The EESC considers that the measures aimed at ensuring responsible lending are not enough in themselves to improve market conditions and help to prevent over-indebtedness.

1.8 The Committee considers the regulation of credit intermediaries, for which it had called in its opinion on the proposal for a directive on credit to consumers, to be crucial given the many difficulties faced in relation to these professions. This regulation should be dealt with in general rules and should not be confined to the limited objective of this proposal.

1.9 It also feels that the proposal does not contribute to the achievement of the single market in mortgages in general and regrets that, in this area, use of an optional instrument has not been considered.

1.10 The EESC suggests that certain provisions be clarified or enlarged upon in order to enhance consumer information on variable rates. Consumers have little awareness of reference indices and of the impact variations in rates can have on repayment amounts. It believes that usurious interest rates should be banned, that lending rates for the main residence should be capped, and that changes in interest rates should be based only on objective, reliable and public indices that are external to the lender.

1.11 The Committee recommends that borrowers be able to choose the insurance cover for their loan in order to increase competition amongst insurers.

⁽¹⁾ OJ L 133, 22.5.2008, p. 66 – EESC Opinion: OJ C 234, 30.9.2003, p. 1.

2. Background and general comments

2.1 On 18 December 2007, the Commission adopted a White Paper on the integration of EU mortgage markets. The related consultation of a large section of the public indicated to the Commission that the discrepancies between existing legislation on mortgages hindered the proper functioning of the single market, increased costs and was detrimental to consumers.

2.2 On 9 July 2008, the European Economic and Social Committee adopted an opinion on the White Paper on the integration of EU mortgage credit markets⁽²⁾. The Committee, albeit unsure about the real possibility of integrating and harmonising the credit market, given the individual cultural, legal and socio-ethical characteristics of the different Member States, welcomed the fact that a link had been established between the existing mortgage credit rules and the need to protect consumers. It emphasised the responsibility of lenders and borrowers, who must be mindful of the extent of their commitments.

2.3 The current financial crisis has brought to light the weaknesses linked to market and regulatory failures but also to the general economic climate, the practices of credit intermediaries and lenders and low levels of financial literacy amongst borrowers. All of these problems should be avoided in the future since they could lead to a considerable loss of confidence.

2.4 The proposal for a directive takes account of the results of consultations and the work of the OECD and the World Bank.

2.5 Its objective is to ensure a high level of consumer protection within a harmonised EU framework, approximating the laws of the Member States. For this reason, and given its content, the Committee feels that the proposal should have Article 169 of the Treaty as its legal basis and not exclusively Article 114.

2.6 It is aimed at creating an efficient and competitive single market while respecting the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, restoring consumer confidence and increasing financial stability.

2.7 The directive is intended to guarantee consumers' rights within the meaning of Directive 2008/48/EC on credit agreements for consumers, while allowing Member States the possibility of extending its benefits to certain professional categories, in particular micro-enterprises.

2.8 It applies to loans intended to fund the purchase or renovation of a real estate property which are not covered by Directive 2008/48/EC and whether or not they are provided by means of a mortgage or similar guarantee.

2.9 The proposal for a directive applies the principle of targeted harmonisation, placing particular emphasis on it in order to take account of the differences between existing legislation and the diversity of mortgage markets in the EU.

2.10 However, although the Committee is aware of the importance to the economy of the construction sector, it does not believe that the directive has learnt fully from the experience of the financial crisis, the origins of which can be found in the US mortgage market. The unhealthy practice of granting credits for 100 % or more of a property's value has encouraged consumers to buy, including those with low incomes. During a period of growth, it is possible to meet substantial commitments, but it has only taken the start of a period of economic stagnation, or recession, for unemployment to have caused widespread defaulting on payments. Large numbers of properties coming onto the market have led to falling prices and immense losses for financial institutions. The root of the crisis, therefore, is over-indebtedness amongst borrowers, a phenomenon which must be prevented at all costs. The Committee's proposals are set out below.

3. The directive's proposals

3.1 *Chapter 1: Subject matter, scope, definitions and competent authorities*

3.1.1 Article 3 of the proposal for a directive, in line with the procedure employed for the directive on consumer credit, provides a definition of the most important terms. In this connection, the Committee would like the term 'residential' to be clarified in such a way as to indicate whether it targets only the main residence.

3.1.2 The EESC supports this provision, which is intended to ensure that consumers understand and are able to compare different offers.

3.1.3 The Committee believes that the establishment and organisation of supervisory authorities and cooperation between them are necessary and all the more important in view of the failings which have come to light during the crisis.

3.2 *Chapter 2: conditions applicable to creditors and credit intermediaries*

3.2.1 Articles 5 and 6 establish requirements in terms of the honesty, fairness and competence of creditors and credit intermediaries serving consumers. They make the Member States partly responsible for ensuring compliance with these requirements, while the Commission reserves the right to specify the requirements for knowledge and competence.

3.2.2 The proposal for a directive also calls upon the Member States to ensure that the remuneration of sellers does not discriminate according to the product sold.

3.2.3 The EESC supports these measures, since high-quality information is crucial when taking on a mortgage. It believes that the remuneration of the staff of lending bodies and credit intermediaries should not encourage them to promote loans which are not suited to consumers' needs. The EESC would nevertheless draw attention to the use of vague, undefined and subjective concepts likely to give rise to diverging interpretations of a legal text defining strict requirements

⁽²⁾ OJ C 27, 3.2.2009, p. 18.

3.2.4 These two articles do not stress the fundamental distinction between creditors and intermediaries: the staff of creditors are essentially paid a salary, while intermediaries receive a commission. Behaviour based on professional ethics can be expected when remuneration remains 'neutral', but this is unlikely always to be the case when the staff of the seller's income depends on selling the most profitable solution, particularly in the case of intermediaries. All persons in contact with sellers, whatever their role, must therefore receive appropriate training, and the staff of intermediaries must have official authorisation that not only attests to their competences, but which, above all, dictates their behaviour.

3.2.5 There is another fundamental difference: in the event of disputes, the consumer can deal with the creditor, a financial institution which in principle is solid and solvent. In the case of an intermediary, liability is often personal and an intermediary is much less certain to be solvent. This is a further reason for adopting legislation which is much stricter than that currently in force.

3.3 Chapter 3: Information and practices preliminary to the conclusion of the credit agreement

3.3.1 In accordance with Directive 2005/29/EC on unfair business-to-consumer commercial practices ⁽³⁾, advertising must be fair, clear and not misleading.

3.3.2 All advertising containing figures must include a number of indications providing crucial information for consumers wishing to sign up to a mortgage contract. This information must be clear, concise and legible, regardless of the medium by which it is provided.

3.3.3 Article 9 lays down the requirements for pre-contractual information at two levels. It stipulates the general information to be made available and included on the European Standardised Information Sheet ('ESIS') for the provision of personalised information. The EESC does not consider the legal presumption set out in Article 9(2) 3rd indent to be acceptable, according to which simply supplying the ESIS is equivalent to providing information.

3.3.4 Article 10 complements the information to be provided to consumers on the qualifications and operating conditions of the credit intermediary in question.

3.3.5 The EESC takes note of these information obligations. It believes that they should be strengthened with regard to the implications of loans granted at a variable rate. A specific information note should be provided.

3.3.6 The EESC would question the current wording regarding the obligation to obtain insurance covering the loan, which may give the impression that it must be obtained from the creditor. **The Committee suggests that consumers be allowed to choose their insurer in order to promote competition amongst insurance companies.**

3.3.7 The Committee believes that the regulation of intermediaries' activities is essential. It considers that it would be useful to include the principle that the charging of any sum (such as a deposit, search costs, loan origination fee, etc.), in any form whatsoever, before the loaned funds are actually handed over, is prohibited.

3.3.8 A final consideration which the Committee believes to be of crucial importance is that consumers should be provided with information encouraging them to consider closely their future repayment prospects. Consumers clearly do not always do so. Creditors must therefore act responsibly, returning systematically to what was once a practice laid down by law in several Member States to the effect that the credit granted should not exceed 70 %-80 % of the property's value. This rule was of high prudential value and was intended to prevent imprudent behaviour on the part of financial institutions. The sub-prime mortgage crisis has shown how appropriate this rule was. Its reintroduction should be considered, while allowing a degree of flexibility for social housing, for which financial facilities exist in most Member States.

3.3.9 The practice of restricting the capital financed would have a two-fold advantage. On the one hand, it would discourage people who are not solvent, who buy and then suffer over-indebtedness. On the other, it would offer the creditor a guarantee that borrowers are responsible, since they have demonstrated their ability to save. In conclusion, the measure which the EESC would like to see is based on the fundamental principle of **responsible lending for responsible borrowers.**

3.4 Chapter 4: Annual percentage rate of charge

3.4.1 The EESC welcomes the harmonisation of the method for calculating the annual percentage rate of charge. The method using the total cost of the credit, excluding any charges payable by the consumer for non-compliance with any of his/her commitments, will make offers comparable amongst the different Member States.

3.4.2 The information for borrowers regarding variations, provided for in Article 13, is very important, since borrowers are rarely aware of changes to reference rates.

3.5 Chapter 5: Creditworthiness assessment

3.5.1 It is essential that consumers' creditworthiness be assessed when they sign up to loans and in the event of increases in the total amount of the loan. Consumers must be aware that, in the event of non-payment, they will lose their property, which will then be disposed of by public sale under market conditions which may be very poor.

3.5.2 However, this obligation must not cause certain categories of consumer to be rejected, or cause them to be led dishonestly towards certain types of loan. The obligation to provide reasons for rejections is essential, as well as the opportunity to demand that the application be re-examined when the rejection is the result of an automated process. The

⁽³⁾ OJ L 149, 11.6.2005, p. 22 – EESC Opinion: OJ C 108, 30.4.2004, p. 81.

objective pursued by the borrower's creditworthiness assessment shall be prevention of over-indebtedness. In case of payment default, the lender shall take the responsibility if its decision is based on a poor quality assessment of the borrower's creditworthiness. The costs of irresponsible lending shall be borne by the lender.

3.5.3 The EESC would point out that it is particularly keen to see responsible lending, which requires compliance with detailed rules by the creditor and the borrower, and for borrowers to provide accurate information regarding their situation.

3.6 Chapter 6: Database access

3.6.1 The proposal for a directive requires the Member States to ensure access for all creditors to databases used to assess the creditworthiness of consumers and for monitoring consumers' compliance with their obligations.

3.6.2 These public or private registers will conform to uniform criteria to be defined by the Commission and will be in accordance with the provisions of Directive 95/46/EC ⁽⁴⁾ of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

3.6.3 The EESC would reiterate its view that data collected should be restricted solely to financial commitments, that consumer rights must be respected and that the information contained in these databases must not be used for commercial purposes.

3.7 Chapter 7: Advice

3.7.1 The EESC believes that the rules on advice should not undermine the obligation to provide advice mentioned in Chapter 5, aimed at ensuring that appropriate credit products are proposed to consumers.

3.7.2 Furthermore, the development of services which may be considered to be related must not increase the cost of the loan.

3.8 Chapter 8: Early repayment

3.8.1 The proposal for a directive allows for the right to early repayment to be subject to certain conditions. In particular, it provides for the possibility of fair compensation.

3.8.2 This provision is unfavourable to consumers when compared to the rules in force in certain Member States, where early repayment is always possible with limited or no compensation payable in the event of death or forced redundancy.

3.8.3 In its opinion on the proposal for a directive on consumer credit, the EESC argued against allowing Member States to lay down the methods for compensation in the

event of early repayment in view of the risk of considerable differences in treatment of consumers and of market distortions.

3.9 Chapter 9: Prudential and supervisory requirements

3.9.1 As the EESC stressed in its opinion on the proposal for a directive on consumer credit, regulating the actions of credit intermediaries is a priority. It must result in the harmonisation of consumer protection levels in the European Union.

3.9.2 The provisions of the proposal for a directive therefore move in the Committee's desired direction.

3.9.3 They provide for:

- an authorisation obligation for credit intermediaries, whether they be natural or legal persons, and conditions for the withdrawal of authorisation;
- a single register of intermediaries which must give the name of the persons responsible and of those acting under the rules on freedom to provide services. This register must be constantly updated. It must be easily accessible;
- professional requirements (good reputation, professional indemnity insurance). These criteria must be transparent. The Commission reserves the right to lay down the technical standards stipulating the minimum monetary amount of the professional indemnity insurance.

3.9.4 The proposal for a directive also lays down the principle of mutual recognition of authorisations, which would enable intermediaries to operate in accordance with the principles of freedom of establishment and freedom to provide services, having first informed the competent authorities of the Member State of origin.

3.9.5 It establishes the information process for authorities in relation to both the granting and the withdrawal of the authorisation and the conditions for cooperation between the competent authorities of the home Member State and of the host Member State.

3.9.6 The EESC nevertheless feels that it would be preferable for the Commission, as a rule, to regulate credit mediation in an autonomous legislative instrument such as that used for insurance mediation.

3.10 Chapter 10: Final provisions

3.10.1 The proposal for a directive establishes:

- the principle of the existence of penalties, leaving it to the Member States to ensure, in accordance with their national law, that appropriate measures can be taken against creditors and borrowers. This symmetry is understandable, but it should not be forgotten that borrowers are in the weaker position, since they are reliant upon the information given to them by creditors or intermediaries;

⁽⁴⁾ OJ L 281, 23.11.1995, p. 31 – EESC Opinion: OJ C 159, 17.6.1991, p. 38.

- the obligation to establish or adhere to procedures for the out-of-court settlement of disputes, which will be in the interest of creditors and borrowers provided that they are independent and do not exclude the possibility of judicial proceedings;
- that the power to adopt delegated acts is conferred on the Commission. The Parliament and the Council can object to decisions taken by the Commission. They can revoke a delegated act at any time.

3.10.2 The EESC would question the scope of the delegated powers allocated to the European Commission on essential aspects of the legislative instrument as well as their consequences in terms of the legal security to be set up for the system. Moreover, these delegated powers by far exceed the limits provided for in Article 290 of the Treaty, defined in the Communication entitled Implementation of Article 290 of

the Treaty on the Functioning of the European Union. The possibility of delegation should be limited and only used in exceptional circumstances.

3.10.3 The proposal for a directive instructs the Member States to ensure that it is implemented and that their provisions for its implementation cannot be circumvented.

3.10.4 The EESC takes note of the provisions of the proposal for a directive and reiterates that it must not lead to a reduction in the level of protection in Member States with existing legislation on credit agreements relating to residential property.

3.10.5 Lastly, the proposal for a directive provides that it must be transposed within two years and that it will be reviewed five years after its entry into force, which would appear reasonable, and the impact assessment of the directive's measures will indicate whether it is appropriate.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

to the Opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 39(2) of the Rules of Procedure):

Point 3.8.2

Amend as follows:

~~3.8.2 As regards this provision, the right and the possibility of providing for compensation for early repayment should be weighed against the interest of consumers in there being is unfavourable to consumers when compared to the rules in force in certain Member States, where early repayment is always possible with limited or no compensation payable in the event of death or forced redundancy.~~

Outcome of the vote:

For: 26
Against: 61
Abstentions: 10

Point 3.10.4

Amend as follows:

~~3.10.4 The EESC takes note of the provisions of the proposal for a directive and reiterates that in this area, in the same way as for ordinary consumer credit, the aim must be to strive for maximum harmonisation, although without the legitimate, existing interests of consumers being put at risk, it must not lead to a reduction in the level of protection in Member States with existing legislation on credit agreements relating to residential property.~~

Outcome of the vote:

For: 29
Against: 76
Abstentions: 4

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Regulation amending Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking’

COM(2011) 224 final — 2011/0091 (NLE)

(2011/C 318/23)

Rapporteur-general: **Mr MANOLIU**

On 16 May 2011, the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Regulation amending Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking

COM(2011) 224 final — 2011/0091 (NLE).

On 3 May 2011, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr MANOLIU as rapporteur-general at its 473rd plenary session, held on 13 and 14 July (meeting of 13 July), and adopted the following opinion by 131 votes to 1, with 2 abstentions.

1. Conclusions and recommendations

1.1 The Committee endorses the decision regarding the proposal for a Council Regulation amending Regulation (EC) No 521/2008 setting up the Fuel Cells and Hydrogen Joint Undertaking, considering that boosting R&D investment by means of the amendments proposed will increase the predictability necessary for beneficiaries by introducing the option of setting a minimum funding level for a call for proposals.

1.2 By endorsing this proposal, the Committee underscores the proposed strategy’s importance in terms of investment and coordinating research through the consolidation of the European Research Area.

1.3 The Committee reiterates ⁽¹⁾ the need for the following measures:

1.3.1 procedures need to be simplified in order to reduce the negative impact of red tape on R&D programmes;

1.3.2 a broad information programme is needed to help more effectively mobilise the financial resources needed, not only industry’s own contribution but also the contribution of the other legal entities participating in the activities;

1.3.3 the financing agreement between the Commission and the Fuel Cells and Hydrogen Joint Undertaking must be applied equitably and under the same conditions to the industrial and research groupings;

1.3.4 there must be no financial implications other than those set out in the budget initially adopted for this Council Regulation, and the amendments suggested must facilitate the spending of the budget planned; and

1.3.5 vocational training programmes need to be introduced to bring workers’ qualifications into line with the jobs created by this joint technology initiative.

1.4 The Committee considers that a clear strategy and roadmap for 2020 are imperative.

2. Background and general comments

2.1 Fuel cells and hydrogen technologies are promising long-term energy options which can be used in all sectors of the economy and offer a broad range of benefits for energy security, transport, the environment and the efficient use of natural resources.

2.2 The Fuel Cells and Hydrogen Joint Undertaking:

2.2.1 aims to make Europe a global leader in fuel cells and hydrogen technologies, enabling commercial market forces to drive the substantial public benefits;

2.2.2 provides coordinated support for the Member States’ research, technological development and demonstration (RTD) activities in order to reduce market failures and focus on the development of commercial applications. The Fuel Cells and Hydrogen Joint Undertaking has been operational for over

⁽¹⁾ OJ C 204, 9.8.2008, p. 19.

two years. An operational cycle has been completed, including calls for proposals, evaluation of proposals, negotiations on funding and concluding grant agreements ⁽²⁾;

2.2.3 supports the implementation of the RTD priorities of the joint technology initiative on fuel cells and hydrogen by granting funding (the EU's contribution amounts to EUR 470 million) on a competitive basis following calls for proposals; and

2.2.4 aims to foster an increase in public and private investment in research into fuel cells and hydrogen technologies.

2.3 The main tasks and activities of the Fuel Cells and Hydrogen Joint Undertaking are as follows:

2.3.1 to ensure that the joint technology initiative is set up and managed efficiently;

2.3.2 to ensure that research activities achieve critical mass;

2.3.3 to encourage new industrial investment at national and regional levels;

2.3.4 to stimulate innovation and the emergence of new value chains including SMEs;

2.3.5 to facilitate interaction between industry, universities and basic and applied research centres;

2.3.6 to promote the involvement of SMEs in accordance with the objectives of the Seventh Framework Programme;

2.3.7 to encourage participation by institutions from all Member States and associated countries;

2.3.8 to carry out research activities with a view to drafting new rules and standards, ensuring smooth operation and no barriers to innovation;

2.3.9 to carry out communication and dissemination activities and provide trustworthy information for the general public;

2.3.10 to commit EU funds and mobilise private-sector resources;

2.3.11 to ensure proper financial management of resources; and

2.3.12 to ensure a transparent and level playing field for all candidates, particularly SMEs.

2.4 The Fuel Cells and Hydrogen Joint Undertaking contributes to the implementation of the Seventh Framework Programme, particularly in the areas of energy, nanosciences, nanotechnologies and new production technologies, and transport including aeronautics, as set out in the specific programme on cooperation.

3. Commission proposal

3.1 Joint technology initiatives were introduced in the Seventh Framework Programme ⁽³⁾ under Article 187 of the TFEU as a means of establishing partnerships at European level between the public and private sectors in the area of research.

3.2 The Committee ⁽⁴⁾ points out that joint technology initiatives reflect the EU's strong commitment to coordinating research activities, thereby helping to consolidate the European Research Area and achieve the EU's competitiveness goals.

3.3 From the outset, in order to participate, the industrial sector has been required to make a financial contribution amounting to 50 % of the running costs and a contribution in kind to the operating costs which must at least match the Commission's financial contribution.

3.4 The Committee is disappointed to observe that as a result of the first two calls for proposals for the Fuel Cells and Hydrogen Joint Undertaking, the maximum funding levels had to be systematically evaluated and reduced for all participants: for large industries the contribution to the Joint Undertaking was cut from 50 % to 33 %, while for SMEs and research bodies it was cut from 75 % to 50 %.

3.5 These funding levels are much lower than in the Seventh Framework Programme and lower than non-European R&D programmes on fuel cells and hydrogen.

3.6 The low rates of funding and the economic and financial crisis have resulted in the current level of participation in the Fuel Cells and Hydrogen Joint Undertaking which fails to meet initial expectations.

3.7 Unless the present situation changes, the general lack of interest evinced by industry and research bodies could persist.

3.8 The present regulation does not take into account the fact that contributions from public national and regional sources to the projects are encouraged and are expected in several cases.

3.9 The new text states that the matching of EU funds shall take into account not only industry's own contribution but also that of the other legal entities participating in the activities.

3.10 In order to increase the predictability necessary for beneficiaries, the option of setting a minimum funding level for a call for proposals has been introduced.

4. Specific comments

4.1 The Fuel Cells and Hydrogen Joint Undertaking was established in 2008 as an initial example of public-private partnership within the SET-Plan, the technological pillar of European energy and climate policy. It is intended to speed

⁽²⁾ There are another four joint undertakings: CLEAN SKY, IMI, ARTEMIS and ENIAC.

⁽³⁾ OJ L 412, 30.12.2006.

⁽⁴⁾ OJ C 204, 9.8.2008, p. 19.

up the development of fuel cells and hydrogen technologies by 2010-2020. The 36 areas identified by the call for proposals aim to facilitate the development of innovative commercial applications within the five application areas:

- 4.1.1 transport and supply infrastructure;
- 4.1.2 production and distribution of hydrogen;
- 4.1.3 local power generation;
- 4.1.4 portable equipment; and
- 4.1.5 various multidisciplinary applications.

4.2 The joint undertaking's overall objective for the next five years is to speed up the development of fuel cells and hydrogen so that these technologies can be brought to the commercial stage and introduced into specific new markets (portable equipment, portable generators, domestic applications for combined power and heat supply, transport applications).

4.3 Fuel cells and hydrogen and joint technology initiatives are intended to identify and implement results-oriented R&D and to roll out the results of these new technologies on a

large scale. The activities are based on strategic documents set out by programmes conducted by industries in the context of the European HFP Platform, particularly the implementation plan.

4.4 The European Industry Grouping for a Fuel Cell and Hydrogen Joint Undertaking, called the 'New Energy World Industrial Grouping Fuel Cell and Hydrogen for Sustainability' (NEW-IG) ⁽⁵⁾, is a voluntary non-profit association established under Belgian law and open to all European companies working in the area of fuel cell and hydrogen R&D. The grouping includes the EEA and candidate countries, and has an annual budget of approximately EUR 1 billion which may be invested until 2013.

4.5 The grouping clearly reaffirms its commitment to develop modular technologies which are profitable and environmentally-friendly in various areas of activity, including transport, power generation, and industrial and domestic equipment.

4.6 This ambitious vision is in line with the European objectives of an economy based on lower levels of carbon, increased security of energy supply, reduced dependency on oil, contributions to new green technologies, lasting European competitiveness and the creation of new jobs.

Brussels, 13 July 2011.

*The President
of the European Economic and Social Committee*
Staffan NILSSON

⁽⁵⁾ European Industry Grouping for a Fuel Cell and Hydrogen Joint Undertaking.

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An Agenda for new skills and jobs: A European contribution towards full employment’

COM(2010) 682 final

(2011/C 318/24)

Rapporteur: **Vladimíra DRBALOVÁ**

Co-rapporteur: **José María ZUFIAUR NARVAIZA**

The European Commission decided on 23 November 2010 to consult the European Economic and Social Committee under Article 304 of the Treaty on the Functioning of the European Union on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — An Agenda for new skills and jobs: A European contribution towards full employment

COM(2010) 682 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 27 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 13 July), the European Economic and Social Committee adopted the following opinion by 130 votes to 1 with 6 abstentions.

Preamble

- The EESC opinion on the Agenda for new skills and jobs is part of the Europe 2020 strategy for smart, sustainable and inclusive growth.
- The EESC opinion stresses a new holistic approach: in other words, it judges the Agenda for new skills and jobs in close relation to the other flagship initiatives and five horizontal objectives at EU level.
- In this connection, the EESC opinion stresses the need for coherence between policies at EU level and at national level, as well the impact and key role of non-governmental stakeholders.

1. Conclusions and proposals

1.1 The Committee shares concern about the impact of the global economic crisis on how the labour market is operating and broadly welcomes the **Agenda for new skills: A European contribution towards full employment** as an effort by the Commission to help increase employment and make labour markets more efficient. It calls on Member State governments to put the social dialogue and dialogue with organised civil society to good effect as they seek ways and means to improve the situation.

1.2 The Committee regrets, however, that the proposed initiative fails to encapsulate the **urgent need** to create good-quality jobs and is not a sufficient stimulus to Member States to

set more ambitious national goals backed by structural reforms and investment policies designed to secure real growth and new job opportunities.

1.3 The Committee appreciates the fact that the agenda is rooted in the notion of flexicurity and underscores the need to strike the **right balance between internal and external flexicurity in the interests of both a more efficient labour market and protection of workers**. The Committee recommends that an analysis be made of the state of affairs at the outset and that the implementation of flexicurity policies continue to be monitored and evaluated, with the emphasis falling on the role of the social partners in this process, the aim of which should be to continue to facilitate reintegration and transition in the labour market.

1.4 The Committee welcomes the bundling of education and employment policy in a single strategy document. Nevertheless, it fails to detect a link between improving and updating skills and a growth in labour productivity.

1.5 The Committee welcomes the Commission's endeavour to offer new instruments and initiatives, but recommends, nevertheless, that their linkage and synergies with existing instruments be strengthened. The EESC believes that the Commission – in looking into the role of non-binding instruments – must respect the mutual compatibility of policies and initiatives adopted at EU level. It also thinks that a coherent proposal to re-examine EU legislation in the social sphere should support rather than weaken the efforts of Member States to implement beneficial labour market reforms and promote social investment.

1.6 The Committee recommends that the Commission take on board, when considering reopening discussion on the quality of jobs and working conditions, the mixed outcomes of the fifth EUROFOUND survey of working conditions in Europe.

1.7 The Committee underscores the need to use European funds more effectively and joins the Commission in calling on the Member States to target the European Social Fund and other funds at the four basic goals listed in the Commission communication in order to help meet the Agenda objectives and national goals under the Europe 2020 strategy.

2. Presentation

2.1 On 23 November 2010, the European Commission presented the Agenda for new skills and jobs: A European contribution towards full employment, which draws on a series of earlier initiatives to raise and forecast skills in the EU and better match them to labour market needs. The Committee responded to these initiatives in an earlier opinion ⁽¹⁾.

2.2 However, the Commission's new agenda is broader in scope, pursues the commonly agreed goal of 75 % employment in the European Union for men and women between the ages of 20 and 64, and lays down significant steps in four key areas:

- better functioning labour markets;
- more skilled workforce;
- better job quality and working conditions;
- stronger policies to promote job creation and demand for labour.

2.3 The Agenda for new skills and jobs draws on the general principles of flexicurity adopted by the Council in 2007 ⁽²⁾. The aim of the flexicurity policy is primarily to increase adaptability, employment and social cohesion. Flexicurity policies – largely by introducing subsidised measures to offer training and reduce working time – helped to a certain extent to weather the crisis, but vulnerable groups are still in a serious situation.

2.4 For this reason, the Commission is now coming forward with a new initiative to reinforce all four flexicurity components (flexible and reliable contractual arrangements, active labour market policies, comprehensive strategy on life-long learning, and modern social security systems) and their implementation. Member States' national flexicurity arrangements must be strengthened and adapted to the new socio-economic context, through a new balance between each of these four elements.

2.5 In its agenda, the Commission sets out thirteen key actions backed by twenty support measures aimed at reducing segmentation and facilitating transitions on labour markets, giving workers the skills they need to get jobs, improving working conditions, supporting the creation of new jobs, and making better use of EU financial instruments.

3. General comments

3.1 The January 2011 report on employment in the EU ⁽³⁾ states that: 'The labour market in the EU has continued to stabilise and there are now signs of recovery in some Member States. (...) Nevertheless, at 221,3 million people, employment was by then still down by 5,6 million people when compared to its peak in the second quarter of 2008, reflecting marked declines in manufacturing and construction. The employment of workers aged 20 to 64 also stood at 208,4 million people corresponding to an employment rate of 68,8 %. (...) Unemployment now stands at 23,1 million persons. Long-term unemployment is increasing across all the population groups, although to a different extent. Of these almost 5 million were unemployed for 6 to 11 months. The crisis has aggravated the risk for the low-skilled and non-EU migrants.' Despite the progress made, the report finds the situation of labour markets to be still uncertain. OECD figures from May 2011 put unemployment in the euro area at 9,9 % ⁽⁴⁾.

3.2 For this reason, the European Economic and Social Committee continues to share the concern about the functioning of the labour market and in general welcomes the Agenda for new skills and jobs: A European contribution towards full employment as an effort by the Commission to increase employment, boost job quality and improve the functioning of labour markets in line with the goals of the Europe 2020 strategy, the Employment Strategy and the Employment Guidelines. It stresses the role of the social partners and thinks that Member State governments should make better use of the social and organised civil society dialogue on this matter so that they can propose and implement the kind of measures that contribute effectively to improving the situation.

3.3 The Annual Growth Survey ⁽⁵⁾ published in January 2011 at the commencement of the European Semester showed that the Member States are lacking in ambition when setting their national goals and will fail to meet their common targets on employment (75 %) by 2 to 2,4 %. The Committee believes that policies to achieve the proposed goals should take on board the conclusions of the **Dialogue on Growth and Employment in Europe** meeting held in Vienna in March between representatives of the IMF, the ILO and the social partners ⁽⁶⁾.

⁽¹⁾ OJ C 128/74, 18.05.2010.

⁽²⁾ Council conclusions on Towards Common Principles of Flexicurity, 5-6 December 2007 (16201/07).

⁽³⁾ Joint Employment Report, COM(2011) 11 final, Brussels, January 2011, http://ec.europa.eu/europe2020/pdf/3_en_annexe_part1.pdf.

⁽⁴⁾ OECD Harmonised Unemployment Rates, News Release, 10 May 2011, www.oecd.org.

⁽⁵⁾ Annual Growth Survey, COM(2011) 11 final, 12.01.2011.

⁽⁶⁾ www.ilo.org: Dialogue on Growth and Employment in Europe, held on 1-3 March 2011 in Vienna.

3.4 The EESC regrets that the Commission is only reacting with standard measures to such a pressing situation and that the proposal submitted lacks any stress on supporting growth factors that could stimulate job creation. It is not enough for people to remain active and acquire the right skills to get jobs: the recovery must be based on growth and job creation.

3.5 What Europe needs above all, in order to take on the challenges it faces, is a return to lending, investing and carrying out structural reform. The tangible action needed to remove the obstacles to creating jobs and boosting productivity has to be mapped out. One of the things productivity depends on is the quality of jobs. Many of these reforms, which should be as consensus-based as possible, have to be carried out at national level. The Member States must realise that they need to encourage business and household lending, make productive investments and carry out effective reforms in order to create jobs. The way to cope with fears of low and precarious salaries is to increase labour productivity and improve working conditions in Europe.

3.6 The Joint Employment Report also stresses the need to link employment policy, support for economic growth and fiscal consolidation (reaffirming the need to keep supporting vulnerable groups with high-quality social services and active inclusion strategies) and highlights the part played by a favourable economic environment and innovation-based economic growth in increasing labour demand.

3.7 The report also draws attention to a certain imbalance between job supply and demand in the course of 2010, which could indicate a mismatch between the skills of jobseekers and those skills required for the available jobs. This is why the report recommends this issue be carefully monitored to ascertain whether this is merely a passing trend or risks becoming structural.

3.8 The EESC notes that the Commission is not proposing any new legislation at this stage and that it acknowledges the role and added value of legally non-binding instruments as a complement to the existing legal framework. The social partners should be consulted on some of the initiatives, including the EU framework for restructuring, revision of health and safety at work legislation, the informing and consulting of workers, part-time and temporary work, and reopening the discussion on job quality and working conditions. Following these consultations, decisions would be taken on the suitability and implications of any changes that might be needed.

3.9 The Committee welcomes the Commission's endeavour to offer a series of new innovative initiatives and instruments to support the implementation of the new skills and jobs agenda. It thinks, however, that the interlinkage between new and existing instruments needs to be investigated to ensure the necessary synergies in their implementation. The strategy on

new skills should also take into account the transition towards a production model based on sustainable development and the greening of jobs.

3.10 In regions without a manufacturing industry, SMEs are crucial for creating opportunities both now and in the future. At the same time, these often provide high-quality jobs, are easily accessible and are able to improve the balance between family life, work, and care for other family members. The Small Business Act must be translated into tangible actions at national and EU level. For this reason, the measures in the agenda tailored to the specific needs of SMEs are welcome. Access to funding and removal of red tape remain the priority.

3.11 In the light of the findings of the third European Demography Report 2010 ⁽⁷⁾, which provides new facts about Europe's population, the Committee also welcomes initiatives geared to mobility, migration and integration in Europe. The EESC is convinced that maintaining internal EU mobility and immigration from third countries will help the EU to achieve positive economic results. Economic migration into the EU and easier mobility between Member States are essential if the Union is to remain an attractive location for business and investment, which delivers new job opportunities for citizens of both the EU and third countries. However, the principle of equal treatment must be respected in all of this ⁽⁸⁾.

3.12 Employment and labour market policies in Europe must continue to implement tangible measures to put the principle of non-discrimination in the workplace into practice and to ensure gender equality and the equality of all groups of workers. The Committee therefore welcomes the European Commission's strategies, published in 2010, which focused, among other things, on people with disabilities ⁽⁹⁾ and equal opportunities between men and women ⁽¹⁰⁾. Both strategies include the goal of equal access to the labour market, to education and to vocational training.

3.13 The Committee also appreciates the key actions and measures proposed in the Single Market Act ⁽¹¹⁾ to improve how we work, do business and trade together which reflect the important role of the social economy and the cooperative movement in the EU single market and the importance of corporate social responsibility. It also feels that the role of organised civil society organisations also needs to be taken into account, since these are also employers and create jobs. However, for their potential to be developed, it is vital that they are involved in policies.

⁽⁷⁾ <http://epp.eurostat.ec.europa.eu/portal/page/portal/population/documents/Tab/report.pdf>.

⁽⁸⁾ OJ C 27/114, 3.02.2009 and CESE 801/2011, 4.05.2011.

⁽⁹⁾ COM(2010) 636 final: European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, 15.11.2010.

⁽¹⁰⁾ Strategy for equality between women and men 2010-2015, COM(2010) 491 final.

⁽¹¹⁾ COM(2010) 608 final, Towards a Single Market Act, October 2010.

3.14 The Committee is deeply concerned by the high level of unemployment among the young in Europe, which has risen by 30 % since 2008. Average unemployment in the EU of young people below the age of twenty-five stands at 21 %. And, although the situation has tended to stabilise since September 2010 in some countries, whilst in others unemployment is still rising, the Committee still feels it continues to warrant special attention. The Committee has commented on the Commission's Youth on the Move initiative in a separate opinion ⁽¹²⁾.

3.15 Employment levels for people with disabilities in Europe remain low at around 50 %. If Europe really wants to ensure equal treatment for all Europeans at the same time as achieving its shared employment target, it has to get people with disabilities into good-quality paid work. The European Disability Strategy 2010-2020 pinpoints eight important areas for the EU still to tackle, including jobs, education and training for men and women with disabilities ⁽¹³⁾. The Commission could look into models in the Member States that might be used to support the legal, political, collective bargaining-related or financial incentives of companies, administrations and social services to employ these people. Given that ICTs currently represent 6 % of EU GDP, the digital strategy proposed by the Commission should have implications for everyone, especially in terms of training plans and the inclusion of social groups for which these technologies represent a catalyst for employment.

4. Flexicurity and job creation

4.1 The Agenda is based on the concept of flexicurity. The Commission highlights the need for comprehensive lifelong learning policies, active labour market policies that are effective in preparing people for work, in labour mediation, and in increasing the number of jobs available. Also needed are unemployment benefit systems that encourage labour mobility, guarantee greater social and occupational security and offer protection against social exclusion and poverty. The possibility of establishing flexible contractual arrangements and internal flexibility should be key aspects of the social dialogue. The EESC considers it important that any measures and policies adopted do not undermine efforts to achieve the aims set by the Agenda (including full employment and maintaining job quality) and do not jeopardise worker's labour rights.

4.2 The Committee has already taken the position in the past that it makes sense to assess job security and flexibility in tandem, since the two are not essentially incompatible. A stable and motivated workforce boosts the firm's competitiveness and productivity. Workers need more flexible working arrangements so that they can accommodate their family and working lives. They should have access to ongoing professional training that enables them to play a part in boosting productivity and innovation. However, the EESC stresses the need for scrupulous and regular monitoring of

flexicurity in operation as part of the social dialogue, in order to make sure that measures adopted really are effectively fulfilling the goals of creating more and better jobs.

4.3 Internal flexicurity proved its worth during the crisis, when companies and trade unions came up with practical ways to keep hold of jobs, especially using subsidised models for reducing working time. External flexicurity is important when the economy is in recovery, can help create new jobs, provided it is implemented in balance with internal flexibility and, more generally, with collective bargaining and adequate social protection for workers. Here, each Member State is starting from a different position. The most important thing is to get the right mix of policies. This is only possible if these policies are the fruit of social dialogue. The Committee finds that the application of internal and external flexicurity should be considered in a more balanced way in the annual recommendations from the Commission to the Member States.

4.4 The Committee notes that discussion on strengthening all four components of flexicurity will continue and culminate in a joint conference of all interested parties in 2011. The Committee agrees that a **new impetus on flexicurity** should be the result of a joint approach by European bodies, should be based on shared principles and should draw on real insight from the national level into how this notion actually helps in practice to create more and better jobs and whether it ensures adequate protection of workers, particularly those in a vulnerable position.

4.5 In this connection, the Committee welcomes the joint project of the European social partners under their multiannual work programme 2009-2011 ⁽¹⁴⁾, which addresses the ways that Member States put the flexicurity principle into practice and what role the social partners play in this process.

4.6 Economic growth remains the main lever to job creation. This is why the Committee sees a close connection between the Agenda for new skills and jobs and the Union's new strategic approach to innovation, the creation of the European research area and the creation of a competitive industrial base – and all of this using the full potential of the EU single market.

4.7 The Commission predicts, however, that economic recovery will be slow and that it could take longer for new jobs to be created. If the EU is to reach the target of 75 % employment and avoid jobless growth, it must realise the absolute necessity of identifying and implementing specific policies that, as part of the social dialogue, favour the recruitment and ongoing training of workers and flexible working arrangements and put job quality at the heart of flexicurity.

⁽¹²⁾ OJ C 132/55, 3.05.2011.

⁽¹³⁾ European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final.

⁽¹⁴⁾ The European Social Partners' Joint Study on The implementation of Flexicurity and the role of the social partners, carried out as part of the joint EU Social Dialogue Work Programme 2009-2011.

4.8 The EESC is aware that a well functioning labour market is key for Europe's competitiveness. The indicators for measuring progress should include long-term unemployment and youth unemployment rates and the labour market participation rate.

4.9 The Commission has proposed a **single employment contract**, the real effect of which is currently being hotly debated. In its opinion on the Youth on the Move initiative, the EESC argues that the single employment contract concept should be one of the measures to help narrow the gap between 'insiders' and 'outsiders' on the labour market. The EESC is aware here of the considerable differences between Member States regarding labour market access. Some of the rigid systems deny people any form of work, while in others short-term job contracts are offered that are unduly elastic and do not provide full access to welfare benefits. The EESC considers it important to point out that measures to be taken should ensure that people have stable job contracts that limit discrimination on the basis of age, sex or any other reason. However, the measures adopted should not lead to widespread employment precariousness or to greater rigidity in the way companies organise work. Companies need to have a repertoire of contractual arrangements so that they can adapt the labour force, while workers need flexibility to balance their working and family lives.

4.10 The EESC endorses the Commission's proposal to create **guiding principles to promote enabling conditions for job creation**, including the accompanying measures of **Erasmus for Young Entrepreneurs** and familiarising teachers with issues relating to the entrepreneurial spirit. However, the Member States must translate these principles into tangible action in order to stimulate the hiring of workers, especially those with low qualifications ⁽¹⁵⁾.

4.11 The EESC also backs the creation of a **Tripartite Social Forum**, which met for the first time on 10/11 March 2011. The intention is to make this a standing platform for building trust between the social partners and policymakers.

4.12 **The European social dialogue** and collective bargaining at national level continue to be a crucial instrument for making labour markets more efficient and for improving working conditions.

In their autonomous agreement on inclusive labour markets ⁽¹⁶⁾, Europe's social partners recommend that the Member States create and implement multi-stranded policies to support labour markets that are accessible to all. Wherever possible, and respecting national specificities, the social partners must be involved at the appropriate level in measures that seek to address the following matters:

- the scope and quality of specific transitional measures for those encountering difficulties on the job market
- the effectiveness of employment services and career advice services
- education and training
- adequate investment in regional development
- adequate access to transport, care, housing and education
- facilitating business start-ups and further development in order to maximise the potential for job creation in the EU; furthermore, entrepreneurs should be able to invest in companies which are sustainable and which improve the environment
- creating the right conditions so that tax and contribution systems are geared to helping people get onto the labour market, stay on it and develop.

5. Giving people the right skills for work

5.1 The Committee welcomes the fact that matters of education are addressed along with labour market obstacles in a single strategy document.

5.2 The EESC has played its part in getting education recognised as a fundamental human right with several opinions in which it acknowledges that the main aim of education has been, and continues to be, to produce free and autonomous citizens capable of critical thought and of contributing to the development of society.

5.3 On the basis of the concept of education for inclusion, the EESC also recommends in a number of opinions ⁽¹⁷⁾ that the EU and the Member States undertake to revise (update) education policies, their content, approaches and structures and the allocation of resources, but also that a revision and/or up-dating of policies relating to employment, quality public services, attention to specific groups (children, people with special needs, migrants, etc.) be carried out, and that the gender perspective is included in all these policies.

5.4 The link between better worker skills and higher employment is incontrovertible. According to the Cedefop forecast, sixteen million jobs requiring higher qualifications will be created by 2020, while twelve million jobs calling for low or no skills will be lost. Nevertheless, the Committee regrets that, although the Commission acknowledges the importance of updating and improving skills, it fails to adequately stress the link between skills and productivity. Increasing productivity in Europe is essential, not least because of the dwindling labour force. The Committee also notes that the Commission is not proposing any new measures to improve the skills of workers

⁽¹⁵⁾ Current OECD surveys estimate that a cut in company contributions would boost employment by 0,6 %.

⁽¹⁶⁾ Autonomous Framework Agreement of the European Social Partners (2010) on inclusive labour markets, negotiated under the European Social Dialogue Work Programme for 2009-2011.

⁽¹⁷⁾ OJ C 18/18, 19.01.2011.

with low or no qualifications, nor is it looking for long-term solutions to support the participation of people who need targeted approaches in order to develop skills and achieve employment (e.g. persons with intellectual disabilities).

5.5 The Committee welcomes the EU skills Panorama, but thinks that the Agenda should lay greater emphasis on better matching skills to the needs of the labour market and on professional qualifications for workers in order to make them more employable. The Commission should not only take account of the formal systems for assessing skills. A good way of evaluating present and future skills demand is close collaboration between educational institutions, companies and trade unions.

5.6 In its opinion on Youth on the Move, the Committee supported the creation of a **European Skills Passport**. The Committee takes the view that 'the existing passports (Europass and the youth passport) should be combined into one overall instrument that would cover, on a single form, a traditional CV, formal education (Europass) and non-formal or informal education. [...] The success of the European Skills Passport will depend, amongst other factors, on how it is viewed by employers and used by young people, for whom the necessary advisory and support measures must remain available.'

5.7 The Committee thinks it of fundamental importance to draw up comprehensive lifelong learning strategies and therefore welcomes the drafting of the **European policy handbook**, which sets out a framework for implementing lifelong learning, and a renewed **action plan for adult learning**.

5.8 The Committee also supports other initiatives in preparation, such as the **Competences and Occupations classification (ESCO)** as joint platforms for work and for education and training, and **reform of systems for the recognition of professional qualifications**. It is particularly important to this end to review and adjust education models in Europe, review education systems, re-evaluate educational and teaching methods and make substantial investment in good education open to all. Education systems must be able to equip people to react to labour market challenges. Close collaboration with businesses is particularly important. The Competences and Occupations classification should be easier to understand and more user-friendly, especially for SMEs. The cataloguing exercise that is in the pipeline may constrain the flexibility needed to combine various skills in order to meet the constantly new or changing tasks that small companies have to perform with a limited number of workers.

5.9 The Committee highlights in particular the possible strategic role of the 'sector councils on employment and skills' when it comes to securing a better fit between skills and labour market needs. These are a unique platform for mobilising the hands-on experience of a range of the various social actors that make up these councils in, for example, the

analysis of future job opportunities and skills and cataloguing them (ESCO), or assessing the changes in some professional skills required for particular trades ⁽¹⁸⁾.

5.10 The Committee welcomes the Commission's decision to work with Member States to examine the situation of highly mobile workers, especially researchers, with a view to facilitating their geographical and inter-sectoral mobility in order to complete the European Research Area by 2014.

5.11 It also welcomes the Commission's systematic endeavours to react to demographic changes and the lack of some skills in European labour markets by supporting legal economic migration under the Stockholm programme. The potential contribution of migration to full employment will be maximised if migrants already legally residing in the EU are better integrated, particularly through removing barriers to employment, such as discrimination or the non-recognition of skills and qualifications, which put migrants at risk of unemployment and social exclusion. The announced **New Agenda for Integration** will undoubtedly be a move in the right direction.

5.12 The Committee again stresses the importance of recognising the results of informal learning, as it has done previously in its Youth on the Move opinion, for example. Deliberations on the form such recognition could take should look at the quality of education and training and how these are monitored and supervised. Any measures to encourage the recognition of informal learning would be to everyone's benefit.

6. Improving the quality of work and working conditions

6.1 The Commission speaks in its communication of full employment as a goal. The criterion here is whether this means better quality of work and better working conditions.

6.2 The conclusions of the fifth EUROFOUND report on working conditions ⁽¹⁹⁾ state: 'Ensuring quality of work and employment is a core element in achieving this objective' (the objectives of the 2020 strategy). The report also summarises a number of current trends in the European labour market. Among the positive points it reveals are that the standard forty-hour working week remains the norm for most workers and that, until 2007, when the global crisis erupted, the proportion of open-ended contracts had been rising. However, it also states that since then the temporary nature of jobs and the intensity of work has increased and that a large number of Europeans fear losing their jobs before reaching the age of sixty.

⁽¹⁸⁾ OJ C 132/26, 3.5.2011, OJ C 347/1, 18.12.2010 and OJ C 128/74, 18.05.2010.

⁽¹⁹⁾ European Foundation for the Improvement of Living and Working Conditions. Fifth report, www.eurofound.europa.eu.

6.3 The effects of the world economic crisis on the labour market will be with us for quite some time. For this reason, the Committee proposes that the Commission take on board, when considering reopening discussion on the quality of jobs and working conditions, the outcomes of the fifth EUROFOUND survey of working conditions in Europe (positive results, persisting problems and problems caused by the crisis).

6.4 The priority is to create good jobs. The Member States should embark upon reforming the labour market to boost growth and help create a balance between supply and demand.

6.5 From this point of view, the effectiveness analysis of EU social legislation proposed by the Commission should be targeted mainly at supporting the efforts of Member States to introduce reforms which are consistent with the priority of creating high-quality jobs.

6.6 Regarding the posting of workers directive, the EESC welcomes the Commission's endeavours to support its uniform and correct implementation, the bolstering of administrative cooperation between the Member States, the introduction of an electronic information system (the Internal Market Information System (IMI)) and the maintenance of Member States' labour standards, while respecting national labour law and the Charter of Fundamental Rights of the European Union.

6.7 The intensity of work has risen sharply over the last twenty years. Studies from the European Agency for Safety and Health at Work, carried out under the Community strategy on health and safety at work, drew attention to new and future risks, such as work-related stress, musculoskeletal disorders, and violence and harassment in the workplace. Regarding review of legislation on health and safety at work, the Committee thinks this must be a matter for discussion and agreement with the social partners. The prime emphasis should be on the rigorous application of existing instruments, increasing awareness and helping workers and companies.

6.8 When it comes to action taken on consultation and information, the Committee endorses the scheduled consultation of Europe's social partners on the creation of an EU framework for restructuring. Such a dialogue will make it clear whether the current directives constitute an appropriate framework for constructive dialogue between management, trade unions and worker representatives at company level.

6.9 When it comes to reviewing directives on part-time work and fixed-term contracts, which are based on agreements between Europe's social partners and have so far been a useful instrument for increasing internal flexibility, the

Committee thinks that the Commission must ascertain whether Europe's social partners consider such a review to be necessary.

7. EU financial instruments

7.1 At a time of budget consolidation, the European Union and the Member States must concentrate on using EU funds better and give priority, within this policy, to creating job opportunities and improving qualifications. Cohesion policies undoubtedly help to advance skills and create jobs, including in the expanding green economy. There is still room for better capitalising on the potential of EU financial instruments that support reforms in jobs, education and training.

7.2 For this reason, the Committee supports the Commission in its appeal to the Member States to target the European Social Fund (ESF) and other funds at the four priorities mentioned in the communication and at the measures and reforms these may generate, thus helping to meet the agenda goals and national goals under the Europe 2020 strategy.

7.3 The crucial element here is the ESF, which will play a positive role in all the areas concerned. The ESF can contribute to supporting the individual pillars of flexicurity, to the forecasting and development of qualifications, to the development of innovative forms of work organisation, including health and safety at work, to facilitating entrepreneurship and company start-ups, and to helping workers with disabilities and some disadvantaged groups on the labour market or groups at risk of social exclusion.

7.4 The Committee's opinion on The future of the European Social Fund contains a series of recommendations ⁽²⁰⁾. In it, the Committee states, among other things: 'Lessons must be drawn from the use of the ESF to support both the economic recovery and the economic growth of the European Union by improving support for SMEs, VSEs and social economy stakeholders, in accordance with ESF objectives, as well as through social improvements, both in terms of preserving and creating quality jobs and in terms of social inclusion, especially through work.'

7.5 Regarding the future EU budget, the same opinion has this to say: 'The ESF is the key instrument for supporting the implementation of the European employment strategy (...). In view of the current economic situation, therefore, the ESF must remain an important strategic and financial instrument and be given more resources to match the greater challenges it faces (higher rates of unemployment), reflecting the increase in the EU's general budget, namely at least by the 5,9 % proposed by the European Commission for the EU's 2011 budget as a whole.'

⁽²⁰⁾ OJ C 132/8, 3.05.2011.

7.6 The Committee welcomes the benefits and outcomes so far of the Union's PROGRESS programme implemented by the 2007–2013 strategic framework for jobs and social solidarity. It also welcomes the fact that the Commission, in revising its financial instruments, has launched a public consultation exercise that covers the structure, added value, action, budget and implementation of the instrument succeeding the PROGRESS programme, which should respond to the new challenges that the Union will be facing in the social and employment spheres.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Towards a comprehensive European international investment policy’

COM(2010) 343

(2011/C 318/25)

Rapporteur: **Mr Jonathan PEEL**

On 7 July 2010 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Towards a comprehensive European international investment policy

COM(2010) 343.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 20 June 2011.

At its 473rd plenary session, held on 13-14 July 2011 (meeting of 13 July 2011), the European Economic and Social Committee adopted the following opinion by 123 votes to 5 with 9 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the new EU competence in FDI and the opportunities this first step brings for stronger, more consistent investment protection between member states and third countries. An overarching framework is welcome provided it is not too restrictive. It is essential that investor security is maintained, both in the interests of EU business and developing countries. The enhanced bargaining power of exclusive EU competence should result in the EU becoming a more important actor, and enable better access to key third country markets whilst protecting investors, thereby enhancing our international competitiveness.

1.2 We particularly welcome the reassurance in the Communication that the EU's trade and investment policy 'has to fit with' and be consistent with economic and other policies of the Union, including 'protection of the environment, decent work, health and safety at work' and Development. It is essential that EU investment policy must not cut across any of these: the Committee urges that for future or renewed EU Investment Treaties, both parties allow sufficient room for manoeuvre in each of these specific aspects of sustainable development. Equally, investors' obligations towards sustainable development requirements need to be taken fully into account as they strive to underpin and maintain their overall competitiveness. Nevertheless an effective EU investment strategy has a crucial role to play in maintaining EU competitiveness at a time of rapid economic change and major shifts in relative economic power around the world.

1.3 The Committee agrees that a one-size model for investment agreements with third countries would be neither necessary nor desirable. However, EU investment agreements should result in combining an open investment environment

with effective protection for EU investors and ensuring operational flexibility in the countries in which they are investing. Such an environment is essential if investors are to benefit, with the progressive abolition of restrictions on investment, and sufficient protection notably by including provisions on national treatment, fair and equitable treatment and free transfer of funds.

1.4 We note too that any attempt to terminate all existing Member State Bilateral Investment Treaties ('BITs') within five years would have a huge immediate destabilising effect on existing investments as well as on employment and social protection, although that should not preclude looking at these closely as part of any review to ensure a more coherent, transparent and balanced EU approach in the future.

1.5 To this end, the Committee urges that the EU should seize this opportunity to improve and update the investment agreements it negotiates, building on its own strengths rather than merely imitate others. The EU needs to take a critical look at recent developments in international investment law, as well as in investment policy and practice (including investor-state arbitration), to ensure that its thinking and approach to future investment treaties and investment chapters in free trade agreements is both state of the art and sustainable.

1.6 We fully support the Commission's intention to prioritise negotiations with those countries, notably the key emerging economies as outlined in 'Global Europe', which have strong market potential but where foreign investors need

better protection. The Committee nevertheless welcomes the statement that this should not preclude any future multilateral initiative.

1.7 We also urge the Commission to use Investment Protection Agreements as key opportunities to encourage the kind of long-term investment in developing countries that brings economic benefits such as high quality decent work, infrastructure improvements and knowledge transfer.

1.8 The Committee regrets that the Communication does not go into sufficient detail as to how an EU international investment policy will interact and tie in with the EU Development programme, with particular reference to ACP, least developed countries and the outstanding Economic Partnership Agreement (EPA) negotiations.

1.9 Openness to two-way FDI has hitherto been of great benefit to the EU, but we regret too that the Communication is silent over possible takeovers of strategically sensitive European businesses and companies.

1.9.1 The Commission clearly and rightly intends the EU should be an open investment environment, but it needs to give further consideration as to how best to secure and monitor this. It also needs to give its attention to the complex issue of reciprocity with third parties in the field of investment, whilst avoiding any crude one-for-one exchange approach.

1.10 The Committee consider that the inclusion of investment chapters must be sought wherever possible as part of any wider EU trade negotiations and that investment must equally be included in the monitoring role foreseen for civil society where Civil Society Fora are to be set up under such agreements.

2. Background – investment: a new EU ‘frontier’

2.1 The Commission Communication *Towards a comprehensive European international investment policy* follows the Lisbon Treaty. Article 207 of the TFEU finally brings foreign direct investment into the EU’s common commercial policy (CCP) for the first time, whilst Art. 206 provides for the EU to work towards the ‘progressive abolition of restrictions on (international trade and) foreign direct investment’. As the Communication states, ‘Investment presents itself as a new frontier’ for the CCP, but it only marks the first step in the development of such an EU policy and responses to the Communication will be important in influencing its future direction.

2.2 The Lisbon Treaty marks a key transfer of power in terms of EU external policy: all the different aspects (trade, investment, development, enlargement) are to be more closely

integrated and mutually informed - not least to ensure much greater coordination.

2.3 The purpose of this Communication is to explore ‘how the Union may develop an international investment policy that increases EU competitiveness’ contributing ‘to the objectives of smart, sustainable and inclusive growth, as set out in the Europe 2020 Strategy’, whilst maintaining an open investment environment.

2.4 The Committee however is not being asked to give its Opinion on the parallel Proposal for a Regulation that aims to establish actual transitional arrangements relating to existing BITs - a matter of considerable concern to many, although the Commission stresses it is not about to rewrite these. Member States have currently over 1 100 BITs in operation, with 147 third countries, ranging from Germany with some 120 to Ireland with none. Of the other pre-2004 Member States, only Greece and Denmark have less than 50 BITs, whereas among the newer Members, only the Czech Republic and Romania have 60 or more.

2.5 The Commission proposes to review current agreements within five years and report to Parliament and Council. Stability and legal certainty for investors has to be paramount. The Commission is however under pressure from some quarters to terminate all BITs within five years. That would have a huge immediate destabilising effect on existing investments, which would not only have serious potential effects on employment and on the companies involved, but also on social protection and prospective pensions across Europe where pension funds are heavily invested in such companies. Nevertheless that should not prevent the EU looking at existing BITs as part of an overall review of recent developments in international investment law, in investment policy and practice and in investor-state arbitration to ensure a more coherent, transparent and sustainable EU investment policy and negotiating approach in future.

2.6 The new EU competence in FDI should bring real opportunities for stronger, more consistent investment protection between member states and third countries, as well as encouraging the kind of long-term investment in developing countries that brings economic benefits such as high quality decent work, infrastructure improvement and knowledge transfer. That could also help reduce the current strong migratory pressures facing the EU.

2.7 Investment decisions are driven by market considerations, of course, but investment is often subdivided into two aspects, ‘market access’ and ‘protection’. This Communication focuses mainly on ‘protection’ but other aspects are also addressed including openness to foreign investors, and assuring such investors that they are able to ‘operate in an open, properly and fairly regulated business environment, both within and across a host country’s borders’.

2.7.1 Investment market access is already covered by both multilateral and bilateral agreements at EU level (services form a key component of the current Doha Round negotiations). It is uncertain how far 'Portfolio' investments, described by the ECJ as 'the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking' ⁽¹⁾, are included in the scope of the Communication: this needs clarification as would any possible differences in treatment.

3. Foreign Direct Investment (FDI)

3.1 Foreign Direct Investment (FDI) is described in the Communication (backed by ECJ Judgments) as being 'generally considered' to include any 'foreign investment which serves to establish lasting and direct links with the undertaking to which capital is made available in order to carry out an economic activity', or 'capital flowing from an investor based in one country to an enterprise based in another'. However there being no absolute definition gives the Commission greater flexibility as conditions may change in the future, but that could also lead to potential greater legal uncertainty: not ideal for investment. Any tighter definition of investment must strengthen not weaken investor protection, nor reduce flexibility.

3.2 Many believe that investment issues may become more important than trade, especially with regard to market access in emerging economies. FDI by EU business and industry abroad has grown exponentially in recent years – part of the gathering pace of globalisation. For most, depending on comparative costs of production, the ideal point of production is as close to the end market as possible, especially important as new markets open up, particularly in key emerging economies. This trend may be accelerated: sourcing and production can be readily switched from one country to another, as has already arisen as a result of differing national and regional levels of acceptability in the use of biotechnology.

3.2.1 Global supply and production chains too can stretch over many countries – for example a mobile phone destined for Europe may be built in China, incorporating advanced technology imported from elsewhere in East Asia. It is notable that, whilst EU imports have grown rapidly in recent years from China (nearly doubling from EUR 117bn to EUR 200bn between 2005 and 2008), the overall level of EU imports from East Asia overall has remained fairly stable in the past decade (fluctuating between 21 % and 26 %). Before Chinese WTO entry such parts were usually imported into the EU direct from elsewhere. Indeed more than half of China's exports come from foreign owned companies that have invested in China - in the electronics industry this is as high as 65 %.

3.3 FDI plays a key role in EU global business strategy. The Communication spells out the main reasons why. Production has also been moved to China by many EU companies (e.g. in textiles) in order to remain competitive, thereby enabling continued funding of crucial work at home, notably in R&D. In 2009, EU inward investment into China totalled EUR 5.3bn, whilst Chinese investment in the EU was only EUR 0.3bn ⁽²⁾. As the Communication states 'current ... research on FDI and employment shows that no measureable negative impact on aggregate employment has so far been identified in relation to outward investment' ⁽³⁾, although it does admit that 'while the aggregate balance is positive, negative effects may of course arise on a sector-specific, geographical and/or individual basis'. That is more likely to affect the lower skilled.

3.3.1 In turn major emerging economies are starting to increase their 'relative share' in global FDI flows, as is noted. The EU is the market leader for both inward and outward FDI – as witnessed by the purchase of EU companies (e.g. Corus, Volvo) by Indian and Chinese companies – alongside many household names, notably in cars, made by US and Japanese companies already operating in Europe.

3.3.2 This openness to two-way FDI has been of great benefit to the EU, as the Communication states, but it is silent over possible takeovers of strategically sensitive European businesses and companies. There has been media speculation as to a possible EU body with powers to review and block such foreign takeovers. For example, despite the 1989 EU ban on high-tech transfer, China has been looking to buy assets (and government bonds), notably in Member States with high debt levels, as well as acquiring cutting-edge advanced technology companies. Projections from the Bank of England show that China could account for 40 % of total G20 savings by 2050, compared with just 5 % for the US. Such issues are covered by the Investment Canada Act, and by the US Committee on Foreign Investment. The Commission clearly and rightly intends the EU should be an open investment environment, but it needs to give further consideration both as to how best to secure and monitor this as well as into the complex issue of reciprocity with third parties in the field of investment, whilst avoiding any mechanisms based on any crude one-for-one exchange approach.

4. Investment as part of a wider EU external policy

4.1 Building a comprehensive EU international investment policy needs to cover many aspects. Investments are driven by market considerations, but equally an open investment environment is essential if investors are to benefit, with operational flexibility and the progressive abolition of restrictions on investment, backed by sufficient protection. That should include

⁽¹⁾ ECJ Judgement, 28 September 2006.

⁽²⁾ Commission figures.

⁽³⁾ 2010 Impact of EU outward FDI, Copenhagen Economics.

provisions on national treatment, fair and equitable treatment and free transfer of funds. This is essential if trade, on which 'our prosperity depends' ⁽⁴⁾, is to be expanded with key third countries and other emerging economies.

4.2 Investment policy was one of the 'Singapore Issues', added by the EU in 1997 to the WTO agenda for the then prospective Doha Round, but later dropped as an attempted compromise at Cancun in 2003. With the need to involve developing countries, it re-emerged as a key EU objective in 'Global Europe', the Commission's 2006 Trade Communication, which covers most of the EU's current FTA negotiations. This Communication builds on that approach, and the countries and regions identified, whilst stating that this should not preclude any future multilateral initiative ⁽⁵⁾.

4.3 Canada, which has expressed an interest in including investment protection in its current economic and trade negotiations with the EU, maintains high standards of investor protection, scores highly in the World Bank 'Ease of doing business index' and in investment flows. However, apart from Singapore, many of the other countries identified in 'Global Europe' and this Communication do not. In the World Bank index, China (excluding Hong Kong) ranks 89th, Russia 120th, Brazil 129th and India 133rd out of 183. For investor protection, these countries also score poorly. Favourable regulatory environments for business here have still to be worked for. It makes sense to prioritise negotiations with such countries with strong market potential but where foreign investors need better protection.

4.3.1 Singapore and India have also requested investment protection chapters in the FTAs under negotiation with the EU. Separate 'stand-alone' investment agreements should as suggested be pursued with both China and Russia ⁽⁶⁾, where wider negotiations are proceeding extremely slowly. Russia is believed to be equally interested. In China clear barriers facing EU companies remain, not least over IPR, procurement and high technology. However Brazil steadfastly refuses to consider the inclusion of an investment chapter in any FTA with Mercosur, whereas, any agreement with countries like Venezuela remain impracticable.

4.4 As the LSE study ⁽⁷⁾ makes clear, exclusive competence should strengthen the EU's role, which the Committee

welcomes. It points out that since the 1990s NAFTA (N America) countries have shaped investment rules through more comprehensive agreements, indirectly to the detriment of EU investors (although some involve newer Member States). It adds that the enhanced bargaining power of a single EU policy 'should enable the EU to gain better access to key third country markets while protecting investors, thus enhancing Europe's international competitiveness'.

4.4.1 The Committee agrees with the LSE that the EU should seize this opportunity to update the investment agreements it negotiates. However, it should build on its own strengths rather than imitate NAFTA.

5. Social and environmental considerations in investment

5.1 Nevertheless, many fear the increased politicisation of investment negotiations that would follow, not least due to the emphasis in Article 205 of the TFEU that the CCP should be guided by the general principles of EU external action, including the promotion of democracy, the rule of law, furthering respect of human rights and contributing to sustainable economic, social and environmental development. We do not share this fear: we consider these considerations to be paramount.

5.2 Recent NAFTA BITs have included provision for protection against indirect expropriation, infrequently covered by Member States' BITs. Without it, the danger increases that disputed matters are then left to arbitration - hardly the most satisfactory way to proceed. This will be of particular interest to the Committee over the inclusion of sustainable development provisions and other regulatory measures clearly in the public interest ⁽⁸⁾ especially where these are seen by others as a way of raising barriers.

5.3 As stated, we welcome the Communication's reassurance that the EU's trade and investment policy has to be consistent with other EU policies, including 'protection of the environment, decent work, health and safety at work' - and Development. The inclusion of investment chapters must be sought wherever possible in wider EU trade negotiations.

⁽⁴⁾ Global Europe, quoted in CESE OJ C 211, 19.8.2008, p. 82.

⁽⁵⁾ The Committee's views on multilateral vs. bilateral agreements are more fully covered in CESE OJ C 211, 19.8.2008, p. 82.

⁽⁶⁾ Trade, Growth and World Affairs, chapter 2.1.

⁽⁷⁾ *The EU Approach to International Investment Policy after the Lisbon Treaty*, Study by the LSE and others, 2010.

⁽⁸⁾ Views of the Committee related to Sustainable Impact Assessments and the EU trade policy are covered by CESE OJ C 218, 23.7.2011, p. 14.

Investment protection must equally be included in the monitoring role foreseen for civil society where Civil Society Fora ⁽⁹⁾ are to be set up under such agreements.

5.4 In its response to 'Global Europe', the Committee has already called for the inclusion of the GSP Plus standards in future EU FTAs. These include the eight core ILO Conventions and major Environmental conventions. The monitoring of these aspects must be included in the investment-related remit of each CSF to be set up, not least to minimise the possibility of the host country in any dispute using environmental or social issues unfairly. However, we note that Canada has only ratified five of these ILO Conventions, Korea four and the US just two.

5.4.1 The Committee therefore welcomes the clear commitment in the Cariforum Agreement (2008) not to lower environmental or labour standards in order to attract investment, as well as a provision on behaviour of investors (Art. 72) to maintain such standards, avoid corrupt practices and maintain liaison with local communities. Investors' obligations towards sustainable development requirements need to be taken fully into account as they strive to underpin and maintain their overall competitiveness. Equally EU investors need to be safeguarded from their domestic competitors abroad being held to lower such standards.

Brussels, 20 June 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

6. Investment as a tool for development?

6.1 One critical area we consider that the Communication clearly does not go into sufficient detail is how an EU international investment policy will interact and tie in with the EU Development programme, with particular reference to the ACP and least developed countries and the outstanding Economic Partnership Agreement (EPA) negotiations. The EU's approach to Africa is in strong contrast to that of China. In its search for new sources of raw materials and outward investment China has adopted partnerships in several African countries that concentrate on investment as business, rather than as aid for development.

6.2 The EU needs to be encouraging the kind of long-term investment in developing countries that brings economic benefits such as decent work infrastructure and knowledge transfer. It should be integral to the EPA initiative, which is primarily concerned with development.

6.2.1 The Committee ⁽¹⁰⁾ has previously referred to the need for Africa's economic development 'to depend first and foremost on deepening its internal market so that it is able to develop the type of endogenous growth that would stabilise and establish the continent in the world economy. Regional integration and internal market development are the pillars and springboards that will enable Africa to participate positively in world trade'. We reiterate this with EU investment policy.

⁽⁹⁾ Provision has been made for a Civil Society Forum (CSF) in the Cariforum (EPA) and Central America (FTA) agreements to monitor the whole agreement, and that with Korea to monitor the chapter on Sustainable Development.

⁽¹⁰⁾ OJ C 317, 23.12.2009, p. 126 and OJ C 255, 22.9.2010, p. 1.

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Energy Efficiency Plan 2011'

COM(2011) 109 final

(2011/C 318/26)

Rapporteur: **Ms SIRKEINEN**

On 8 March 2011, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Energy Efficiency Plan 2011

COM(2011) 109 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 June 2011.

At its 473rd plenary session, held on 13 and 14 July 2011 (meeting of 14 July), the European Economic and Social Committee adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 As conclusions, the EESC:

- reiterates its firm support to the goal of better energy efficiency as a central part of the Europe 2020 strategy,
- points out that energy efficiency and saving are predominantly dependent on action by citizens, business and workers, their change of behaviour,
- would put more emphasis on longer term sustainable effects rather than pressing for short term achievements,
- underlines that energy saving should foster economic development, social wellbeing and quality of life,
- emphasises the responsibility of the Member States, with the EU creating a common framework,
- underlines the importance of choosing the right instruments and believes that voluntary agreements are useful while compulsory measures are needed when positive incentives do not work,
- underlines the importance of cogeneration as highly efficient energy production,
- does not support setting a binding overall target for energy efficiency but recommends that efforts are focused on achieving real results, and
- emphasises the need to ensure financial support and investment to realise the big potential in new Member States.

1.2 The EESC recommends

— to the Commission on the Energy Action Plan to:

- clarify the question of measurement of results of energy efficiency measures,
- explain better the grounds for the estimate of energy use in 2020,
- make the National Energy Efficiency Action Plans more strategic and carry out public consultation during drafting and evaluation,
- clarify the requirement on the public sector to double the pace of building renovation,
- make and publish a thorough study of white certificates,
- use targeted measures to deal with individual cases of large untapped energy efficiency potentials, also ensuring that state aid, in specific cases, can be provided,
- require ensured access to the grid for electricity from cogeneration in order to enlarge the share of cogeneration in heat and power production.

— on measures to enhance behavioural change to:

- put the energy user in the centre,
- enhance the role of the public sector as an example on energy efficiency to be followed by businesses and households,

- study people's behaviour and segment information and awareness measures to different groups of users,
- ensure that users benefit from action,
- provide, when necessary, carefully designed effective incentives even modest ones can bring results,
- both builders and governments to ensure that additional investments in buildings are reflected in value,
- increase and adapt education and training in the building sector,
- promote training for public administrations in energy efficiency, including green public procurement,
- the Commission to study problems and if needed revise provisions on energy performance certificates for buildings and the new system of eco-labelling of appliances,
- the Commission to evaluate the effects on energy users of the rolling out of smart metering and propose additional measures to achieve real benefits,
- continue and develop well functioning national long term voluntary agreement systems and apply them also to the public sector,
- truly involve all stakeholders – citizens, enterprises, workers.

2. Introduction

2.1 Energy efficiency is at the heart of the Europe 2020 strategy. It **contributes to all three key objectives of energy policy** – security of supply, competitiveness and the environment/combating climate change. The EESC has continuously supported the goal of better energy efficiency and has in many opinions given its views on related measures.

2.2 **This opinion covers two initiatives.** The EESC decided to prepare in 2011 an own-initiative opinion on energy efficiency, concentrating on changing behaviour and ways to achieve results. When the Commission presented its new Energy Efficiency Plan 2011 in March 2011 it was decided to present the Committee's views on it in the same opinion.

2.2.1 Hence in this opinion the conclusions and recommendations as well as chapters 2. 'Introduction' and 4. 'General comments on energy efficiency' are common to both parts. Chapters 3. 'The gist of the Communication on the Energy Efficiency Plan 2011' and 5. 'Specific Comments' refer to the Communication on the Energy Efficiency Plan, while chapter 6. on 'Measures to enhance behavioural change' refers to the own initiative of the Committee. This last chapter is primarily based on findings from a hearing organised on 18 May 2011.

2.3 The gross inland **energy consumption** (minus non-energy use) was in 2007 projected to 1 842 Mtoe, equalling the saving target to 368 Mtoe. Recent calculations give a projected consumption of 1 678 Mtoe in 2020. Latest statistics from 2008 show an EU gross inland energy consumption of 1 685 Mtoe.

2.4 The final energy consumption in 2008 was 1 169 Mtoe. 25 % of this energy was consumed in the residential sector and 12 % in services. In households 67 % of energy consumption goes to space heating, 15 % to lighting and appliances, 14 % to water heating and 4 % to cooking. Transport contributes to 32 % of energy use, industry to 27 %, and other uses 4 %.

3. The gist of the Communication on the Energy Efficiency Plan 2011

3.1 **The earlier Energy Efficiency Action Plan** of 2006 and subsequent legal and other measures have been successful drivers of better energy efficiency. They were, however, not designed to reach a target of saving 20 % of EU's primary energy use by 2020, which was set later. According to estimates the EU is on the path to reach half of this target.

3.2 The new plan is part of the Europe 2020 **flagship Initiative for a Resource Efficient Europe**. The aim is to reach the 20 % savings target in 2020. The plan presents the Commissions aims, which will be realised by legal and other proposals later in 2011, first by revising the Energy Services and CHP Directives ⁽¹⁾.

3.3 **Fully implemented** the existing and new measures have, according to the Commission, a potential to savings of up to EUR 1 000 per year per household, create up to two million jobs and reduce greenhouse gas emission by 740 mill tons, as well as improve Europe's industrial competitiveness.

3.4 The greatest **saving potential** lies in buildings. The focus is on accelerating renovation of public and private buildings and improving the performance of components and appliances:

- A binding target of doubling the rate of renovation of public buildings to meet the best 10 % of energy efficiency and from 2019 onwards all new buildings to reach a 'nearly zero-energy' performance.
- Enhancing energy performance contracting and the Covenant of Mayors.

⁽¹⁾ OJ L 114, 27.4.2006, p. 64 and OJ L 52, 21.2.2004, p. 50.

3.5 To decrease energy consumption **in homes**:

- Promoting the use of district heating and cooling.
- Legal provisions to deal with the problem of split incentives (owner/tenant).
- Supporting training to meet the doubling need of qualified people involved in refurbishment.
- Support to overcome market obstacles for Energy Service Companies (ESCOs).

3.6 To enhance energy efficiency **in the energy generation industry** (30 % of primary energy use):

- A binding requirement to achieve BAT levels of energy efficiency for new installations and those to have their permits renewed.
- Mandatory combined heat and power (CHP) systems for new thermal power installations where there is sufficient potential demand for heating or cooling and priority access to distribution systems for electricity from CHP.
- National grid regulators to take energy efficiency better into account in their decisions and monitoring.
- All Member States to establish a national energy saving obligation scheme (white certificates?).

3.7 New measures **for manufacturing industry**:

- Encouraging Member States to provide SMEs with information and appropriate incentives (tax, financing).
- Mandatory regular energy audits in large companies and incentives to introduce energy management systems.
- Ecodesign requirements for standard industrial equipment like motors, pumps, compressed air, drying, melting, casting, distillation and furnaces.
- Encouraging voluntary agreements based on clear targets, methodologies, measurement and monitoring.

3.8 The Commission will continue to foster development, testing and deployment of new energy-efficient **technologies**.

3.9 **Financing** to enhance energy efficiency, in order to overcome market and regulatory failures, is primarily a national responsibility. Complementing this, the EU supports energy efficiency through Cohesion Policy programmes, the Intelligent Energy Europe Programme, intermediated finance, the European Economic Recovery Programme and the FP for R&T&D. The Commission will analyse further options when preparing the next financial framework.

3.10 **For consumers** the Commission will study and consult on best solutions to bring about behavioural change. In addition:

- Stricter consumption standards for several household appliances.
- Facilitating market uptake of more efficient building components, like ecodesign or labelling frameworks for windows as well as ecodesign or labelling of whole systems.
- Better information on energy consumption through bills etc., implementation of the obligation to roll out smart meters for at least 80 % of consumers by 2020 (provided this is supported by a favourable national cost-benefit analysis), developing new intelligent systems for energy saving (with due regard for personal data).
- Energy labels and standards to reflect 'smart grid readiness' of appliances and buildings.

3.11 **Transport**, even with the fastest growing energy use, is not dealt with in this plan, in waiting for the upcoming White Paper on Transport (published in April 2011).

3.12 The **National Energy Efficiency Action Plans** (NEEAPs) shall be expanded to cover the whole energy chain. Reporting and monitoring will be included in the ex-ante policy coordination of the Europe 2020 strategy – the European Semester.

3.13 The Commission does not as yet propose **binding national targets**. It will assess the development in 2013 and, if it is unlikely for the 20 % target to be achieved, it will propose binding national targets. As to sectoral targets, the plan includes some, as described above.

4. General comments on energy efficiency

4.1 **The EESC welcomes** the Commissions proposal for a new Energy Efficiency Plan, which has finally been presented after a long delay. The Committee supports the aim of the Communication, but has some comments and wishes for clarifications, presented in this opinion. The EESC looks forward to give its detailed views on the legislative and other proposals implementing this plan. Energy efficiency and saving are predominantly dependent on actions of citizens, business and workers, which makes close consultation and participation of civil society exceptionally important.

4.2 Under **present economic conditions**, with restrained public finances, high unemployment and a widespread lack of sufficient confidence to make investments, this task is not easy, even if it could bring benefits in a relatively short time. Most important is to ensure a profound, sustainable, long term development towards much better energy efficiency. Pressing for short term results may not lead to sustainable results.

4.3 The **choice of measures** is crucial in order to achieve real results. The EESC believes, as stated in the Opinion on energy efficiency in 2008 ⁽²⁾, that voluntary agreements with national operators are useful, but it should be clear from any agreements approved that failure to meet targets will result in the imposition of compulsory measures. Regulation is naturally needed in many cases, but only when positive incentives do not work. Social and civil dialogue must be employed whenever possible and an additional administrative burden for all, and in particular SMEs must be avoided.

4.4 The situation is particularly paradoxical in the **newer Member States**, where the potential for better energy efficiency is biggest but economic resources weakest. For example there is an urgent need to repair leaking district heating systems and to ensure high quality in the building and appliances sectors. Governments have to act in the general and longer term interest. Better use should be made of structural funds.

4.5 When discussing **energy efficiency and saving**, it is helpful to keep some basic features in mind.

4.5.1 Better energy **efficiency means** less energy input per unit of output. This is mainly achieved by better technologies. Investing in a new technological solution gives lasting effects over its lifespan. Not only technology development but also deployment is crucial.

4.5.2 In spite of better energy efficiency energy **consumption can still grow** even in times of economic constraints, due to higher income, increasing number of households with better comfort levels and more home appliances, more travel etc.

4.5.3 **Energy saving**, on the other hand, means decreasing energy use mainly through change in behaviour. This must be a key target for action. To give real results change should be permanent, but the 'rebound effect' easily outplays this. The EESC stresses the need to pay more and closer attention to motives and patterns of human behaviour. What kinds of incentives really do influence people to change their behaviour? (see also chapter 6).

4.5.4 Energy saving can also be the result of **decreased economic activity**, which we could recently witness during the financial crises. Enhancing energy saving should foster economic development, social wellbeing and quality of life. The important target is to disconnect economic growth from growth in energy use.

4.5.5 There is also a need to assess how the **costs** of energy efficiency measures are passed on **to consumers**, and mitigate these repercussions to ensure that it does not become more difficult for consumers to access energy and to prevent energy exclusion from becoming any worse. It is of outmost importance to strike a better balance between the costs and benefits of energy efficiency, without jeopardising consumer access to energy and the universal nature thereof.

4.6 A thorny issue **is the measurement of results** of energy efficiency measures. It is surprising that the Commission does not mention this at all, not even in the Impact Assessment of the Plan. In many cases the measures as such, and their theoretical potential, are registered as results. The real aggregated results, as a change in the projected use of energy, appear with a considerable time lag. On top of that we have the time lag of statistics - presently the newest are from 2008.

4.7 The **grounds for the estimate** that the EU would be on track to reach half of its target by 2020 also remains somewhat unclear. Obviously this is based on several sources and calculations, taking into account the recent economic downturn. But is this an average result, or the most optimistic or pessimistic scenario?

4.8 The EESC sees energy efficiency and saving predominantly as a **responsibility of the Member States**, due to the vast potential at local level, defined by local circumstances and traditions. The Committee strongly underlines the importance of thorough and ambitious NEEAPs. It emphasises that these plans should be more strategic than in the past, and that public consultations should be carried out during the drafting and evaluation processes. The Committee welcomes the proposed new approach to reporting and monitoring. Member States should not deviate from this responsibility. The Commission should help to strengthen the ownership of the Member States and to create a common framework for these activities.

⁽²⁾ OJ C 77, 31.03.2009, p. 54.

4.9 The Committee agrees with the Commission's view on **the role of the EU** in this context, derived from Article 194(1) of the Treaty on the Functioning of the Union. This is, briefly: avoiding internal market distortions; common framework for mechanisms but leaving the Member States to set concrete levels to be met in coordination with the EU level; platform for exchanging best practices and capacity building; financing through EU instruments; and promoting the EU internationally.

4.10 It is evident that all potential for better energy efficiency needs to be realised. In order to get tangible results within a reasonable timeframe without high costs and thereby motivate actors, measures should be first directed to those areas with the **most cost-effective** and large potential.

4.11 **As to proposed measures**, the Committee supports the rolling out of Ecodesign and labelling requirements, but first the functioning of the new labelling system needs to be evaluated (see 6.8). It also supports measures to overcome the upfront financing obstacles to building renovation and refurbishing. The Committee also recommends examination of those sectors where long-term Voluntary Agreements can be used effectively.

4.11.1 All measures have to be applied with careful view to their cost effectiveness and differing circumstances. Neither households and industries nor the public sector should be unduly burdened. Higher energy prices and related costs do in theory lead to less energy use, but in practice they lead to a risk of energy poverty, as price elasticity of households is known to be low. Also, the competitiveness of industry and jobs are put at risk. This seems self evident, but obviously needs to be reiterated, given some of the Commission's proposals. These will be commented upon in the next chapter.

4.11.2 The Committee would reiterate its concern about the impact of some measures on the costs for and possible repercussions on consumers. It is essential that policy focuses on the most long term and sustainable solution to fuel poverty, namely radical improvement to the energy efficiency standards of housing, particularly that occupied by low income and vulnerable households.

4.11.3 As the Commission points out, there are effective programmes in place in many Member States, some having been successfully operated for several years or even decades. In the view of the Committee, it is clearly preferential to continue and, where appropriate, strengthen these schemes, instead of deeming them outdated and giving support to new measures only.

5. Specific comments

5.1 The Committee agrees with giving the **public sector** the role of a frontrunner and example to be followed by businesses

and households. However, the requirement to double the pace of building renovation could prove too burdensome in spite of its positive effects. Also a clearer definition of what is a public sector building is needed.

5.2 The measures to enhance energy efficiency and saving in **households** are to be supported. The EESC has in 2008 ⁽³⁾ presented detailed recommendations on measures, in particular tax incentives, for energy efficiency in buildings. In this context the Committee repeats the importance of better understanding human behaviour to design best incentives, which may not always be economic (see also 6.5 and 6.5.1).

5.3 The goal of enhancing better efficiency in **generation of heat and electricity** is supported by the Committee, but some of the proposed measures could be too heavy and inefficient.

5.3.1 The energy business should as such include sufficient economic **incentives for utility companies** to invest in the most energy efficient technologies available and applicable and thereby avoid massive public intervention. The newest technological breakthroughs, which are not yet ripe and very costly, i.e. not in reality available on the market, should receive support for further development before take-up by users.

5.3.2 The Committee underlines the role of cogeneration as highly efficient production of heat and power. **Cogeneration** is to great benefit applied widely in Europe, with some cost-effective potential untapped. District heating and cooling still have a big potential in Europe, but obligations should be applied prudently as district heating and cooling systems are costly investments, not to be made obsolete in a few years. Ensured access to networks for electricity from cogeneration can be a useful measure to support a cost-effective expansion of central and decentral cogeneration systems.

5.4 The Committee agrees with the Commission that energy efficiency is a **promising business sector**. Its development should, however, be approached by enhancing demand, not primarily pushing supply. Utilities should certainly be obliged to provide much better information, including on bills, than is often the case presently. Already in its opinion on the Energy Services Directive ⁽⁴⁾ the Committee was doubtful about putting energy saving obligations on utilities as this goes against business logic.

5.4.1 On **white certificates**, the Committee proposes that the Commission makes a thorough study of existing schemes, taking into account the results where they have been applied, analysing their overall impacts and feasibility with the internal market and other existing legislation.

⁽³⁾ OJ C 162, 25.6.2008, p. 62.

⁽⁴⁾ OJ C 120, 20.5.2005, p. 115.

5.5 The Commission notes that progress in energy efficiency has been greatest in **manufacturing industry** – 30 % in 20 years. In addition EU-level measures, like the ETS, already target energy intensive industries. It is unclear what the Commission means by big industries – big energy users e.g. energy intensive industries, or any big companies? In any case, the Committee strongly supports the measures proposed by the Commission to enhance energy efficiency in SMEs.

5.5.1 There is always room for further improvement, and to realise this, the Committee additionally recommends the use of long term Voluntary Agreements. In some cases unusually large untapped efficiency potentials surely occur. If for instance a small part of a sector has not acted effectively on its energy efficiency potential, this may however not justify new mandatory measures for whole sectors. The cases of big untapped potentials of energy efficiency should be addressed more directly and selectively. Energy audits and management systems are widely and increasingly in use and normally part of obligations under Voluntary Agreements. In this context it is important that the possibility to grant state aid prevails, while it is prohibited by EU rules to grant aid to measures that are mandatory.

5.5.2 **Extending ecodesign** requirements to standard industrial equipment is worth exploring, but neither widespread use of tailor-made solutions nor further innovativeness should be hampered.

5.6 The Committee agrees with the Commission on the large untapped potentials in the **use of ICT** for energy saving purposes, like smart metering and vast applications linked to them. This is a promising area for European innovation, and it should be boldly developed in cooperation between different relevant parties.

5.7 The Committee has previously expressed hesitance about **binding overall targets** for energy efficiency, and recommended exploring the feasibility of sectoral targets on a case-by-case basis. The Committee appreciates that the Commission has so far chosen this route. All efforts should be focused on measures to achieve real results.

5.8 The Committee regrets that the Communication does not take up energy efficiency in **services**, like retail, leisure and sports, except for that in buildings. Also, it only mentions but does not develop the issue of the **external dimension** of energy efficiency. The Committee has presented recommendations on EU's external energy policy, including efficiency, in two opinions in recent years (EESC opinion on *The external dimension of the EU's energy policy*, OJ C 182, 4.8.2009, p. 8 and *Energy supply: what kind of neighbourhood policy?* (CESE 541/2011)).

6. Measures to enhance behavioural change

6.1 The **supply side** of energy has been the target of many policy measures to enhance energy efficiency, and even more so with the Commission's new plan to address the whole energy chain. Support to technical development, minimum performance standards as well as labelling and certification requirements are put in place, and more are planned at EU and national level. Still these alone are not enough to achieve real results, because so much depends on the behaviour of citizens and enterprises. Therefore, on its own initiative, the Committee wants to direct attention to the **demand side** and practical experiences of measures to change behaviour.

6.1.1 To this end the Committee arranged a **hearing** on 18 May 2011. The programme and presentations are to be found on the website⁽⁵⁾. This chapter is based on the presentations and discussion at this hearing.

6.2 There is **much potential** for energy saving even **without any investments**. In households, for example, one can simply switch off lights in empty rooms, lower the room temperature, not leave appliances on standby, use the car less and drive more economically etc. In enterprises, audit under voluntary agreements reveal many measures of the same kind.

6.2.1 A good example of successful voluntary action is the EESC itself. A recent EMAS review of the buildings of the EESC and the CoR shows that from 2008 to December 2010 the consumption of electricity has decreased by 10.6 % and of gas by 30.3 %.

6.3 **Information and awareness** are the first steps to accomplish these simple measures, as well as others that require some investment. Experience from, amongst many others a Danish utility SEAS-NVE, shows that in order to be effective, information must be segmented to different user values, preferences and needs. For this a deeper understanding of human behaviour is needed, with behavioural psychology as an important tool.

6.3.1 To better navigate in the abundance of information energy users need help to **compare** features of appliances and measures. One good example of such an effort is the Topten website by WWF and others, available all over Europe.

6.3.2 'Disinterest – precontemplation – contemplation – preparation – action – maintenance' are in the experience of the Transition Town Movement the **citizens steps** to results in energy saving. And action requires awareness, but this alone is not enough.

⁽⁵⁾ <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-energy-efficiency-changing-behaviour>.

6.3.3 According to a recent **study by the OECD**, less expensive equipment is the top motivator to reduce energy consumption at home, while more practical information and belief in environmental benefits scored much lower.

6.4 Policy makers must thus **not rely only on information and awareness measures** nor on environmental policy messages to bring results on energy efficiency and saving. Consumers as well as other energy users need to benefit from action. A smaller energy bill can be such a benefit, if it is immediate. Otherwise incentives are needed.

6.5 VAT reductions, guarantees, direct subsidies etc. are possible **economic incentives**. These are needed, but should be applied with great care, in particular under present constraints on public finances. For instance the latest, very expensive technology should rather receive support for further development towards a lower price than incentives to users to invest in it.

6.5.1 The EU **Structural Funds** could make a bigger and more effective contribution, in particular in the new Member States, where the potential is big and support badly needed. The Commission should study the reasons for low use of available resources, and as appropriate, revise the rules for financing. It seems that in many cases the share of EU funding is too low to act as an incentive.

6.6 Even very **modest incentives** can be effective. Positive feedback in the form of a letter of recognition or doing well in a local competition may be enough. Social pressure in neighbourhoods have brought good results. Many times a recommendation from a friend is decisive. Social media could be used to enforce these kinds of features. Phenomena like this, also called nudges, need to be further studied and developed.

6.7 In **the building sector**, the energy efficiency of new buildings is a matter for regulation. A problem to be solved in this context, too, is the issue of split incentives (owner/tenant).

6.7.1 In the old **building stock**, measures to enhance energy efficiency are met by doubts about the financial effects of investment: The results are still influenced by behaviour and the value of the investment on the market is unclear. Builders should meet this by, for instance, high performance guarantees. Governments should, in addition to awareness measures, follow a stable policy line and provide financial incentives.

6.7.2 Improvements should be free to **low income households** and not funded by loans since many low-income households are reluctant or cannot afford to take out loans. It is often more cost effective to improve homes on a street by street, area by area basis.

6.7.3 **Certification of the energy performance of buildings** is a positive measure – in theory. In practice many problems have occurred, from unskilled auditors to no real value for the certificates on the market. Tests have given highly differing results by different auditors for the same building. The Energy Performance of Buildings Directive leaves open the options to the Member States on whether to use energy demand or energy use as calculation base, so does the related standard EN 15217. A European wide energy performance certificate for buildings based on calculated energy demand and a revision of EN 15217 are needed. The Commission should take a serious look at the certification requirements and system, and at least introduce common criteria for audits. A harmonised calculation method for energy consumption in buildings on the basis of reference buildings for different climatic zones will be a good solution.

6.7.4 Both for new buildings and renovation of old ones, the availability of **skilled** planning, projecting and labour are essential and represent a bottleneck. Effective measures are urgent to increase education and training of all involved, from architects and district planners to workers, and to adapt the curricula to energy efficiency needs.

6.8 For **household appliances** eco-labelling is an important measure to inform the consumer. This has given good results and could do so in the future, even if its biggest potential has probably been tapped by now. However, the renewed system has met criticism. It is not clear enough and can lead to misinterpretations (e.g. A+ can be displayed as best performance level). Also, its design has not been thoroughly tested by consumers. The Commission should study the situation and make necessary adjustments.

6.9 **Smart/distant metering** of energy use is spreading quickly, in accordance with EU requirements. This clearly increases the productivity of energy companies. But its benefit to households, who mainly pay for it directly or indirectly, is unclear. The meter alone does not do much. In addition energy use should be easily and visibly displayed, to which many innovative solutions are provided and under development by the IT sector. Furthermore an easy way to adapt one's energy use should be provided. (e.g. let the energy company interrupt distribution at certain hours etc.) For the time being, the Commission should analyse the use of smart meters in the Member States and their effects on household behaviour and, if needed, amend present provisions or propose further measures, with due regard for personal data.

6.10 In industry the use of **long term Voluntary Agreements** has shown convincing positive results in several Member States, for example Finland. Incentives are normally connected to these systems. In the Finnish experience, with very modest incentives, a motivating factor is the comprehension by participants that in case of failure regulation is the alternative. Voluntary agreements could be an effective measure also in the public sector, as is shown by recent developments in Finland. Sectoral agreements at EU level have delivered some results, but not always worked as expected. This is no ground for a negative appreciation of existing and well functioning national long term agreements.

6.11 All in all, energy users need to change their behaviour fundamentally and permanently. Citizens, as consumers, workers and voters, are key. Projects can only be successful when **all stakeholders**, not only authorities and enterprises but also trade unions and users are **fully involved**.

Brussels, 14 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals (recast)’

COM(2011) 245 final — 2011/0105 COD

(2011/C 318/27)

On 10 May 2011 the European Parliament and on 27 May 2011 the Council decided to consult the European Economic and Social Committee, under Article 192, paragraph 1 of the Treaty and Article 304 on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council concerning the export and import of dangerous chemicals (recast)

COM(2011) 245 final — 2011/0105 COD.

Since the Committee endorses the contents of the proposal and has already set out its views on the subject in its earlier opinions CESE 493/2008, adopted on 12 March 2008 (*) and CESE 799/2007, adopted on 30 May 2007 (**), it decided, at its 473rd plenary session of 13 and 14 July 2011 (meeting of 13 July 2011), by 137 votes with 10 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned documents.

Brussels, 13 July 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON

(*) EESC opinion on the proposal for a Regulation on classification, labelling and packaging of substances and mixtures, OJ C 204, p. 47 of 9 August 2008

(**) EESC opinion on the proposal for a Regulation concerning the export and import of dangerous chemicals, OJ C 175, p. 40 of 27 July 2007

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