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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

477TH PLENARY SESSION HELD ON 18 AND 19 JANUARY 2012

Opinion of the European Economic and Social Committee on the 'Post-secondary vocational education and training as an attractive alternative to higher education' (own-initiative opinion)

(2012/C 68/01)

Rapporteur: **Ms Vladimíra DRBALOVÁ**

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

Post-secondary Vocational Education and Training as an Attractive Alternative to Higher Education.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 19 January 2012), the European Economic and Social Committee adopted the following opinion by 208 votes to 7 with 10 abstentions.

1. Conclusions and proposals

Recommendations for the European Commission

1.1 The Committee calls upon the Commission to encourage Member States to achieve the long-term and short-term objectives set out in the Bruges Communiqué and to **improve the quality and efficiency of VET so as to enhance its attractiveness and relevance**. The social partners at all levels must continue to play an active role in the Copenhagen process and help attain the short-term deliverables.

1.2 The Committee urges the Commission to bring both processes – Bologna and Copenhagen – together in an integrated approach. This synergy will help to provide people with the skills they need to reach their potential in terms of development and employability.

1.3 The Committee considers that the Commission has to be a platform for statistics-based evidence monitoring the situation

in the different Member States and should create a platform to allow the exchange of good practices.

1.4 The Committee welcomes the Commission's endeavour to implement new instruments and launch new initiatives. However, there is an urgent need, first and foremost, to assess what has already been developed, to avoid duplication of tools and to make sure that existing programmes and policies are properly and fully implemented.

Recommendations for the Member States

1.5 To set the number of young people getting into university as the only indicator is misleading when formulating education policy as it is only partially relevant to the needs of the labour markets in terms of skills. Education and training systems need to be balanced.

1.6 To implement the Bruges Communiqué and Copenhagen Process effectively and to help achieve the EU headline target of 40 % completion of tertiary or equivalent education, **which includes a higher level of VET.**

1.7 To develop financial and non-financial incentives both for companies, especially SMEs and micro and craft-type companies, in order to increase the attractiveness of both IVET and CVET and mobilise businesses, and for education institutions to cooperate with business.

1.8 To engage in comprehensive promotional activities with a view to systematically raising social recognition of post-secondary vocational education.

1.9 To provide counselling services that are more effective and adapted to the needs of the labour market and of young people, with individual counselling for persons with disabilities. There is an urgent need to expand the mindsets of young people, their families and counsellors who tend to consider that attending university is the key to employment.

Recommendations for business organisations

1.10 Business organisations in cooperation with other social partners should actively participate in advice and guidance systems since they are the relevant structures for providing information on VET and labour market opportunities. They should assist learning providers in developing work-integrated learning and new methods.

1.11 Industrial sectors and companies have to provide more places for apprenticeships and possibilities for workplace learning and encourage employees to pass on knowledge and experience to apprentices and workplace learners or temporary VET teachers.

Recommendations for educational institutions

1.12 To develop their trust in creating links with companies and recognise the need for constructive cooperation and the value of experience gathered in external environments.

1.13 To cooperate more closely with sectors of industry and further develop wider range of methods of work-integrated learning, a more flexible attitude towards VET is needed.

1.14 The quality of teachers and trainers needs to be guaranteed. They should be familiar with the changing needs of the workplace. Traineeships for teachers and trainers in enterprises should be encouraged.

Recommendations for the social partners

1.15 The Committee calls on the social partners' organisations to meet their responsibilities, to be pro-active in the process using all methods and tools for improving the attractiveness of post-secondary vocational education and training (sectoral job and skills councils etc.).

1.16 Social partners at all levels should properly carry out the commitments resulting from their joint working programmes and contribute towards the process of delivering and implementing all EU VET-related instruments at national level.

Recommendations for individuals and Civil society organisations

1.17 People should be made aware that higher education is not necessarily a guarantee of employment and effective alternatives should be considered. They must therefore recognise their responsibility in making informed study and training choices. Ultimately, they should be confident enough to commit themselves to post-secondary vocational education.

1.18 The preferences of students and the expectations of their families should be set against employers' needs. In future, they could use the newly-developed EU skills Panorama and its predictions of skills supply and labour market needs.

2. European political framework

2.1 In June 2010, the EU Spring Summit adopted its new strategy for growth and employment entitled Europe 2020, underpinned by seven flagship initiatives and strategic documents to strengthen the EU internal market (Single Market Act).

2.2 The key flagship initiative the Agenda for new skills and jobs, which focuses on equipping people with the right skills for employment and matching skills supply with labour market needs, create a strong synergy with other initiatives (Industrial policy, Digital Agenda, Innovation Union, Youth on the Move, European Poverty Platform etc.).

2.3 The Europe 2020 objectives will be underpinned by the proposed **Multannual Financial Framework** (MFF) ⁽¹⁾. The budget for Europe 2020 will invest in Europe's brains by increasing the amounts allocated to education, training, research and innovation.

⁽¹⁾ A Budget for Europe 2020 COM(2011) 500 final Part I and II from 29.6.2011.

3. Vocational education and training - current developments and challenges

3.1 Development of the European labour markets is currently driven by financial and economic crises, globalisation, demographic pressures, new technologies and many other factors.

3.2 The five horizontal objectives set out by the Europe 2020 Strategy include:

— An objective of a 75 % employment rate for 20-64 year-olds.

— An educational attainment target tackling the issue of early school leavers by reducing the drop-out rate from the current 15 % to 10 %.

— The desire to increase the proportion of the population aged 30-34 having completed tertiary or equivalent education from 31 % to at least 40 % in 2020.

3.3 The Copenhagen Declaration of 29 and 30 November 2002 launched the European strategy for enhanced cooperation in Vocational Education and Training (VET), commonly referred to as the '**Copenhagen Process**'.

3.4 A strategic framework for European cooperation in education and training (VET 2020) was adopted by the Council on 12 May 2009.

3.5 The EC Communication 'A new impetus for European cooperation in Vocational Education and Training (VET) to support the Europe 2020 strategy' ⁽²⁾ outlines key elements to be pursued to relaunch the Copenhagen process and highlight the key role of VET in lifelong learning and mobility.

3.6 A strong commitment was written into the Bruges Communiqué adopted in December 2010 by the EU Ministers for Vocational Education and Training and European social partners. The Communiqué reviews and sets out the following priorities for EU cooperation in VET up to 2020:

— Development of post-secondary VET and VET at higher EQF levels,

— Permeability and open pathways between VET and HE,

— Policy document on the role of vocational excellence for smart and sustainable growth.

3.7 To build on the commitment from Bruges the Commission is developing an Agenda for excellence in vocational education and training focusing on both Initial and Continuing VET. The process should be finalised by the Council conclusions (end of 2012).

4. Evidence base for the process of enhanced cooperation in VET

4.1 Cedefop's forecasts of future skills needs show a greater demand for medium and high-level qualifications up to 2020, and a decreasing demand for low-skilled workers. However, the European population of working age still currently includes 78 million low-skilled persons.

4.2 Cedefop's fourth report on vocational education and training research in Europe entitled Modernising vocational education and training provides an evidence base for the process of enhanced cooperation in VET. It also sets priorities for reforming VET aimed at contributing to the EU's strategy for growth and employment.

4.3 Modernising VET is urgent with regard to increased global competition, an ageing population, pressures on the labour market and the objective of aiming to improve social cohesion in Europe.

4.4 Cedefop also addresses the question of how to improve the image and attractiveness of VET. The general impression emerging from the analysis of indicators related to VET attractiveness in the EU is negative. Some research has made it possible to identify the main groups of determinants influencing the attractiveness of education pathways:

a) Schooling content and context: selectivity of pathways, reputation of institutions, tracking or programmes,

b) Students' educational and labour-market prospects: access to further studies (in particular at tertiary level), employment prospects,

c) Economic factors: financial aid or tax incentives or tuition fees.

⁽²⁾ EC Communication COM(2010) 296 final.

4.5 In its publication *A bridge to the future*, Cedefop also focuses on the progress made in developing and implementing common European principles (guidance and counselling, identification and validation of non-formal and informal learning) and instruments ⁽³⁾ (EQF, ECVET, EQAVET, Europass). Those principles and instruments aim to help enhance the mobility of employees, learners and trainers between the various education and training systems and between countries. Their development and implementation encourage the evolution in learning outcomes in all types and levels of education and training to support lifelong learning.

4.6 The new Cedefop research paper ⁽⁴⁾ addressing vocational education and training at higher qualification levels in 13 countries and six sectors shows that views and conceptions of VET and EQF at levels 6 to 8 are influenced by the national contexts.

4.7 The European Training Foundation (ETF) highlights a strong need to provide information on the various professional sectors and a need for evidence-based policies to link the education sector with the professional sectors. To increase the attractiveness of post-secondary VET, the ETF recommends that:

- degrees be recognised through a close partnership with the corporate world;
- post-secondary VET (or higher vocational education) be integrated into the tertiary education system;
- education options and stepping stones to lifelong learning be created;
- international partnerships for higher vocational education be created;
- there should be an educational mix of 20 % lectures to 40 % tutorials and 40 % workshops;
- teaching staff should comprise both academic staff and experts from the corporate world.

⁽³⁾ EQF (European qualification framework), ECVET (European credit system for VET), EQAVET (European quality assurance reference framework for VET), EUROPASS (a portfolio of documents to support job and geographical mobility).

⁽⁴⁾ Cedefop Research Paper No. 15 Vocational education and training at higher qualification levels.

4.8 A study commissioned by the EC focusing on the identification and analysis of future skills needs in micro and craft-type companies ⁽⁵⁾ recommends that training programmes should integrate future trends and developments in skills needs more than is the case at present. More work-based learning programmes and means of recognising practical knowledge gained informally need to be established, including at European level.

4.9 The OECD informal ministerial meeting on VET which took place in Copenhagen in January 2007 recognised the dramatically increased profile of vocational education and training and launched an analytical work leading to a final report in 2010, 'Learning for jobs' ⁽⁶⁾. A follow-up policy review focusing on post-secondary vocational education and training 'Skills beyond School' was launched at the end of 2010.

5. VET from the labour market viewpoint

5.1 Demographic changes, combine with a forecast need for more skilled workers, mean that Europe is faced with a shrinking workforce and labour shortages in some sectors despite the economic crisis.

5.2 The structural shortage of skilled labour in the EU is a fact. For European businesses, the immediate consequences of these shortages are missed opportunities for growth and increased productivity. The lack of skilled labour will be one of the main obstacles to economic growth in coming years.

5.3 The greening of jobs and the development of the 'silver economy', including social and health care services, generates opportunities to create new, decent jobs for all working age groups as well as to improve the competitiveness and growth potential of the entire European economy. It also represents a higher demand for new professions, updated and upgraded skills.

5.4 Vocational education and training can contribute to achieving the above-mentioned Europe 2020 head target: 1) by providing opportunities to progress from vocational education and training to specialist training and higher education, 2) by developing VET at higher levels of the EQF based on sound VET systems at secondary level, 3) by contributing to the provision of adequate arrangements for the validation and accreditation of non-formal learning outcomes at all levels and 4) by developing work-linked training which involves adults in ensuring the success of young people.

⁽⁵⁾ Final report Identification of future skills needs in micro and craft (-type) enterprises up to 2020, FBH (Forschungsinstitute für Berufsbildung in Handwerk an der Universität zu Köln, Januar 2011).

⁽⁶⁾ OECD review on Learning for Jobs project (focused on VET), <http://www.oecd.org/dataoecd/41/63/43897561.pdf>.

5.5 To enhance the competitiveness of European businesses and companies, it is crucial that Europe has a mobile labour force equipped with a set of skills and abilities that corresponds to current labour market demands. Businesses need transparent and comparable qualifications, irrespective of the way in which skills have been acquired.

5.6 Building credit and qualification systems on the actual outcome from learning will make it easier to assess what abilities an individual possesses. This will contribute to a better matching of supply and demand in European labour markets. Employers do not reward qualifications, they reward performance. Likewise, the education system should increasingly reward the actual outcome from studies rather than for instance the number of weeks a course runs.

5.7 Opportunities to progress from VET to Higher Education (HE) are important and could be facilitated by improved transparency regarding the outcome. EQF could prove to be a useful tool for increasing permeability between VET and the HE credit system, since it is working as a converter of learning achievements into units at the corresponding qualification level.

5.8 Post-secondary VET cannot be placed in a grey area between upper secondary VET and higher education. Post-secondary VET is strategically important within the EU 2020 Strategy as a way of making VET a more attractive career option for young people and supporting upskilling and higher levels of attainment. From the perspective of small and medium companies in Europe that some progress has been achieved towards making VET and higher VET more relevant and attractive. Nevertheless, more needs to be done at all levels – European, national, regional, local and sectoral – to diversify VET provision of at higher levels, improve permeability, reform VET systems and create financial incentives, in order to stimulate both companies and individuals regarding the provision and take-up of higher VET.

5.9 Quality and excellence in VET is decisive for making VET more attractive. However, high quality VET is not cheap and SMEs have specific challenges: 1) they are the largest providers of IVET, 2) they need to update the skills of all their workers, not just the best qualified. Regarding the latter, 'on the job training' is crucial for upgrading skills in SMEs.

5.10 Cross-border learning mobility is a key area which business has long supported, notably for young persons in VET and apprenticeships. Europe currently still has an insufficient level of mobility as regards VET employees, learners and teachers. Their mobility can only be improved by having a good knowledge of at least one foreign language.

6. What are the reasons for the lack of attractiveness of VET, and particularly post-secondary VET

6.1 The term higher education is frequently used as a synonym for academically-oriented, university education. Higher education is often contrasted with vocational training – with the latter understood as being at a lower level.

6.2 Policies to develop and expand higher education have not paid enough attention to VET. Vocationally (or professionally/labour market) oriented education and training is already an important although 'invisible' part of higher education.

6.3 VET is highly diversified across Europe. A diversity of institutional solutions creates confusion. In some countries it makes little sense to refer to it as a system.

6.4 National education and training systems themselves are somewhat opaque and there is a low level of permeability between the different learning pathways. Post-secondary education and training is provided by a wide variety of providers: universities, tertiary VET institutes, secondary schools, adult education institutes, social partners, private firms.

6.5 VET qualifications are sometimes difficult to understand and not easily recognised in other countries. VET programmes do not match the Bologna three cycle models (Bachelor, Master, Doctor). There is still not a clear vision of how and at what level to classify vocational qualifications in the NQF or the EQF.

6.6 There is no linkage between the qualifications and skills obtained from study and national occupational classification systems.

6.7 The image of industry itself is undermined because of the vision the media often convey and because of the current crisis. This leads to an increasing mistrust of companies in Europe.

6.8 Stigmatisation and low social recognition of VET graduates deters a substantial number of young people from committing themselves to this training path.

6.9 A low level of numerical literacy in primary school leads to a reluctance on the part of young people to focus their career plans on STEM disciplines (science, technology, engineering, and mathematics) or on practically-oriented studies.

6.10 The low ability to respond to constantly - changing skill needs caused by rapid ICT-driven changes and the gradual shift towards a low carbon economy.

6.11 There is a perceived lack of educational and labour-market prospects in such areas as: access to further studies, in particular at tertiary level, employment prospects, earnings, job satisfaction and finding a good job-education match.

6.12 There is a lack of information and assistance for individuals and their families when the future career of young people is discussed for the first time. Parents' life experiences and career paths are often the main drivers for the final decision about the choice of school and future job. Career guidance is too often fragmented, reactive and far removed from practice.

6.13 In some Member States, there is a lack of financial and non-financial incentives for employers provided by governments to invest in and undertake VET.

6.14 The framework for cooperation between business representatives and educational institutions is insufficient for the purpose of designing programmes which balance theoretical learning and professional skills. A lack of trust in schools or universities for creating links with companies still persists. Within educational institutions there is a low level of recognition of the value of experience gathered in external environments.

6.15 The current labour force is ageing. Many countries are facing a shortage of teachers and trainers in VET institutions. Some teachers and trainers also lack recent workplace experience.

6.16 The role of VET in combating social disadvantages is underestimated. The disadvantaged are more likely to leave school early.

6.17 VET, and particularly post-secondary VET, suffers from gender stereotypes which affect career development.

6.18 Cross-border learning mobility is a big problem in the field of VET and apprenticeship. Europe still has an under-developed level of mobility among VET learners and teachers.

6.19 Better language skills will be needed in order to make mobility both possible and worthwhile.

6.20 Tertiary education is not perceived sufficiently as a global challenge, especially post-secondary VET. Participation in the global circulation of knowledge should be supported.

7. How can post-secondary education and training be made more attractive

7.1 The percentage of students in universities can no longer be seen as the sole measure of modernity and progress. Universities alone cannot ensure economic growth and social progress. All alternative path ways need to be identified and promoted.

7.2 The Copenhagen process, which aims to ensure the transparency and quality of vocational qualifications, needs to be closely connected with the reform of higher education. Bringing both processes – Bologna and Copenhagen – together in an integrated approach is critical for the successful and sustainable integration of young people into the labour market.

7.3 The reputation of industry in Europe needs to be improved. A fresh approach to industrial policy is necessary, because of its important contribution to growth and job creation, and the development of innovation. Such an approach would support industry by placing the emphasis on sustainability, innovation and the human skills needed to keep EU industry competitive in world markets.

7.4 Services are fundamental for Europe's economy. They account for 70 % of the EU's GDP and about two-thirds of total jobs. Nine out of ten new jobs are created in the services sectors. They provide new opportunities from the post-secondary VET perspective.

7.5 A Europe which is facing labour shortages in many professions needs to focus more on how to balance education and training systems, and on finding the right mix between general, vocational and academic education. Post-secondary VET demonstrates the challenge in this respect. Its aim is to make the fullest use of the work place as a valuable learning environment.

7.6 Qualification frameworks can be very useful to VET systems. Qualification frameworks have the potential to unify the VET system, increase transparency, so that the value of different qualifications can be more clearly recognised by students, employers and other stakeholders facilitate lifelong learning and improve access to higher education for all. The work undertaken on qualification frameworks has resulted in a

renewed debate on the profile and status of vocational education and training – on how to define and understand VET.

7.7 A real sense of cooperation between educational institutions, business representatives and SMEs must be developed on the basis of mutual trust and understanding. The EESC believes in the newly-proposed 'Knowledge alliance' ⁽⁷⁾, i.e. ventures bringing together business and the education/training sector to develop new curricula addressing innovation skills gaps and matching labour market needs. In this respect the Commission's proposal to create the first VET-Business Forum in 2012 is a promising new initiative.

7.8 Industrial sectors and companies themselves have to invest in in-house training, offer more possibilities for apprenticeship and workplace learners, allow interested and suitable employees to become on-site tutors for apprenticeship and workplace learners, further the interest of suitable employees to work as temporary VET teachers, allow VET studies for employees during working hours and cooperate with educational providers in developing courses in line with the market's demand for certain skills.

7.9 Educational providers should further develop methods of work-integrated learning, (i.e. the majority of learning), and not just apprenticeships, should take place at the work place, have a more flexible attitude towards VET (more flexible learning methods), include the use of ICT in all VET and cooperate closely with industrial sectors in order to identify new learning needs.

7.10 As careers diversify, effective career guidance is becoming both harder and yet more essential and demanding. People, particularly young people, need to have a clear picture of their studies and prospects. The old idea that initial vocational training would prepare students for a single occupation throughout their working life is no longer sustainable. Career guidance needs to be coherent, well-resourced, proactive, objective and well supported by evidence. Particular attention should be paid to counselling provided to persons with disabilities; such counselling must be individually tailored, taking into account different types of disability and the possible resulting mobility restrictions and obstacles to obtaining certain qualifications.

⁽⁷⁾ Flagship initiative Agenda for new skills and jobs.

7.11 The role of the family cannot be underestimated. Information, advice and guidance (IAG) should also be focused on the family, because parents and family members often play a decisive role in a person's choice of study plans and career. More information, awareness-raising and evidence-based policy is necessary to illustrate the labour market opportunities associated with higher VET.

7.12 Nevertheless, VET provision needs to balance student preferences and employers' demands. Student preferences are relevant, but such preferences on their own are usually not enough. Employers' needs are important, but it is not always easy to establish what those needs are. The balance also depends on the funding provided by government, students and employers.

7.13 Equal treatment for all students has to be guaranteed in all learning pathways, as does equal access to financial subsidies for housing, transport, health care and social security schemes.

7.14 The quality of teachers and trainers is important; they need to be familiar with the workplace. To tackle these problems flexible pathways of recruitment should be encouraged, designed to facilitate the entry of those with industry skills into the workforce of VET institutions. Programmes to increase teacher mobility need to be developed.

7.15 The role of the social partners is vital in making VET more relevant and flexible. In order to promote excellence in VET, the social partners should be involved more in the design and implementation of VET policies, notably curricula, to ensure that the skills taught are relevant for the labour market. The facts prove that those countries which coordinate the links between schools and the labour market and include labour market actors in the monitoring, supervision and certification of vocational skills and qualifications are generally regarded as successful. The EESC has already highlighted many times the role of Sectoral and Transversal Employment and Skills Councils ⁽⁸⁾ in carrying out analyses of quantitative and qualitative labour market needs and has welcomed the joint efforts of the European Social Partners to focus on education and training in their joint work programmes ⁽⁹⁾.

⁽⁸⁾ EESC Explanatory Opinion, OJ C 347/1, 18.12.2010.

⁽⁹⁾ The framework of actions for lifelong development of competences and qualifications (2002) and Autonomous agreement on inclusive labour markets (2010).

7.16 The crisis has shown that many smart and effective solutions for maintaining jobs and launching different education and training schemes have been developed at company level. The EESC opinion on crisis exit strategies ⁽¹⁰⁾ contains a number of 'good practices' in this respect.

7.17 Learning mobility helps to enhance employability, particularly that of young people, through the acquisition of key skills. The EESC therefore welcomes the ambitious but politically necessary benchmark proposed by the Commission on learning mobility. This specifies that at least 10 % of EU graduates from initial VET should have a study or training period abroad. It should improve VET mobility in quantitative and qualitative terms by putting VET and higher education on an equal footing.

7.18 The recent Green Paper on the mutual recognition of professional qualifications ⁽¹¹⁾ launched a public discussion on how to reduce and simplify the restrictive regulations governing professional qualifications in order to improve the functioning of the Internal Market and boost cross-border mobility and business activity. The success of the newly-proposed European professional card will depend primarily on mutual trust and cooperation between the Member States.

7.19 The EESC is convinced that it is essential for all teachers and trainers, in particular in VET, to have the high quality language skills needed to promote content and language integrated learning (ET 2020). The EESC supports the activities provided in this area by the Business Platform for Multilingualism ⁽¹²⁾ and the Civil Society Platform on Multilingualism aimed at securing lifelong language learning opportunities for all ⁽¹³⁾.

7.20 In the twenty-first century it is absolutely crucial to eliminate the stereotypes that already exist in primary schools and to promote equal opportunities for men and women at all levels of education and training, supporting cultural measures to direct young women more towards scientific and technological studies, as mentioned in the European Pact for Gender Equality ⁽¹⁴⁾.

7.21 In the last decade, countries have developed and implemented various cost-sharing approaches. This has changed the balance of contributions made by states, employers and individuals. The financial measures include: training funds, tax

incentives, vouchers, individual learning accounts, loans and saving schemes. They aim at increase private investment and participation in ECVET.

7.22 The biggest financial contribution from the EU budget to investing in people comes from the European Social Fund (ESF). In order to raise skills and to help tackle the high levels of youth unemployment in many Member States the actions currently supported by the Leonardo programme will be reinforced in the next MFF period ⁽¹⁵⁾.

8. Proper implementation of European instruments and principles at national level

8.1 With the launch of instruments aimed at increasing European cooperation in VET, it has become clear that more cooperation between the different structures is needed to improve the functioning of the structures themselves.

8.2 The Copenhagen and Bologna processes cannot continue to develop independently from one another. Interoperability and comparability between the respective instruments should be increased. It should be recognised that the Copenhagen process is less advanced, with the proper functioning of ECVET ⁽¹⁶⁾ and EQF still several years away.

8.3 EQF, ECVET, EQAVET should help to promote learning at all levels and in all types of education and training. The EQF should be rated at levels 6-8 in the NQFs on a par with higher education. For ECVET, the credit points system for VET, coherent and convergent implementation is required with the ECTS ⁽¹⁷⁾, as ECVET is not an operational system yet.

8.4 European instruments can be complemented by national instruments (e.g. National Qualification Frameworks) or adopted in national rules (e.g. on national credit systems) when it proves necessary in the scope of national reforms. More interaction is needed between the different levels (EU, national, regional).

8.5 Progress has to be made in implementing an 'Erasmus for Apprentices'. This programme will enable VET to be considered on an equal footing with higher education initiatives and will thus contribute to promoting VET. It will give an

⁽¹⁰⁾ EESC Own Initiative Opinion, OJ C 318/43, 29.10.2011.

⁽¹¹⁾ COM(2011) 367 final, Green Paper – Modernising of the professional qualification directive, 22.6.2011.

⁽¹²⁾ http://ec.europa.eu/languages/pdf/business_en.pdf.

⁽¹³⁾ http://ec.europa.eu/languages/pdf/doc5080_en.pdf.

⁽¹⁴⁾ 3073rd EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS Council meeting, 7 March 2011.

⁽¹⁵⁾ A budget for Europe 2020 - COM (2011) 500 final of 29.6.2011.

⁽¹⁶⁾ European credit system for VET – helps validate, recognise and accumulate work-related skills and knowledge.

⁽¹⁷⁾ European Credit Transfer System.

international dimension to VET, tackle its lack of mobility and reinforce the visibility and attractiveness of post-secondary vocational education.

8.6 However, the Commission should hold back on creating new instruments before the potential added value from existing instruments has been assessed. Communication and cooperation

within and between existing instruments needs to be improved for their objectives to be translated in practice.

8.7 The EESC has drawn up a number of quality opinions on the relevant instruments – on ECVET ⁽¹⁸⁾ and EQAVET ⁽¹⁹⁾ and on the comparability of vocational training qualifications between the Member States ⁽²⁰⁾.

Brussels, 19 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁸⁾ EESC opinion, OJ C 100/140, 30.4.2009.

⁽¹⁹⁾ EESC opinion, OJ C 100/136, 30.4.2009.

⁽²⁰⁾ EESC opinion, OJ C 162/90, 25.6.2008.

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 in the course of the debate (Rule 54(3) of Rules of Procedure):

Point 1.10

Amend as follow:

Business organisations should actively participate in advice and guidance systems since they are the ~~most relevant structures~~ key actors for providing information on VET and labour market opportunities. They should assist learning providers in developing work-integrated learning and new methods.

Voting

For:	81
Against:	100
Abstentions:	20

Point 1.18

Amend as follow:

The preferences of students and the expectations of their families should be encouraged to converge with ~~set against~~ employers' needs. In future, they could use the newly-developed EU skills Panorama and its predictions of skills supply and labour market needs.

Voting

For:	75
Against:	127
Abstentions:	18

Opinion of the European Economic and Social Committee on 'Youth employment, technical skills and mobility' (own-initiative opinion)

(2012/C 68/02)

Rapporteur: **Ms ANDERSEN**

On 14 July 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:

Youth employment, technical skills and mobility.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January), the European Economic and Social Committee adopted the following opinion by 173 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 Demographic trends pose major challenges for the labour market. The consequences of the economic crisis show that the labour markets suffer from structural problems. Young people in particular find it difficult to gain a footing in the labour market despite having appropriate skills. Member States should therefore carry out the reforms provided for in the Europe 2020 Strategy and the national reform programmes in order to revive growth.

1.2 Youth unemployment entails major economic and social disadvantages for society and young people and restricts opportunities for growth. Europe's competitiveness will depend to a great extent on skilled workers, and it risks losing ground in the competition for specialist and highly skilled workers.

1.3 Nobody really knows what tomorrow's jobs will look like, but training should be based on labour market needs and solutions to actual problems. There should be greater recognition of skills acquired outside the training systems. Curricula should focus more on general and innovative competences.

1.4 Barriers between the education system and the labour market should be dismantled and excessive focus on financial considerations should be avoided. The partnership between businesses and the education sector should be deepened with a view to the development of curricula and the anticipation of future needs. Training should lead to employment.

1.5 There should be more room for twin-track training and traineeships in the education system, also in relevant higher education courses and vocational training. Synergies between practical activity, workplace learning and classroom work make young people more employable, smooth their path into employment and give an impetus to the development of teaching.

1.6 Countries wishing to introduce a twin-track training system should receive subsidies from the European Social Fund to cover the initial start-up costs.

1.7 An open and dynamic labour market can promote mobility and in particular create job opportunities for young people. The Europe 2020 Strategy and the national reform programmes require the Member States to modernise their labour markets in order to improve their take-up capacity and operation.

1.8 An active labour market policy which motivates jobseekers and people in employment to undertake lifelong learning helps to boost vocational and geographical mobility and thus creates more employment opportunities.

2. Introduction and objectives

2.1 Europe's youth is its future. However, many young people do not have a job or lack the appropriate skills. Furthermore, many young people have difficulty getting a foothold in the labour market despite having appropriate skills.

2.2 This opinion is about job opportunities for young people. This includes the future demand for technical and specialised workers, labour market access for young people and professional mobility. It is about core workers with technical or specialised training or with medium-level qualifications, who, according to CEDEFOP, will make up 50 % of future workers in 2020.

2.3 The intention is that the opinion should put forward concrete proposals to improve employment opportunities for young people and to ensure that businesses have access to the right skills.

2.4 The concept 'skills' covers numerous aspects, e.g. social and general skills, and technical and specialist skills and qualifications attained both through formal learning and training and through work and social and family relationships and activities.

2.5 This opinion seeks to answer two closely interrelated questions: firstly, what skills will the labour market need in future, and secondly, how can the integration of young people and opportunities for professional mobility be guaranteed?

2.6 The European Commission has launched several flagship initiatives in this area, most recently 'Youth on the move' and the 'Agenda for new skills and jobs'. These flagship initiatives are of key importance and encompass various initiatives to improve employment opportunities for young people. The relevant EESC opinions refer to these ⁽¹⁾.

3. The current situation in Europe

3.1 Due to demographic trends, the labour force in the EU is shrinking: the older baby boom generation is leaving the labour market, to be replaced by younger people from a time with a lower birth rate. This poses major challenges for the labour market, as a large supply of skilled labour is key to Europe's growth.

3.2 According to the latest edition of the *Quarterly employment and social situation review*, published by the European Commission, recovery in the EU's labour market is slow and patchy. New jobs are being created, but in insufficient number. Youth unemployment, at 20.3 %, highlights the need for rapid and effective action.

3.3 Unemployment is affecting all categories of young people, including the problem groups, regardless of their education and training. However, the risk of not finding a job is greater for young people with poor qualifications or without work experience. Moreover, long term unemployment has risen, to stand at 9.5 % in March 2011 and many young people in particular run the risk of becoming long-term unemployed.

3.4 Both unemployment and underemployment among young people lead to significant economic and social problems for society and for young people themselves, and hinder growth.

3.5 Before the crisis, there was a period in which a relatively large number of jobs were created. According to the European Commission, 20 million new jobs were created between 1995 and 2006.

3.6 Then, during the crisis, around 5 million jobs were lost. According to Eurofound, most of these were low-paid jobs for unskilled workers. However, there are major differences between individual Member States.

3.7 CEDEFOP estimates that around 7 million new jobs will be created over the period 2010-2020, and that around 73 million vacancies will arise due to demographics. Many of the new jobs created will be highly skilled ones.

3.8 Paradoxically, there is a labour shortage in certain countries and certain sectors at the same time as a large number of unemployed, which points to continuing structural problems in the European labour markets. For example, there were 118 000 vacancies in the Netherlands at the end of 2009; in Germany and Poland respectively, there are 87 800 and 18 300 vacant posts in the IT sector.

3.9 The competitiveness of the private sector will depend heavily on skilled workers. If private businesses cannot find suitable workers in Europe, they may be forced to seek them elsewhere in the world. Demographic trends will mean that more workers will be needed for care of the elderly and in the healthcare sector.

4. Future need for workers

4.1 Falling employment and the urgent need for growth make it all the more necessary that future generations of young people entering the labour market have high levels of education and training which match current and future needs. This also means cutting the number of school drop-outs and more young people completing vocational training. It is also essential that the labour market be set up in such a way as to enable young people to get on the ladder. Recent years have shown that the transition from training to employment is difficult. Furthermore, training barriers and employment-law obstacles make it more difficult to change jobs.

4.2 The EU and its Member States have already committed to a number of reforms within the context of the Europe 2020 strategy, the tried and tested procedures and the national reform programmes. In this connection a number of Member States have proposed reforms to bring their education systems more closely into line with the requirements of the labour markets.

4.3 The Europe 2020 strategy sets two key objectives in the area of education and training. However, these are purely quantitative targets. Equally interesting is the ability of education and training systems to send young people on their way with the right skills – ones that are in demand and that they can use.

4.4 Forecasts indicate that European citizens will become increasingly educated and skilled, but there is a risk of polarisation. Some forecasts show that the aim of at least 40 % of 30-to-34-year-olds having had a tertiary education will probably be achieved by 2017.

⁽¹⁾ EESC opinions on *Youth on the Move*, OJ C 132, 3.5.2011, p. 55 and on *An agenda for new skills and jobs* (OJ C 318, 29.10.2011, p. 142).

4.5 Conversely, the prognosis for the aim of reducing the proportion of school drop-outs below 10 % by 2020 is not looking nearly so good. CEDEFOP, for example, estimates that by 2020 at least 83 % of 22-to-24-year-olds (as against 78 % in 2010) will have completed upper secondary education – i.e. vocational training or A-level equivalent. The fact that many young people have no qualifications presents a major challenge to ensuring a supply of highly-skilled labour. The jobs of the future will mainly require highly skilled or specialised workers. The first thing to do is therefore to ensure that more young people leave school with qualifications, including vocational ones.

4.6 Globalisation and new technologies will change the labour market, and this will be felt, for example, in ever shorter product life cycles. As jobs move between sectors and new methods of work organisation arise, new jobs will be created, but so will a need for new skills.

4.7 This will result in higher requirements for lifelong learning, adult education and willingness to adapt, which will in future be part of working life. The social partners and educational establishments in particular have a shared responsibility for seeking innovative joint solutions.

4.8 According to CEDEFOP, the demand for highly-skilled workers will rise by almost 16 million by 2020, and that for semi-skilled workers by around 3.5 million. Conversely, a fall in demand for low-skilled workers of around 12 million is expected.

4.9 Over the period 2010-2020, a significant fall in employment is expected in primary industries, but also in production and manufacturing. The greatest growth will be in services, particularly in services to business, but distribution, catering, healthcare and transport will also expand. Knowledge-intensive sectors will grow, but so will less knowledge-intensive ones such as retailing. The trend towards a knowledge-based economy and an innovation-led, rapidly-changing world is continuing. It is therefore important that improved skills translate into knowledge, in turn resulting in innovation and new products and services. Willingness to adapt remains a key issue both for individuals and for the education system if they are to meet the needs of the labour market.

4.10 Innovation is a key element in any analysis of the employment patterns and skills requirements of the future. Innovation involves the ability to improve processes and methods, but general competencies such as creativity, problem solving, working with others, leadership skills and entrepreneurship also play a role. Thus, for example, many people who work in the knowledge-intensive area of industry are not themselves highly qualified but do contribute to innovation, for example by improving work processes or organisation.

4.11 Some studies show that the innovation that underpins growth mainly comes from businesses. Businesses develop on the basis of the input and demands of customers, suppliers and staff.

4.12 However, innovation should not be understood as a discipline. Innovation capacity makes new demands on education systems, including the question of how to boost the innovation skills of young people so that they can make a direct contribution to wealth creation in our society through their work.

5. Future core workers and education systems

5.1 No one really knows what tomorrow's jobs will look like. The EU will shortly be launching an EU skills panorama; Sector Skills Councils will be launched in the EU and the forecasting of future needs and shortfalls will be steadily improved. In view of global competition, technical development and inward and outward migration, the education system's flexibility and ability to adapt will be decisive.

5.2 Moreover, much closer coordination and cooperation between educational establishments, government and employers will be needed, for example when drawing up curricula, and skills acquisition will be lifelong through training courses and work, and skills will be continually developed. Skills can of course also be acquired outside the labour market, and this should be given greater recognition.

5.3 The training of future core workers already begins in primary school, and the quality of education should be improved here. Children and young people should also learn how to learn and acquire knowledge at school. Guidance at primary and lower secondary school level and careers advice, for example, are important. Teachers need corresponding skills.

5.4 The vocational training system is dealt with in another EESC opinion ⁽²⁾, but vocational training courses have a key role to play in ensuring the availability of the right skills for the future.

5.5 There are now major challenges facing vocational training. These relate, among other things, to the image and quality of courses, coverage of the skills needed for work, and enhancing employability. Many vocational training courses have high failure rates due to poor primary skills amongst young people, such as literacy. In addition, the transition from vocational training to higher education is often difficult. There is also an observable gender-based segmentation of courses of study.

5.6 Some countries have adopted a twin-track system for vocational training. This means that courses switch between classroom teaching on the one hand, and work experience and training in the workplace on the other. Such close contact with the workplace builds bridges with the world of work and ensures that most people with a vocational qualification find a job quickly. In contrast, the vocational training systems in, say, Sweden, Belgium and Spain are characterised by limited contact with workplaces, as vocational training courses

⁽²⁾ EESC opinion on *Post-secondary Vocational Education and Training as an Attractive Alternative to Higher Education* (See page 1 of this Official Journal).

are mostly school-based. At the same time, many young people in these countries have trouble getting a foot on the employment ladder.

5.7 As the combination of work, on-the-job training and school-based education is considered by many (the Commission, OECD, Parliament, etc.) to be a good way of getting people started in the labour market, the EESC should propose concrete initiatives aimed at making the traineeships of the twin-track vocational training system more widespread in the EU.

6. Starting work and professional mobility

6.1 The transition from training to the workplace – and thus from the vocational training system to the labour market – often involves many financial considerations. Although closer links between the vocational training system and the labour market, and promoting labour market access for young people, are political priorities for the EU, recent years have shown that major challenges exist in these areas.

6.2 Vocational and geographical mobility in Europe is still restricted, and it is often hindered by barriers in the qualification systems, problems in obtaining recognition of skills and inadequate counselling. The EU's exchange and mobility programmes have a central role to play here and should be stepped up. The focus has until now been on higher education, and in future there should be greater focus on mobility opportunities for those taking technical and vocational training courses, e.g. by way of cross-border company placements. Cross-border placement arrangements could for example improve the situation in border areas, if in one country there is a lack of placement opportunities whilst in the neighbouring country there is an abundance of supply.

6.3 Against this background, the twin-track training system could act as a springboard for a positive, sure start in the labour market for young people, whilst ensuring that the right skills are available to businesses. A Eurobarometer study has for example shown that 87 % of employers regard practical vocational experience, for example in the form of a placement, as a key factor in recruitment.

6.4 The combination of theoretical classroom teaching and on-the-job learning should be more widely disseminated. There should of course be a contractual basis, with companies being asked to participate in the training of young people and

individual apprentices. This would be fair to all concerned. Companies would then have a larger pool of workers to choose from, while at the same time benefiting from new knowledge and inspiration. At the same time educational establishments would be offered access to more knowledge and cooperation with industry. And the individual would benefit through practical work experience.

6.5 As the development and rollout of a twin-track educational system entails additional costs, EU funds and programmes, e.g. the Social Fund, could provide start-up finance for countries and regions intending to introduce the twin-track system.

6.6 However, if people are to get off to a good start in their careers and be able to progress and enjoy professional mobility, certain conditions must be met. These include both promoting job creation and ensuring that labour markets are open and dynamic, supporting mobility on the one hand and guaranteeing a sure start for young people on the other. A labour market with plenty of jobs and voluntary retraining help to smooth the way for young people.

6.7 In the context of Europe 2020 many countries are reforming their labour markets in order to increase their absorption capacity and improve their operation. In order to ensure that young people can enter the labour market more easily, it is important to dismantle the obstacles which are currently preventing employers from offering young people standard employment contracts. This should entail neither advantages nor disadvantages for either employers or workers. The type of work alone should decide what kind of contract is chosen for recruitment.

6.8 What is needed, therefore, is to shape an active labour market policy which offers both jobseekers and people already in employment incentives for lifelong learning, further education and skills upgrading. What is needed is an active labour market policy which helps improve mobility, thus offering young people in particular opportunities in the labour market.

6.9 Individual entitlements of every kind which are not tied to a particular company or a job, but which stay with the individual worker when changing jobs, e.g. pension entitlements and training opportunities financed from funds, will contribute to labour market mobility.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'Involving civil society in the establishment of a future European Energy Community' (own-initiative opinion)

(2012/C 68/03)

Rapporteur: **Mr COULON**

On 14 June, the European Economic and Social Committee decided to draw up an own-initiative opinion, under Rule 29(2) of its Rules of Procedure, on

Involving civil society in the establishment of a future European Energy Community.

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 20 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 183 votes to 2 with 8 abstentions.

1. Conclusions and recommendations

1.1 The Committee endorses the Commission's recent initiatives aimed at pressing ahead with interconnection and completing the internal market in energy. It also supports the efforts made – particularly by the Council – to bolster the position of the EU and its Member States on the international stage. The Committee particularly notes the Energy Roadmap 2050 which was published by the European Commission on 15 December 2011 with a view to achieving 'a European approach, where all Member States share common understanding (...)'.

1.2 The Committee supports the principle of creating a European Energy Community (EEC) and endorses the interim steps that this would entail, including regional European energy networks, a renewable energy development fund and a gas purchasing group.

1.3 The Committee recommends going further and integrating European markets in order to align and reduce energy prices. As regards the energy mix, it also recommends making the most consistent and efficient choices at EU level. Groups of States could formally enter into enhanced cooperation based on priority infrastructure projects, interconnection and complementarity in energy production and supply.

1.4 The Committee proposes concentrating investment, including at national level, on research in the field of low-carbon energy technologies. The emphasis should be placed on renewable energy and on major projects likely to contribute to the reindustrialisation of Europe and to job creation.

1.5 The Committee calls for universal access to energy to be included among the goals of the EU's common energy policy. It believes that end users should be systematically informed of

their rights by the relevant authorities or by energy distributors, and that, where necessary, consumer protection should be bolstered. The Committee calls for the problem of fuel poverty to be addressed forthwith by means of a 'European energy solidarity pact' for instance.

1.6 The Committee calls for the establishment of a joint body on fossil fuel supply. It also calls for the EU to be given greater powers as regards the negotiation and scrutiny of international energy supply agreements.

1.7 The Committee recommends stepping up cooperation on energy with developing countries and the EU's neighbouring countries in a spirit of development and partnership.

1.8 Given the high environmental stakes, the scale of investment required, the social repercussions of political decisions taken, their consequences on people's lifestyles, and the need for public support, it is crucial that the public be informed about and involved in the debate on energy issues. The Committee calls for the establishment of a European civil society forum tasked with monitoring energy issues which would enable member organisations to put forward their views to decision-makers.

1.9 The Committee must provide a forum for regular structured debates with European civil society on developments in the European Energy Community.

1.10 The Committee recommends taking stock of progress made by 2014 with the aid of Article 194 of the Treaty on the Functioning of the European Union (TFEU), and then considering whether changes are required, on the basis of the proposals set out in this opinion.

2. The EU's energy policy: challenges, progress and limitations

2.1 The EU's energy landscape is marked by a growing imbalance between domestic production and consumption, and a high and entrenched dependence on carbon-based energy sources. The EU thus faces three major challenges at the same time, which on the face of it are not easy to reconcile:

- combating climate change and making the transition to a low-carbon society;
- securing integration, an efficient internal energy market and affordable energy prices; and
- ensuring secure energy supplies.

2.2 The objective of creating an internal market for electricity and gas dates back to 1996 (first liberalisation package) but 15 years on, the internal energy market is still a distant dream: only 10 % of electricity transits between countries, consumers are still unable to choose a supplier established in another Member State, the development of renewable energy – intended to become the main source of electricity production – is still based on national support mechanisms, network planning is still largely a national competence (ACER being competent only for cross-border capacity, whereas a genuinely integrated market also requires joint action on national networks), and the EU still does not deal with supplying countries as a single bloc, etc. Key policies pertaining to the gas and electricity sectors are still chiefly decided at national level.

2.3 The scale of these issues and the high degree of political, economic and technical interdependence between the EU Member States mean that joint action is needed, giving priority to the EU's collective interest over what are seen to be national interests.

2.4 The aim now is to finalise the construction of the internal energy market in 2014. Establishing a European energy system is something that Europeans want. Recent European Parliament Eurobarometer surveys (Standard EB 74.3 on Energy of 31 January 2011 and Special EB 75.1 of 19 April 2011) show that (i) Europeans believe in European added value here and would prefer a Community approach; and that (ii) their concerns mirror the major challenges outlined above, in the following order: price stability, renewable energy and security of energy supply. As regards security of supply, 60 % of the Europeans surveyed felt that they would be better protected through measures coordinated with the other EU countries. Finally, some 78 % of Europeans endorsed the proposal for a European Energy Community.

2.5 The Committee thinks that by responding effectively to the public's major concerns, the EU would restore legitimacy to

its endeavours. Phasing in a European Energy Community is the best way to cushion the impact on Europeans of the economic and social consequences of energy challenges. The de facto energy dependency between Member States poses a major threat to EU cohesion if it is not accompanied by democratic governance arrangements enabling joint decisions to be taken for the common good.

3. Towards a European Energy Community (EEC)

3.1 Against this backdrop, Jacques Delors has put forward the idea of creating a 'European Energy Community' (EEC), a project backed by Jerzy Buzek. The Committee believes that this policy proposal, which was the subject of a detailed report drawn up by the think-tank *Notre Europe* (see: http://www.notre-europe.eu/uploads/tx_publication/Etud76-Energy-en.pdf), could provide an effective response to the energy challenges, while restoring legitimacy to and revitalising the European venture.

3.2 A number of options are proposed, from retaining the status quo (Article 194 TFEU) to concluding a new energy-specific treaty.

3.3 The following interim steps are also proposed:

- strengthened cooperation around European regional energy networks;
- a common energy fund for developing new technologies;
- the establishment of a European gas purchasing group.

3.4 The Committee, which has already adopted opinions putting forward the idea of a European energy SGI ⁽¹⁾, feels that the EU should capitalise on the momentum created by the *Notre Europe* think tank's report and go further by involving civil society in the debate, as well as by implementing measures to achieve the goals of integration and cooperation.

4. The EU is moving towards a more integrated energy policy

4.1 The Committee welcomes the initiatives put forward by the European Commission in response to Europe's energy challenges, including its recent proposals on crisis prevention, networks and infrastructure, and security of supply in relation to third countries. These proposals pave the way to increased solidarity, cooperation and efficiency and converge towards a common vision.

⁽¹⁾ OJ C 175, 28.7.2009, pp. 43-49.

OJ C 306, 16.12.2009, pp. 51-55.

4.2 The Committee welcomes the recent proposal for a Regulation on guidelines for trans-European energy infrastructure (COM(2011) 658 final) which follows on from the blueprint for an integrated European energy network put forward in 2010 (COM(2010) 677 final). It will set out its views in a separate opinion (TEN/470 opinion).

4.3 The Committee supports the Commission's initiatives aimed at equipping EU energy policy with an integrated and coherent external dimension, to help secure energy supplies from third countries (COM(2011) 539 final). The Committee supports any strengthening of the EU's position regarding its external partners. It looks closely into this issue in its TEN/464 opinion.

4.4 The Committee endorses the information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy (COM(2011) 540 final). This Commission proposal is important in terms of asserting the primacy of the collective interest over national interests (TEN/464 opinion).

5. A more ambitious and participatory effort is needed to tackle the challenges ahead

5.1 Despite this significant progress, the Committee believes that we need to go further in terms of joint governance of energy issues, with particular regard to the 2050 low-carbon energy system objective.

Towards an integrated EU energy market

5.2 EU energy legislation should focus more on a joint approach to energy production. This is especially true of renewable energy, for which national objectives are set. The most cost-effective investments should be prioritised on the basis of the costs and benefits of production within the EU. Increased solidarity is also necessary during low production periods at EU level. This may require EU legislation to be adapted.

5.3 The Committee thus reiterates the importance of joint planning and interconnection of networks in order to smooth out congestion, particularly at borders. The Commission should play a driving role in this respect. Private operators must also be given a long-term view of return on investment. In this context, public-private partnerships could be envisaged.

5.4 Although choice of energy mix is a national competence, the Member States must act responsibly when taking decisions on energy production. Decisions taken unilaterally by certain Member States, such as those taken in the wake of the Fukushima accident making it harder to balance energy demand and production at regional level, must henceforth be taken by common accord at EU level, given the high degree of interdependence. In the long term, with the rise of renewable

energy it will be essential to act together to guarantee a sufficient energy production buffer to meet any shortfall in production from renewable sources.

5.5 For Member States, the absence of coordination undermines the reliability of their energy supply and nullifies efforts made in parallel to build up interconnections and solidarity in the EU. At the same time, abandoning nuclear energy (a low-carbon energy source) in the short term should not mean a major shift to the use of polluting energy sources, which would run counter to the EU's objective. This should be undertaken with the greatest transparency and in consultation with representatives of civil society organisations.

5.6 The Committee believes that given the energy dependency between the Member States, energy independence can only be achieved at EU level and not on a national basis.

5.7 The Committee suggests exploring the idea of establishing common approaches among subgroups of Member States or operators on the basis of their respective energy mixes and cross-border energy trade practices. This regional coordination would mean greater consistency in the energy choices of the Member States concerned and greater security of supply. These groups could also make the most of each other's energy resources in terms both of renewable energy and of electricity generation based on other energy sources.

5.8 The Committee proposes that these groups should have responsibility for choosing their energy mix and their infrastructure network. Coherent and interconnected regional energy communities could in this way be developed. The advantage of these communities would be the establishment of similar market conditions (energy prices, renewable energy subsidies, customer relations, etc.) among the Member States involved.

5.9 One policy successfully harmonised in some European regions demonstrates that policy harmonisation has a clear impact on market integration: coupling markets for the allocation of transmission capacity. Through price coupling between countries it is possible to establish a single trade area (and as a result single price areas) when interconnection capacities do not curb cross-border trade. Price coupling contributes to the creation of a single European market for electricity. Nord Pool Spot introduced 'price splitting' in 1993, and in 2006 price coupling was applied for the first time in France, Belgium and the Netherlands. In time, these market conditions would be expected to offer consumers broad trans-European choice.

5.10 The Committee would highlight the economic opportunities that these macro-regional groups could present for the Member States, not least given the economies of scale involved and the industrial development linked to renewable energy sources.

5.11 The Committee maintains that it is in favour of a diversified and sustainable energy mix. National choices should be made in line with EU legislation and objectives. The Committee stresses that these choices must not have disproportionate adverse effects on the economy, environment and society. With this in mind, the EU should explore new energy sources such as shale gas, following broad and transparent consultations with representatives of civil society organisations, in order to avert the risk of a divergence in national approaches.

Fostering the EU's competitiveness: pooling and increasing financial resources

5.12 Joint research efforts between Member States and operators should be encouraged and appropriate research networks and communities put in place, particularly in the field of renewable energy and low emission technologies, for example through technological research platforms.

5.13 Given the considerable investment needed and current budgetary constraints, the resources available should be directed towards the major challenges. It is important to establish closer links between national and EU funding. This may entail Member States directing their national support for research towards projects tying in with the EU's objectives.

5.14 It is necessary to assess whether a consolidation of the funds available for infrastructure and research could increase the effectiveness of funding. This could mean allocating fixed amounts to energy projects under the various EU and national funding programmes.

5.15 If an assessment here were to prove positive, the use of bonds to finance projects could be an effective way to increase resources for the promotion of research and the deployment of renewable energy sources and infrastructure.

5.16 It is important to prioritise EIB loans more effectively with regard to the EU's key infrastructure projects. Investments by the macro-regional groups of Member States should be eligible for EIB loans.

5.17 A comprehensive and coordinated drive towards renewable energy could help the EU to emerge from the current economic crisis. The availability of affordable energy is vital to economic competitiveness. The benefits would be numerous: job creation, expertise, reindustrialisation of the EU, etc. Projects such as the supergrid or the development and deployment of smart grids could be conducive to industrial cooperation and enhanced innovation across the EU.

An energy policy for all

5.18 Universal access to energy should be included among the goals of the EU's common energy policy, beyond mere market integration.

5.19 Fair and transparent energy prices enable businesses to grow and invest. Attaining affordable energy is dependent on making effective choices, establishing an integrated and transparent internal energy market and expanding the oversight powers of national and EU regulators.

5.20 EU legislation grants consumers a series of rights, but many consumers are not fully au fait with these rights and fail to exercise them. The Committee urges the relevant authorities or energy distributors to systematically inform end users of their rights. It calls for regular reports on the enforcement of consumer rights to be published at national level. Where necessary, further measures could be taken to ensure the enforcement of consumer rights.

5.21 Over the winter of 2010-2011, between 50 and 125 million Europeans suffered from fuel poverty (depending on the definition used). Those affected by this insecurity are generally the most deprived and poorly-housed people, who often live in buildings with inadequate insulation and are not even able to pay the social tariffs introduced in some Member States. In tandem with the necessary drive at EU level towards energy efficiency and demand reduction, the Committee suggests launching a fresh debate on strengthening solidarity mechanisms across the EU-27 to combat fuel poverty, beginning with a common definition ⁽²⁾.

5.22 A 'European energy solidarity pact' could thus enshrine the strategic and vital nature of energy (accessibility, affordability, regularity, reliability and provenance). Such a European social energy 'shield' would demonstrate the EU's responsiveness to public concerns. It would form an integral part of the drive for greater social harmonisation, something that is needed to strengthen and restore meaning to the European venture. It would need to be implemented by means of practical measures at the appropriate levels.

Strengthening the external dimension of the EU's energy policy

5.23 The Committee endorses the proposal from the Notre Europe think tank on creating a European gas purchasing group if participating States and companies can benefit from greater bargaining power, secure their supply and reduce price volatility, in compliance with competition rules. This could be taken a step further by establishing a common supply structure for gas, and possibly for other fossil fuels.

⁽²⁾ EESC opinion on *Energy poverty in the context of liberalisation and the economic crisis*, OJ C 44, 11.2.2011, pp. 53-56.

5.24 In cases affecting several Member States, the Council should confer a mandate on the Commission authorising it to negotiate energy supply deals with third countries on the EU's behalf. The Committee welcomes the Council's decision to empower the Commission to negotiate agreements with Azerbaijan and Turkmenistan on behalf of the Member States as regards supplying gas via the trans-Caspian pipeline. It calls on the Council and the Commission to make this standard practice under such circumstances.

5.25 The Committee recommends closer monitoring by the Commission of all national-level energy supply deals concluded with third countries. The Commission should be able to approve these agreements on the basis of their positive or negative repercussions on the EU as a whole (TEN/464 opinion).

5.26 The Committee recommends taking an approach based on development and partnership with the Euromed countries and the EU's eastern neighbours, which would enable the EU to diversify and secure its energy supplies (e.g. as regards renewable energy, by means of projects such as Desertec, the Mediterranean ring, the Mediterranean solar plan and Medgrid), and to help its partners to tap their potential. The EU could provide technical support and bring to bear its expertise and skills in training and project management (REX/329 opinion).

5.27 The Committee believes that the EEC and its various precursors should be equipped with a strong external dimension aimed at promoting developing countries' access to energy. These countries should be helped to produce the energy they need but they must also be able to export it to Europe so as to finance their investments.

5.28 The Committee takes note of the conclusions of the Transport, Telecommunications and Energy Council meeting of 24 November 2011 calling for a stronger external dimension for energy policy. It also notes the Council's priorities and reiterates its request for better integration of energy policies, entailing at least systematic consultation before decisions are taken. With regard to the method, it recommends a Community approach carried out in close collaboration with the Member States whenever this would provide added value.

Involvement of civil society

5.29 Given the high environmental stakes, the scale of investment required, the social repercussions of political decisions taken, their consequences on people's lifestyles, and the need for public support, it is crucial that the general public be involved in the debate on energy issues. Europeans have the right to clear and transparent information on the energy choices

made at European, national and regional level ⁽³⁾. National ESCs have an important role to play in this respect. Information and consultation campaigns on the major energy issues facing Europe are required. Emphasis must also be placed on energy efficiency.

5.30 Europeans should also be enabled to express their views regularly on these major policy choices. Consultations could be organised at the appropriate level. The Committee has conducted such consultations for many years at EU level (on nuclear energy, CCS (carbon capture and storage), etc.). National, regional and local authorities are invited to organise a broad consultation of civil society.

5.31 The Committee proposes setting up a European civil society forum tasked with monitoring energy issues. This forum would work closely with EU institutions and would meet regularly to contribute to a multiannual energy market integration programme. It could bring together European and national organisations active in the field of energy. The forum could be consulted on the design of the EU's energy network, the transition to a low carbon energy system by 2050 and the resulting socio-economic issues. Its members should also be kept fully informed, and could pass this information on to similar organisations in the Member States.

5.32 Winning public acceptance of energy choices poses a further energy challenge (nuclear, CCS, wind farms, high voltage lines, etc.). Participation and responsibility go hand in hand. The Committee, which chairs the 'Transparency' working group within the European Nuclear Energy Forum (ENEF), could help provide clear information for citizens and engage with them via its website (disseminating best practice, monitoring initiatives, cooperation projects and developments in the industry, and gathering the views of civil society for discussions in the civil society energy forum and dissemination to policy makers). The Committee calls on the Commission and the Member States to provide relevant public information via neutral and objective channels. Civil society organisations and consultation forums have an essential role to play here.

Considering possible longer-term institutional developments

5.33 Establishing a European Energy Community remains the ultimate goal. However, given that it may be difficult for 27 Member States to move simultaneously in the same direction, closer cooperation between Member States, particularly at regional level, could enable faster progress to be made. However, these actions should not go against EU legislation or other initiatives, and this should be ensured by means of ongoing consultation and involvement of the EU institutions. If necessary, more formal mechanisms could be established.

⁽³⁾ For example, for nuclear energy in France, see: ANCCLI, Association nationale des comités et des commissions locales d'information (National Association of Local Information Committees), set up by a Council of State decree.

5.34 The Committee recommends taking stock of progress made by 2014 with the aid of Article 194 TFEU and then considering whether changes are required, on the basis of the most ambitious proposals set out in this document. A new institutional framework could be envisaged along the lines of the ECSC Treaty. It should be possible to integrate any new institutional architecture and its *acquis* into the structure of the EU, should Member States so decide.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

Opinion of the European Economic and Social Committee on 'The role of the European Union in peace building in external relations: best practice and perspectives'

(2012/C 68/04)

Rapporteur: **Ms MORRICE**

At its plenary session held on 19 and 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

The role of the European Union in peace building in external relations: best practice and perspectives.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 15 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 19 January 2012), the European Economic and Social Committee adopted the following opinion by 190 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

1.1 Peace-building is in the European Union's DNA. Its very creation, enlargement and survival in times of crisis are a testament to its peace-building prowess. As a community of nations promoting democracy, human rights, equality and tolerance, the EU has a moral obligation to support peace-building worldwide and it now has a Treaty mandate to do so. As the world's largest aid donor with years of experience in conflict zones and a vast array of tools at its disposal, it should be leading the way in international peace-building efforts. Yet it fails to make sufficient use of its potential in peace-building worldwide and the impact of its support for positive change is not as great as it should and could be. Despite efforts to improve coherence with the creation of the European External Action Service, an integrated 'whole of EU approach' has yet to be achieved. Without a clearly defined peace-building strategy, without greater sharing of experience between all EU peace-building actions and in the absence of genuine cooperation with Member States, international aid donors, NGOs and civil society organisations building peace on the ground, the EU potential to create a real and lasting difference in the world's most troubled regions will not be fully realised. The challenge may be great, but the reward is greater. A peaceful Europe sits better in a peaceful world.

1.2 On the basis of these conclusions, the EESC recommends the following:

With regard to strategy and policy

1.2.1 The EEAS should draw up a Peace-building Strategy to include civilian, military, diplomatic, political, rapid response and humanitarian actions, long term development assistance, short term aid, climate change, trade and investment policy and all other EU actions which have an impact on fragile zones.

1.2.2 It should create a Task Force, to include representatives from the EP, EC, CoR, EESC, EIB and peace-building NGOs to draw up the strategy.

1.2.3 EU policies and programmes, particularly those operating in conflict zones, should be liable to undergo a conflict sensitive impact assessment to ensure they are in line with EU norms and values and can guarantee the most cost effective use of EU aid.

With regard to operational matters

1.2.4 A Code of Principles should be established for all EU operations in conflict and conflict-prone zones.

1.2.5 All peace-building projects should include the promotion of good governance and democratic principles (human rights, freedom of speech, equality, political and trade union freedoms) as well as environmental protection norms.

1.2.6 Benchmarks should be established to monitor progress on reform and monitoring systems should be enhanced to include representatives from civil society, gender balance on monitoring bodies and to ensure commitment to reforms. Greater focus should be placed on conflict prevention, with particular emphasis on the role of education and the media, including social media, in fragile zones, and measures to promote reconciliation, including intercultural dialogue and mediation, should be actively encouraged and promoted.

1.2.7 EU engagement with organised civil society in fragile zones should be strengthened through increased support for organisations which share EU values promoting tolerance, pluralism and other peace-building actions and the work of the EESC in this area should be facilitated.

1.2.8 Adherence to UN Resolution 1325 on women in peace should be encouraged, greater support given to women's groups working on the ground and to the promotion of gender equality.

1.2.9 Victims of conflict, particularly children, should receive more sensitive targeted attention and greater EU recognition and support.

1.2.10 Programmes to support vulnerable youth, particularly boys, should be encouraged, facilitated and supported to enable them to play a full and constructive role in society.

1.2.11 Recruitment and training of civilian personnel for use on missions should be extended and improved and the focus of missions should shift from military to civilian crisis management.

1.2.12 A data-base of European peace-building experts and candidates for civilian missions from the judiciary, lawyers, police, peace-building NGOs, mediators, administrators and politicians experienced in the field should be drawn up.

With regard to best practice and exchange of experience

1.2.13 A sharing of key lessons should take place among EU institutions, Member States and international bodies facilitated by a compendium of peace-building best practice and further research into the use of the EESC conflict resolution toolkit ⁽¹⁾.

1.2.14 Greater regard should be given to exchanging experience between EU internal peace-building work, such as the EU PEACE Programme in Northern Ireland, and its external actions.

1.2.15 Serious consideration should be given to creating a European Peace-Building Centre of Excellence/Institute which would tie into and build on existing structures and follow up on ideas and recommendation from other institutions and experts.

1.2.16 A major peace-building conference should be held to bring together all the strands of a new peace-building strategy and consolidate recommendations on how best to share the learning.

⁽¹⁾ See Opinion SC/029, *The role of the EU in the Northern Ireland peace process*, (rapporteur: Ms Morrice, 2009), OJ C 100, 30.4.2009, p. 100 - 108.

2. Context

2.1 This Opinion is a follow up to the Own-initiative Opinion on the EU Role in the Northern Ireland Peace Process, approved by the EESC in October 2008 ⁽²⁾, which calls on the EU to place peace-building at the core of its future strategic direction. It widens the scope of research beyond the EU borders, reviews the peace-building tools available, particularly since the creation of the EEAS, examines how far experience has been exchanged and puts forward recommendations for future work in this area.

3. Introduction

3.1 Often described as the world's most successful supra-national peace-building venture, the EU can be seen as a role model for others in this arena. Its own experience, bringing sworn enemies together in the aftermath of World War II must be its greatest ever achievement. Keeping them together in a union of nations, increasing their number and extending their influence worldwide is another peace-building triumph and sustaining that momentum in the face of financial crisis will be another major challenge.

3.2 However, the EU hasn't been properly equipped to carry the weight of its moral obligation as either a role model or a leader for peace-building in the world. In its operations in conflict zones it uses a variety of different tools at its disposal from crisis management, through humanitarian aid to military assistance and development aid. But its approach has lacked coherence, lacked coordination and lacked credible connection with grass roots civil society.

3.3 With the entry into force of the Lisbon Treaty, the EU has a new peace-building mandate (Article 21), a new structure to support it (the EEAS) and a new leader (the High Representative, Catherine Ashton) to make it happen. There should therefore no longer be any reason why the EU cannot move into the driving seat and make a genuine impact on peace-building worldwide.

3.4 If ever there was a right time for the EU to show leadership that time is now. Its closest neighbours are in a state of political, economic and social upheaval. They need solid support at this crucial time in their history. In launching its 'new and ambitious' Neighbourhood Policy, the EU has shown it is ready and willing to lead by example. But in this, as in peace-building the world over, actions speak louder than words.

3.5 The EU has 'formidable potential' to link all the facets of its influence together to generate a coherent and comprehensive approach to peace-building and it has the resources to match. But success ultimately depends on the political will of EU Member States, their ability to speak with one voice and their

⁽²⁾ Ibid.

desire to give full backing to an ambitious joint peace-building strategy which will not only give the EU greater credibility on the international stage but will also serve to promote positive change in the world.

4. Background

4.1 The term 'peace-building' is relatively new in the lexicon of international diplomacy. It was first described by Boutros-Ghali, UN Secretary General, in his Agenda for Peace in 1992 as 'action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict'. In 2006, the UN set up a Peace-building Commission to support peace efforts in countries emerging from conflict and in 2009 the OECD established an International Network on Conflict and Fragility (INCAF).

4.2 In the European context, the first specific reference to peace-building in EU external relations was in the Gothenburg Programme for the Prevention of Violent Conflicts, adopted in 2001. The most recent reference is Article 21 of the Lisbon Treaty which lists as the core objectives of EU External Action the principle of human rights and democracy, conflict prevention and the preservation of peace.

4.3 The Lisbon Treaty also sets out a new framework for the EU in external relations. The High Representative for Foreign Affairs and Security Policy combines the competences previously divided between the Council and the European Commission. The HR, Catherine Ashton, is supported by the EEAS whose remit covers the '3Ds' - Diplomacy, Development and Defence - all of which can be deployed for peace-building.

4.4 Within the EEAS and the relevant EC directorates, the EU has a vast array of tools which can be used for peace-building. These include:

- **CSDP civilian and military missions** – focusing on police, the rule of law, civilian administration and civil protection - often constrained by lack of available trained personnel. The security and logistical dimension is seen as a prerequisite to a stable and safe environment for peace-building.

- **Instrument for Stability (IfS)** - the main source of EU funding for peace-building. More than 70 % of funds available (EUR 2 billion 2007-13) are used for crisis response to 'fill the gap' between short term humanitarian assistance and longer-term development aid.

- **Peace building Partnership (PbP)**, set up under the IfS, to improve communication with key partners in crisis response. It supports work with civil society organisations, assists in the dissemination of best practice and access to logistical and technical support.

4.5 There are many other EU instruments which are not peace-building specific but which can be used to support the EU in this role. These include Humanitarian Assistance (ECHO), the European Instrument for Democracy and Human Rights, Development Aid through the European Development Fund (ACP/OCTs) and the Development Cooperation Instrument (Latin America, Asia, the Gulf and South Africa).

4.6 EU Policies, such as Trade, EIB investment, Environment, Energy or Agriculture can also be used in a peace-building context and EU Enlargement Policy has a peace-building element in that it requires candidate countries to adhere to the EU's core values⁽³⁾. Also, the European Neighbourhood Policy (ENP) which covers 16 of the EU's closest neighbours, has been 'revitalised' following the 'Arab Spring' to include a peace-building aspect to help build 'deep and sustainable democracy' and the EU's new 'Agenda for Change' proposes strengthening the EU role in peace-building in a variety of ways.

4.7 While the majority of EU peace-building is carried out under its external relations policy, the EU has also been operating a unique peace initiative within its own borders. The Special EU Support Programme for Peace and Reconciliation in Northern Ireland and the border counties of Ireland was set up in 1996 and is currently in its third funding round⁽⁴⁾.

5. Peace-building - the challenges

5.1 Search for a definition and a strategy

5.1.1 Although peace-building is now widely accepted as a valuable new approach to intervention in conflict zones,

⁽³⁾ See paragraph 2 of the Council conclusions on enlargement and stabilisation and association process 3132nd GENERAL AFFAIRS Council meeting of 5 December 2011: 'The enlargement process continues to reinforce peace, democracy and stability in Europe and allows the EU to be better positioned to address global challenges. The transformative power of the enlargement process generates far-reaching political and economic reform in the enlargement countries which also benefits the EU as a whole. The successful completion of accession negotiations with Croatia is a strong testimony to this and sends a positive signal to the wider region'.

⁽⁴⁾ See Opinion CESE, 'Draft Notice to Member States laying down guidelines for an initiative in the framework of the special support programme for peace and reconciliation in Northern Ireland and the border counties of Ireland (SEC(95) 279 final)', OJ C 236/29, 11.9.1995, and opinion CESE 'Proposal for a Regulation of the European Parliament and of the Council concerning European Union financial contributions to the International Fund for Ireland (2007-2010)', COM(2010) 12 – 2010/0004 (COD), OJ C 18/114, 19.1.2011.

the term has no precise definition. Some see it being applied only to a post conflict situation to stabilise and reconstruct. Others see it bridging the gap, between the policies of defence and development. Others describe it as 'a catalytic process deployed across the continuum from conflict prevention through crisis management, peace-making and peace-keeping to post-conflict stabilisation'.

5.1.2 Looking at the various strands, **'peace-keeping'** is about security and defence, **'peace-making'** is about using diplomacy for political agreement while **'peace-building'** encompasses both and more. Ideally, it is an action which begins before the peace-keepers or peace-makers arrive and, if successful and sustained, could mean they wouldn't be required. All inclusive, all embracing, fully consultative and long term, peace-building could perhaps be described as an open-ended process which serves to reconcile difference by opening doors and opening minds.

5.2 The need for joined-up thinking

5.2.1 Whatever the definition, experts agree that peace-building is a 'highly complex process involving a wide range of actors operating in the fields of military and civilian intervention, diplomacy and financial and technical support over short and long term at local, national and international levels'. The major challenge is to find a way to establish 'coherence, coordination and complementarity' between the extensive array of policies, players and instruments within and outside the EU all working in the same area. The main difficulty is that different Member States and different external donors have different priorities and tensions can arise when the needs and interests of each pull in different directions.

5.2.2 Within the EU, the complexity of structures across its institutions and directorates means practical coordination between those responsible is another significant challenge. Similarly, there exists an important need to ensure coherence between those policies which specifically target fragile zones, such as development aid, and those which can have a major impact on them, particularly trade, investment, climate change and energy policy. The creation of the EEAS is seen as a real opportunity to 'join the dots' of policy and practice between the EU institutions and between the EU, its Member States and other major donors, such as the United Nations, the US, China, and other stakeholders.

5.2.3 While the 'holy grail of a comprehensive approach' remains elusive, efforts have been made to use EU instruments in a more coherent manner. A recent example was the Foreign Affairs Council of June 2011 which agreed an inclusive

approach to Sudan and South Sudan ranging from political dialogue through civilian capacity-building to development aid and trade co-operation. The EU's recent 'Agenda for Change' re-prioritising its development policy, is another example of a new peace-building approach. The proposals include emphasis on human rights, democracy, equality, good governance and links with civil society. This is seen in some quarters as valuable new thinking while others believe it has not gone far enough.

5.3 Enhanced role for civil society in conflict transformation

5.3.1 The process of conflict transformation requires some fundamental changes in attitudes and behaviour. Inclusion, engagement, and dialogue are weapons that challenge fear, hatred intolerance and injustice and form the building blocks which create an environment for conflict prevention and peace-building. This work has to be carried out at grass roots and street level where peace-building matters most. Here, the involvement of civil society organisations which share the EU values of equality, human rights, inclusion and tolerance, can no longer be left to chance and support for those who are vulnerable, at risk or simply cannot get their voices heard must be given priority.

5.3.2 It is widely accepted that civil society organisations have a crucial role to play in ensuring the effectiveness and long-term sustainability of any peace-building strategy. Cooperation and consultation with local 'non-state actors' serves not only to increase EU understanding of a conflict situation from the bottom up, but also ensures grass roots 'ownership' of the process. It also helps promote more 'conflict-sensitive' peace-building and serves as positive reinforcement of their peace-building efforts.

5.3.3 Until now, the focus of peace-building, whether at policy or operational level, has tended to overlook those groups whose influence on the process can be crucial. Women, who often hold together the fabric of society in a conflict, are rarely represented in decision making. The 'back to business' approach used by local traders in conflict zones is an important demonstration of resilience which merits support. Trade union activity, such as the peace and solidarity demonstrations often seen on what are now EU streets, is another effective resource in support of peace-building. Young people need support to channel their energies in constructive ways and vulnerable groups, particularly victims, need expert focussed attention.

5.3.3.1 Conflict prevention and reconciliation between divided groups is increasingly recognised as meriting greater attention in peace-building efforts. Education plays a vitally important role in this regard, teaching young people not only to

accept but also to respect difference. The media is another significant player to consider particularly the role social media can play in influencing positive change. Promoting specific strategies to bring groups together, such as intercultural dialogue and mediation is another important part of this work.

5.3.4 'Structured dialogue' between the EU and civil society organisations in conflict zones can create lasting relationships and understanding at ground level. Because of its close connections with organised civil society, the EESC is well placed to play a greater role in EU engagement with grass roots organisations in these regions. It is already working with business, trade unions and others in places such as China, Tibet, Lebanon, North Africa and the ACP and is keen to step up this experience sharing to 'underpin and strengthen' the efforts of civil society organisations and work with the EU on peace building projects.

5.4 Greater recognition of the value of exchange of experience

5.4.1 As a community of 27 nations joined together for the common good, the EU is in a position to share its own distinct experience with others. From its decision-making process to its enlargement strategy, the EU offers examples of a practice which could be replicated by regional associations in other parts of the world. The African Union is one such organisation which is emulating the EU approach and others are keen to do likewise. There are other successful examples of countries and regions which have managed to bring about change without conflict and these are well worth highlighting in peace-building policy and practice.

5.4.2 Because it has been working on peace-building in external relations since its inception, the EU also has a vast amount of experience to share from areas such as South East Asia, the Middle East, Central America, the Balkans and Sub-Saharan Africa. Some of this work has been highly successful, some less so. Indeed, the EU's record in certain conflict zones has been the subject of severe criticism but even these experiences could serve to advise policy if the 'lessons learned' are properly passed on.

5.4.3 In terms of 'positive experience sharing', there is much to learn. The Aceh Peace Process in Indonesia, the re-connection of the sewage system in the divided city of Nicosia⁽⁵⁾ and EU support for peace in Northern Ireland are all examples which could be used more extensively in the EU tool kit of peace-building experience. While there is no 'one size fits all', there are core principles common to many conflict zones which cannot be ignored.

⁽⁵⁾ See Committee of the Regions Opinion on 'City diplomacy' of 12 February 2009 (OJ C 120/01, 28.5.2009).

5.4.4 Research shows, however, that this sharing of experience is not well established in EU policy particularly if it cuts across internal and external action. In the case of the Northern Ireland PEACE Programme there is a lack of any systematic approach to shared learning with other areas of conflict. Given that the EU is credited for helping contribute to peace in the region, that the Barroso Task Force on Northern Ireland recommended experience sharing with other conflict zones and that a 'Peace Network' has been set up to do exactly that, the apparent lack of read-across from this to external action is a missed opportunity and a major policy flaw.

5.5 Towards the creation of a Centre for Peace-building

5.5.1 A great deal therefore needs to be done for the EU to establish its credentials as a world leader in peace-building strategy and ensure its work has greater reach and impact. One proposal under discussion is the creation of a European Institute for Peace called for by the former President of Finland and the Swedish Minister for Foreign Affairs to ensure greater 'coherence, coordination and complementarity' in EU peace-building efforts. For their part, Northern Ireland leaders have proposed an International Centre of Excellence dedicated to peace-building outside Belfast, for which they have requested EU PEACE funds and the European Parliament has entered the debate and produced a policy document entitled 'a Blue Print for an Institute for Peace'.

5.5.2 The possibility of the creation of a new Institute/Centre linked with other bodies working in the field, such as the EUISS or the Agency for Fundamental Rights, is one worth serious consideration. If such an organisation could provide a focus for independent expert advice, dialogue, training, study and experience sharing between people working in the field, it may prove a valuable asset supporting the work of the EEAS in this crucial area of EU action.

5.6 An opportunity not to be missed

5.6.1 This Opinion focuses on how best the EU could organise itself to play a more constructive role in what has become the greatest challenge facing the world today – conflict resolution. The fact that there is no definition of peace-building and the EU has not yet formulated a peace-building strategy means there is virtually a blank sheet from which to work. This is a rare opportunity for the EU in the area of international relations which may not come again.

5.6.2 The creation of the EEAS should allow the EU to seize that opportunity and move into the driving seat of international peace-building. The challenge now is to design a distinct peace-building strategy which not only achieves coherence between

EU programmes and policies but also between the values and interests of the EU and its Member States. This may prove difficult without a common foreign policy setting out accepted principles for intervention or non-intervention in areas of conflict, but there are those who believe that a 'whole of EU approach' is the only way to ensure peace-building has a real impact on the ground.

5.6.3 History has taught the EU the value of democracy over dictatorship, the importance of justice, equality and human rights and the dangers of intolerance, xenophobia, discrimination and prejudice. From world war to the fall of the Berlin Wall, the EU is constantly moving along a peace-building path, consolidating its achievements and paving the way for others to follow. It has faced many testing times, not least the current

financial crisis, but its fundamental values serve as a touchstone for EU action at home and abroad from which it must never deviate.

5.6.4 In this time of internal crisis and introspection the EU must not lose sight of the bigger picture and its global responsibilities. It must not abandon external policies and commitments and needs to carve out a distinct role for itself which no other nation or group of nations can match. As a peace-builder, the EU brings its history, its ethos and its unique brand of 'bottom-up' intervention to an arena where reputation, understanding, experience, generosity and trust are the most valued actors. As a world leader in peace-building the EU also needs the confidence, the conviction and the courage to step forward.

Brussels, 19 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

APPENDIX

Persons interviewed during the preparation of this opinion:

1. Mr Gerrard Quille (Policy Adviser on Security and Defence Policy, Policy Department, DG External Policies, European Parliament).
 2. Ms Franziska Katharina Brantner (MEP) - Member of the Greens /European Free Alliance Group; Member of the Committee on Foreign Affairs; Rapporteur on the Proposal for a Regulation Establishing an Instrument for Stability and Member of the Delegation for Relations with Israel.
 3. Marc Van Bellinghen, Acting Head of Division and Andrew Byrne, Administrator: Policy Board Global and Multi-lateral Issues, Direction C, Conflict Prevention & Security Policy, Division for Peacebuilding, Conflict Prevention & Mediation, European External Action Service.
 4. Mr Kyriacos Charalambous, Programme officer - EU policies, DG REGIO D1, Unit Programme Coordination, Relations with Other Institutions and NGOs, Simplification, Solidarity Fund, and Ms Tamara Pavlin, Programme Manager – EU Policies, DG REGIO D4, Unit Ireland, United Kingdom.
 5. Ms Catherine Woollard, Executive Director, EPLO (European Peacebuilding Liaison Office).
 6. Ms Olga Baus Gibert (International Relations Officer – Peacebuilding – Crisis Response Planner, Service for Foreign Policy Instruments, Unit Stability Instrument Operations.
 7. Mr David O'Sullivan, Chief Operating Officer, European External Action Service.
 8. Prof. Dr Joachim Koops, Academic Director, European Peace and Security Studies, Vesalius College, Brussels, and Director of the Global Governance Institute.
 9. Ms Danuta Hübner (MEP) - Member of the European People's Party Group - Chair of the Regional Development Committee, Member of the Special Committee on the Financial, Economic and Social Crisis, Member of the Delegation for Relations with the United States and Substitute Member of the Committee on Economic and Monetary Affairs.
 10. Mr Van den Brande, President of CIVEX Committee, Committee of the Regions.
 11. Ms Mireia Villar Forner, Senior Policy Adviser, Crisis Prevention and Recovery, UN/UNDP.
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III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

477TH PLENARY SESSION HELD ON 18 AND 19 JANUARY 2012

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 — A Single Market for Intellectual Property Rights — Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe’

COM(2011) 287 final

(2012/C 68/05)

Rapporteur: **Mr MEYNENT**

On 24 May 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 – A Single Market for Intellectual Property Rights – Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe

COM(2011) 287 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 19 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January), the European Economic and Social Committee adopted the following opinion by 160 votes to 3 with 7 abstentions.

1. Conclusions and recommendations

1.1 Intellectual Property Rights (IPR) must persevere in their traditional role of driving innovation and growth. The protection system which the Commission intends to develop needs to preserve this conventional aspect without shifting entirely towards a purely asset- and finance-based approach, although it must be acknowledged that the market capitalisation of the biggest multinationals is now based largely on their portfolio of intangible rights and licences, the value of which must be entered on the balance sheet in accordance with the International Financial Reporting Standards (IRFS).

1.2 The strategy set out by the Commission for IPR in the single market is both fundamental and designed to supplement

the Europe 2020 strategy, the Single Market Act and the European Digital Agenda. A strategy in this area is imperative in view of the growing intangible share and financialisation of the economy, but it must not be forgotten that current developments are founded on people’s increasing training and skills and their knowledge regarding the growth of the new economy. The human dimension and the public interest must be built into the strategy, and the Committee believes that the proposals and analyses fail to put this point across clearly.

1.3 Furthermore, as the Committee has consistently argued in previous opinions, priority must be given to enabling SMEs to protect their inventions and creations and to tap the

knowledge potential of patents and commercial and advertising strategies which vary widely across the knowledge and information-based society.

1.4 The Committee has long been waiting for the single European patent and the opportunity to unite national case-law throughout the single market, and hopes that these developments will now be put into effect in the interests of Europe's companies and economy, which are at a disadvantage compared to their external competitors. The Committee trusts that the Commission's initiatives will slash transaction costs, particularly for patents.

1.5 In 2012 the Commission will present a legislative proposal on collecting copyright revenue for online music distribution. The Committee insists on the need for advance, meaningful consultation of the organisations representing the rights and interests at stake, including those of users and employees; it also underscores the need for transparency and monitoring of the bodies managing copyright and related rights which must take precedence in the proposed system for collecting copyright revenue. As regards the private copying levy, the Committee believes that this is unfair given that private copying is an integral part of fair use. It should certainly not apply to hard drives used by businesses in the course of their industrial and commercial activities.

1.6 Moreover, the idea of treating IPRs as potentially transferable securities for a specialised European stock market is not enough: SMI-SMEs and major transnational groups in the EU will not have the same level of access, which could accelerate the flight of European innovation to other continents. The Committee is keen to see the Commission's practical proposals on this point.

1.7 The future harmonised IPR policy must also accommodate the general interest and the rights of consumers, as well as the effective participation of all parts of society in deliberations and in the process of shaping a global, balanced strategy. The innovation and creation thus protected must be brought into society's common pool of knowledge; they must contribute to the promotion of culture, information, education and training, and more generally of fundamental collective rights in the Member States.

1.8 Approximating national laws on the protection of intangible rights and suppressing counterfeiting is necessary in the single market in order to facilitate administrative and customs cooperation and, where appropriate, police and judicial cooperation on investigations and the suppression of the most serious infringements of protected rights, where the violations serve commercial purposes and in particular where consumers' health and safety are endangered.

1.9 Large-scale counterfeiting and pirate copies made for commercial purposes are often directly linked to organised crime, as the chances of being caught and the penalties imposed for this type of crime are an inadequate deterrent.

1.10 The Committee therefore supports the Commission's strategy with a view to promoting the coordinated policies and actions and genuine administrative cooperation which are a core component of it, both in the interest of businesses and in the general interest.

1.11 Today, examples of online, fee-paying distribution, developed for instance by Apple, Amazon, Google or Deezer, show that copyright can be valorised without criminalising young people; if prices are reasonable and affordable, private pirate copies will lose most of their appeal.

1.12 Civil courts are competent for the majority of cases brought for infringement of intangible rights but, in addition to the customary slow pace of proceedings, the burden of proof incumbent on SMEs is often excessive, particularly for cases of infringement committed outside their own country, and specific procedures should be considered in the context of the single market for investigations, seizures, mutual recognition of administrative and judicial acts and reversing the burden of proof.

1.13 Payment of damages to plaintiffs can also be problematic in an international context and the countries concerned should cooperate in order to ensure that right holders are awarded damages as closely proportionate to the actual harm done as possible, independent of the fines and other penalties which may be handed down by the courts.

1.14 A clear legislative framework is needed regarding private 'solutions' (codes, etc.); and, above all, initiatives of this kind should be replaced by judicial monitoring and guarantees of procedures and respect for personal rights, which must prevail: the right to information, to privacy and to freedom of expression and communication, and guarantees on internet-neutrality.

1.15 At the same time, the general principle of proportionality between offences and penalties should be applied effectively; some highly intrusive and punitive national laws on illegal copying of audio-visual material, made on a small scale by individuals via internet with no commercial purpose in mind, should be revised accordingly. It is important to avoid giving the impression that laws are shaped in response to pressure brought to bear by lobbies rather than in response to a fundamental principal of criminal law.

1.16 The Committee also awaits with interest the Commission's proposals on overhauling trademark law and harmonising and revamping it in the context of the single market. It believes that revamping the law and stepping up protection is necessary in view of the role played by these factors in assessing companies' value.

2. The Commission's proposals

2.1 The notion of intangibles usually brings to mind research, patents and, more generally, technological innovation. However, while these elements are certainly key assets when it comes to competitiveness, there is also another category of intangible asset: the entire field of intangibles linked to the imagination. This covers a whole range of activities, concepts and sectors, encompassing cultural and artistic creation in the broadest sense, design, advertising and trademarks, etc. All these elements have one thing in common: they are based on notions of creation and creativity.

2.2 It was not possible for the Commission's 2009 proposal to take into account the changes brought about by the ratification of the WIPO internet treaties (WCT, WPPT) by the European Union and the Member States. The present Communication takes this new status quo and also ACTA (the Anti-Counterfeiting Trade Agreement) into account.

2.3 A distinction is drawn between two forms of intangible (or intellectual) property, industrial property and literary and artistic property.

2.4 Traditionally, the two main types of protection for inventors and authors are patents, for inventions with the potential for industrial applications, and copyright (including its more restrictive common law form) for publications and other literary, audiovisual or artistic works, understood in the broadest sense.

2.5 This communication aims to present the Commission's comprehensive strategy for establishing the genuine single market for intellectual property that is currently lacking in Europe – a European IPR (Intellectual Property Rights) system fit for the economy of the future, which rewards innovative and creative efforts, generates the incentives needed to encourage EU-based innovation and allows cultural diversity to flourish by offering additional outlets for content in an open and competitive market.

2.6 It includes a collection of proposals, some returning to long-standing policies that need harmonising and adapting, and other, new proposals for the incorporation and integration of IPR in the single European market.

2.7 Some of the proposals have yet to be fleshed out, and it will be months before practical proposals are available on how the European IPR market should be organised and what changes are needed when it comes to harmonising trademark protection. In 2012, the Commission will present proposals on managing online music rights.

2.8 Other proposals have been on the table for a long time already, such as the unitary patent, which seems to be approaching completion following three decades of work, and the harmonisation of legislation and practical measures for combating product counterfeiting and piracy, and parasitic branding; these proposals have now been brought together within a harmonised and coherent framework in order to combine with others to make the proposed strategy more effective.

3. General comments

3.1 It is the Committee's opinion that a modern, integrated European IPR system would contribute in a major way to growth, the creation of lasting jobs and the competitiveness of the European economy: the primary objectives of the Europe 2020 strategy. The Committee has regularly expressed its views in the past and put forward suggestions concerning industrial property and literary and artistic property in the single market ⁽¹⁾.

3.2 Intellectual property rights comprise industrial and commercial property rights, such as patents and utility models, trademarks, new plant varieties, ownership of databases, electronic layouts, designs and models, geographical indications, copyright and related rights, trade secrets, etc.

3.3 Knowledge-based industries alone comprise 1.4 million SMEs in Europe and 8.5 million jobs; they are growing rapidly and steadily compared to other sectors of the economy, and so are helping put the economy back on track.

3.4 The Commission states that: 'IPR are property rights ...'. They are seen as property rights but are in fact intangible rights protecting the holders from copies and competition. They constitute exceptions to free competition and take the form of temporary monopolies protected by a deed or certificate issued by a competent state authority (patents, etc.), or recognised under government legislation (copyright and related rights).

3.5 The holders of these rights may surrender them or sell sole reproduction rights in the form of licences; in this way they resemble intangible property rights, but in practice the protection provided is less certain than for material property rights, owing to their different basis. Temporary monopolies are only recognised and protected to serve the general interest, in order to increase the potential of knowledge and technology and thus boost industrial or cultural development.

⁽¹⁾ OJ C 18, 19.1.2011, p. 105.
OJ C 116, 28.4.1999, p. 35.
OJ C 32, 5.2.2004, p. 15.
OJ C 77, 31.3.2009, p. 63.

3.6 This general interest dimension no longer exists in the area of software, for which there is no obligation to publish sources when patents are issued for their protection. European law, meanwhile, rules out patent protection for software (Munich Convention) and uses a right deriving from copyright to protect not the sources but only the effects generated by what is known as proprietary software. This nevertheless poses a problem since the same effects may be obtained from different programmes; furthermore, protecting software copyright involves specific obligations, with a view to the interoperability of various programmes, which might allow for decompilation. The usual 50 year term of protection, however, seems excessive in a field where the pace of renewal and innovation is extremely rapid and in a market where technologies and programmes are constantly evolving and changing and where the winner takes all.

3.7 In contrast, there are movements that oppose traditional forms of protection by creating free public licences, such as the General Public Licence for software and the creative commons for the literary and artistic domains; they object to conventional protection that they consider obstructs the knowledge- and information-based society. These free licences, which represent a large share of the global market, should be recognised and protected in the same way as other licences that represent ownership rights.

3.8 Derogations can affect temporary protection for reasons of general interest (compulsory licences when right holders refuse to grant licences in certain countries, or the case of medicines in the event of human or animal epidemics). In the past, before the TRIPS agreements and the recent WIPO treaties made the scope of intangible rights linked to international trade broader if not universal, many countries did not offer real or sufficient protection and some tolerated violations of industrial and literary property rights with the aim of building up their industrial base and developing their knowledge (Japan, certain European countries, etc.). Such practices are in decline, but the fact is that States can be more or less repressive or tolerant in their treatment of counterfeits (China, India, etc.).

3.9 The development of intangible assets (trademarks) enables a company to set itself apart from its competitors, put new products and concepts on the market and, more generally, gain in terms of non-price competition, which in the long run generates additional customers and profit and new jobs. Counterfeiting and parasitic practices are expanding and threaten both jobs and investments; they also threaten consumers' health and safety and their confidence in brands that have been counterfeited or pirated, reducing opportunities for licensing as well as the expected profits and tax revenue.

3.10 Increasingly, however, the value generated by these assets is being taken into account when determining the stock

market value of major companies as part of the financialisation of the intangible economy. Up to 90 % of the market capitalisation of companies like Microsoft, Apple, IBM (portfolio of 40 000 patents), Google and Facebook, consists of intangible assets; this percentage varies from one economic sector to another but remains considerable: between 90 % and 40 % of market capitalisation for listed companies. The new accounting standards call for intangible assets to be entered on the balance sheet, but pose serious problems in terms of assessment.

3.11 This change in scale has direct consequences for the concept of intellectual property, which has indeed changed in comparison with the traditional usages of patents and copyright, as reflected in the more recent WIPO conventions. The Commission has asked WIPO to address database protection in a forthcoming conference with a view to an international treaty.

3.12 This also accounts for ACTA and the way it was adopted (though it is no justification); this is a treaty designed to implement cross-border protection measures for property covered by patents and copyright as written into the WTO's TRIPS agreements. Certain countries such as China and India are blocking the adoption of TRIPS implementing measures in Geneva, thus preventing any effective protection of intangible rights in international trade.

3.13 In principle, ACTA should not alter the community *acquis*; nevertheless, its exclusive focus on increasing protection for rights holders by means of customs, police and administrative cooperation measures continues to favour a certain view of rights ownership. Other doubtless more fundamental human rights, such as the right to information, health, sufficient food, the right of farmers to select seeds and the right to culture, are not taken sufficiently into consideration, and this will impact on future European legislation geared towards the harmonisation of Member States' legislation. The individualised and exclusive, proprietary view of temporary exceptions to free competition therefore clearly has an impact on the future of the knowledge- and information-based society and the third-generation human rights included in the EU's Charter of Fundamental Rights.

3.14 It should be noted that what is deemed a patentable invention varies considerably from one country to another, especially when it comes to new technologies: software has specific features and is protected by patents in some countries (USA) and by a special form of copyright in others (Europe), but these contradictory systems form major obstacles to innovation and are at the root of disproportionate legal defence costs, for instance in the US. The issuing of trivial patents creates intense legal uncertainty. The US has recently reformed the USPTO and revised its system for protecting new technologies, in particular software, so as to issue good quality patents in order to enhance innovation and legal certainty.

3.15 The procedure for examining applications for the future unitary patent is fundamental and must be recognised to be of the highest quality, so as to anchor the patent's value and avoid disputes and court cases as far as possible. The EPO has qualified staff, but they must be given sufficient time to study each file in order to secure the quality that should be the hallmark of European innovation. Similarly, translation from national languages into the official languages named in the London Agreement must be subject to the same care regarding quality and carried out by specialist technical translators; it is the Committee's opinion that current translation software still cannot deliver the necessary quality of highly specialised technical-legal language used in patents ⁽²⁾.

4. Specific comments

4.1 Using patents to protect inventions

4.1.1 Under the Munich Convention, patent applications can be made for inventions that offer novelty and the potential for industrial application; software, business methods, algorithms, equations and scientific discoveries cannot be patented. Questioning these principles when it comes to software (based on algorithms) and genetic discoveries (the human genome, the role of genes) has proved highly controversial. The United States issues patents in the area of European exceptions (in accordance with Supreme Court case-law) which are now posing serious problems and generating disproportionate protection costs in the case of disputes.

4.2 Software protection

4.2.1 'Council Directive 91/250/EEC gives copyright protection to computer programmes as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971). The question of authorship is widely left to the EU Member States. Employers are entitled to exercise the economic rights in programs created by their employees. Moral rights are excluded from the scope of the Directive' ⁽³⁾. This directive does not solve the problem of the rights of wage-earning creators as regards either copyright or patents.

4.2.2 The Committee would suggest that the Commission assess the possibility of specific, extremely limited duration protection for software; Directive 91/250/EEC ⁽⁴⁾ could be revised in order to significantly reduce the protection term for instance to five years, and then to require the publication of sources, in the light of the rapid pace of innovation and of the renewal of programmes by major publishers.

4.3 Database protection

4.3.1 This is *sui generis* protection as for literary and artistic property, but for a 15 year term, whereas the works referenced

or quoted by certain databases remain subject to copyright. European legislation is one of the few systems to offer protection to database authors, who are largely ignored in the rest of the world.

4.4 Protection for computer designs

4.4.1 Electronic cards and computer processors are subject to universal *ad hoc* protection against copying, which is written into the Marrakech agreement (1994) establishing the WTO.

4.5 Protection of literary and artistic property

4.5.1 Copyright (which breaks down into copyright plus the moral right of the author) and artists' resale rights are also subject to universal protection in Europe.

4.5.2 The protection of works, in particular books, film and music, has been affected by modern means of digital reproduction and transmission via the internet, that can make it easy to make copies of the same quality as the original and sell them. This is illegal practice in Europe, but national legislations diverge; the Committee is in favour of the thorough harmonisation of legislation with a view to proportionality and balance of controls and penalties.

4.5.3 The European law that has developed in this field is extremely protective of the holders of copyright and related rights. This is also the case in the United States, which goes a long way towards explaining ACTA, the 'secretive' drafting process limited to only a few countries and, above all, its enforcement objectives in the face of the impossibility of having the practical procedures and obligations accepted by the WTO, given the need for unanimity and the veto of certain countries, such as China or India.

4.5.4 Meanwhile, according to the Committee, ACTA's approach is aimed at further strengthening the position of rights holders vis-à-vis the 'public', certain of whose fundamental rights (privacy, freedom of information, secrecy of correspondence, presumption of innocence) are becoming increasingly undermined by laws that are heavily biased in favour of content distributors.

4.5.5 'Professional' copyright pirates are perfectly capable of eluding any form of control on the flow of data on the internet, and the penalties imposed as an example on a handful of teenagers cannot conceal the fact that audio-visual producers are a decade behind in creating a business model that matches the new information and communication technologies. In order to cut down on procedural costs and settlement delays, codes of conduct have been established piecemeal, sometimes at the government's urging, which force internet access providers to supply audio-visual and music providers (a sector with a high level of concentration) with the names and addresses of alleged

⁽²⁾ The European Patent Office (EPO) offers translation tools but these are limited to the three official languages.

⁽³⁾ See COM(2000) 199 final.

⁽⁴⁾ OJ L 122, 17.5.1991, p. 42.

'copiers' of content acquired illegally on the internet. This entails a certain level of risk of error. This form of accusation may be compounded by cutting off the alleged counterfeiters' internet access. Although this may reduce the workload of overburdened courts and spare the legislator the need to act and propose official institutions to combat counterfeiting at a time of budget cuts, private practices of this type may ultimately have undesirable consequences. The same applies to laws shaped under the excessive pressure exerted by film and music distribution lobbies in various countries - generally to highly doubtful effect, and at the cost of violating the rights of consumers, who by and large are totally ignored and considered without distinction to be potential pirates.

4.5.6 While it is necessary in itself to enforce anti-counterfeit laws, which in most cases protect consumers against health- and safety-related risks and also defend skilled jobs and workers' rights, it would be preferable to set out the general shape of literary and artistic property more clearly, so as to redress the balance in the legislation to be harmonised in such a way as to give due consideration to the rights of consumers and users, as well as workers, and involve their representative organisations in framing laws in these areas.

4.5.7 A directive ⁽⁵⁾ governs satellite broadcasting and cable retransmission. There are other European laws:

- a directive on orphan works (under examination by the legislator) ⁽⁶⁾,
- a directive on rental and lending rights ⁽⁷⁾,
- and exceptions to copyright ⁽⁸⁾.

This legislation is the subject of periodical reports. 'Exceptions' or 'allowances' should be reconsidered so as to give clear affirmation to the rights of users by means of legislation that protects their fundamental rights and by establishing exceptions, for instance in the case of disabilities ⁽⁹⁾.

4.6 *The Commission's proposal on the single market for intellectual property rights and the Committee's comments*

4.6.1 There is a deep-rooted and growing tendency to treat temporary rights to protection by patent, copyright and other *sui generis* systems (for circuit layouts, designs, and models, plant

varieties, etc.) like property rights similar to the right to ownership of movable and immovable property. This trend, which may or may not last, has been detected by the Commission and has had a profound influence on the proposed strategy.

4.6.2 The resulting confusion between temporary exceptions and ownership based on Roman law has a downside, if not for rights holders. Suspending the right to competition and making it subject to a system of authorisation by right holders in the form of licences does not amount to a genuine property right with all that entails. Limitations to protection exist for reasons of public interest (compulsory licences), the geographical nature of patents, and divergences in national legislation, not least in Europe, etc.

4.6.3 Nevertheless, the current tendency is to treat patents and licences as investment securities and guarantees, and we are even seeing securitisation with a view to financial speculation. This is the result of the financialisation of the economy alongside the deployment of an intangible economy linked to the new information and communication technologies and the new IFRS accounting standards. The Commission should soon be finalising its strategy in the area of the market for patents in the form of an IPR valorisation instrument (a European stock market?). The chief problem besetting innovative start-ups in Europe is the inadequate interlinkage between basic, applied and university-business research, as well as the crying lack of venture capital for innovative businesses. The Committee again draws attention to the practices of multinationals operating in high-technology sectors, consisting of acquiring SMEs and engineers with the innovative companies' portfolios of patents, rather than licences which could also be granted to competitors, the aim being to use the patents and other industrial property rights in pursuit of monopolist, anti-competitive strategies.

4.6.4 Another pillar in the strategy reaffirms a key role for the unitary European patent and a higher European jurisdiction designed to unify case law, with a view to remedying the serious difficulties encountered by companies, especially problems that largely prevent SMEs from securing protection for their industrial property, and promoting improved awareness of technological progress in the single market.

4.6.5 The Committee has always given strong backing to the Commission's work to establish a unitary patent, while also expressing concerns regarding certain EPO practices that do not fully comply with the clauses of the Munich Convention when it comes to the explicit exclusion of software, whereas all patents relating to software or business methods have been annulled by the national courts with which complaints have been lodged; such practices seriously undermine the legal certainty that should be associated with obtaining a patent,

⁽⁵⁾ Directive 93/83/EEC (OJ L 248, 6.10.1993, p. 15).

⁽⁶⁾ EESC opinion: OJ C 376, 22.12.2011, p. 66.

⁽⁷⁾ Directive 2006/115/EC (L 376, 27.12.2006, p. 28).

⁽⁸⁾ Directive 2001/29/EC (OJ L 167, 22.6.2001, p. 10).

⁽⁹⁾ EESC opinion: OJ C 228, 22.9.2009, p. 52.

which is a costly procedure (examination and translation costs, annual fees, employment of patent agents). These practices must find no echo in the future patent.

4.6.6 As regards the Commission's suggestions to establish a European Copyright Code and to examine the feasibility of creating an optional 'unitary' copyright title, the Committee considers that while these are very ambitious proposals which would support the harmonisation and completion of the single market, it would be premature to give its views on what are only hypotheses; the Committee therefore calls on the

Commission to continue looking into this question and to present practical proposals which take due account of pertinent developments in the various Member States.

4.6.7 The Committee believes that the tax levied on any form of electronic and magnetic media in order to cover the cost of private copying is based on the presumption of guilt. Instead, the Committee holds the view that private copying is a legitimate practice which enables the user to change media or hardware and which should be recognised as a right of the legal holder of the license for use under the concept of fair use ⁽¹⁰⁾.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁰⁾ The CJEU espouses this view in its Padawan ruling.

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on a strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020'

COM(2011) 311 final

(2012/C 68/06)

Rapporteur: **Mr IOZIA**

On 1 June 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 and the European Economic and Social Committee on A strategic vision for European standards: Moving forward to enhance and accelerate the sustainable growth of the European economy by 2020

COM(2011) 311 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 19 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 19 January 2012), the European Economic and Social Committee adopted the following opinion by 158 votes to 6 with 2 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) is a committed supporter of the Europe 2020 strategy for smart, sustainable and inclusive growth and welcomes the Commission's initiative. In particular, the adoption of common EU standards contributes to the development of a competitive single market with interoperable and innovative standards-based products and services.

1.2 Standards can be considered as the heritage of our civilisation: they represent current and past knowledge; they have to be progressive in order to properly evolve. The time required to develop standards should be reduced in order to always reflect society's needs. The EESC supports the Commission's efforts to reduce this period by 50 % by 2020 without, however, this being carried out in a uniform fashion and without calling into question the necessary and sometimes lengthy consultation of stakeholders. These consultations are conducted more effectively at national level and are usefully complemented by the direct action of specialist European organisations.

1.3 Participation in standardisation should be as important as participation in the legislative process. Greater participation by consumers, SMEs and other stakeholders is needed and can be achieved through financial support. A peer review by interested stakeholders of national standard could ensure that society's interests are represented at all levels.

1.4 Standards in public procurement are essential to implement the single market correctly.

1.5 The EESC confirms its previous view: 'specifications adopted by international industry forums and/or consortia, in the ICT sector, should only be accepted after a process of approval by European standardisation organisations (ESOs), involving representatives of SMEs, consumers, environmental organisations, workers and organisations with strong social interests' ⁽¹⁾.

1.6 The Commission proposes several actions in different fields. As standardisation is a very important tool to support industrial policy, innovation and competitiveness, the EESC supports the proposed actions, especially the ones related to the role of the Joint Research Centre of the European Commission intended to verify that scientific standards fit with the requirements of the European and national economies in terms of competitiveness, social needs, safety/security concerns and the environmental impact (Actions 1-5 of the Communication).

1.7 On societal interest, the Commission foresees specific attention being devoted to safety, security and protection, asking Member States to ensure the genuine involvement of consumers, environmental associations and disabled and elderly people. The EESC considers these proposals to be of great value (Actions 6-9).

⁽¹⁾ OJ C 376, 22.12.2011, p. 58.

1.8 The EESC has always supported the involvement of and an effective role for civil society organisations and fully agrees with the Commission and its initiative to enlarge and ensure a more inclusive working process, both at national and European level, based on recognised criteria, such as the principles of the WTO agreement on Technical Barriers to Trade. Financial support should be provided to SME organisations, consumers, trade unions and other relevant stakeholders (Actions 10-15).

1.9 Chapter 5 of the Communication is dedicated to the development of standards in services: the EESC is in favour of the view expressed in that chapter and considers the idea of giving the responsibility to the High Level Group on Business Services, as proposed in the Communication 'Towards a Single Market Act', to be very helpful for all economic sectors, even beyond the services sector (Actions 16-18).

1.10 The EESC recognises the particularity of the ICT market and the need for a rapid definition of standards, which would actually be developed by forums and consortia. As stated, a genuinely inclusive process should validate these standards. The creation of a multi-stakeholder forum is to be welcomed. The EESC recommends that this forum be held on regular basis and not only for a single initiative. The EESC would like to be part of this forum.

Standards in ICT are essential in public e-Procurement and in e-Government in general. It is crucial to guarantee the interoperability of ICT (Actions 19-23).

1.11 The final proposals underline the role of Europe in international standardisation and the active initiative announced by the Commission. The EESC is in favour of the proposed actions and considers it crucial for the EU interest to play a very active part in the international activities, endorsing the Commission decisions to support ESOs in their work on a bilateral and multilateral basis (Actions 24-28).

1.12 The independent review, which is to be launched by 2013 at the latest, is based on the interest of the Commission in evaluating progress and compliance with the targets: industrial policy, innovation and technological development, from the point of view of the market's needs, of inclusivity and of representativity. The EESC fully agrees with this proposal (Action 29).

2. General comments

2.1 An efficient European standardisation system will essentially allow interoperable products and services to be created, which can be offered seamlessly within the EU, not just in cross-border scenarios, but also at local, regional or national levels.

2.2 The EESC agrees that standards are effective policy tools and that they can contribute to the proper functioning of the Single Market, particularly in the field of ICT and services, in which process and production standards are developing.

2.3 The EESC strongly supports the use of standards in public procurement, as this will trigger the supply of standards-based product and services. Public procurers in the EU should employ global or European standards, if available, in any product or service request, while the use of proprietary standards and non-interoperable products or services should be strongly discouraged.

2.4 Noting the importance of permanently removing barriers to trade, the EESC appreciates the commitment of all national standards bodies in Member States to implement European standards as identical national standards and to withdraw existing national standards that conflict with these, and not to take actions in the future that could undermine this harmonisation.

2.5 The EESC agrees that the European standardisation process should be accelerated, simplified, modernised and made more inclusive. The use of specific strict deadlines, expert resources and the effective participation of all interested stakeholders (especially SMEs, consumers and other societal stakeholders who are often weak or absent at national level) should be included in EC requests for standards and funding.

2.5.1 Participation at national level is very important as well. The proposals from the national standardisation bodies form the basis for a European standard. It is easier for consumers and SMEs to contribute at national level.

2.6 Since standardisation is a voluntary process driven by the market and its success depends primarily on acceptance by the market, the EESC emphasises the importance of better involvement of SMEs, even through their associations, in all phases of standardisation: consultations on new projects including mandates, development of standards and the final vote, both at national and European level.

3. Specific comments

3.1 *Consideration relating to ESOs* ⁽²⁾

3.2 The EESC acknowledges the considerable reduction in the average development time of European standards made in recent years. Nevertheless, further reductions should be made,

⁽²⁾ ESOs: European standardisation bodies. The three official European standardisation bodies are CEN, CENELEC and ETSI.

but not at the expense of inclusivity or quality. The Commission is also urged to improve and accelerate its procedures for the development of standardisation mandates and the referencing of harmonised standards in the Official Journal of the EU. The EESC welcomes the Commissioner's stated intention to reduce the length of the process by 50 % by 2020.

3.2.1 The membership of ESO working groups and Technical Committees must be better balanced, representing all market parties for the standardisation topic in question. Some funding should be provided in order to ensure that micro-enterprises, consumers and other societal stakeholders and their associations attend workshops. The EESC supports the decision to revise and rationalise the current system of incentives and financial supports to expand opportunities for all interested stakeholders to participate. A unified regulation of existing tools will be very welcome.

3.2.2 Proper oversight is required in order to prevent any duplication of work or outcomes across working groups at EU level (funded by the European Commission).

3.2.3 NSB require the full involvement of Member States, particularly political backing, as well as technical and financial resources, to allow for the participation of all the stakeholders.

3.2.4 While one of the key benefits of standardisation is the opportunity to provide interoperable products and services, a clear mechanism and tools for testing and validating EU standards should be established in order to ensure faster product development cycles.

3.2.5 In response to an 'Ageing Europe', European standardisation also has a key role to play in ensuring the delivery of safe and accessible products and services to consumers of all ages and abilities. This is especially important when considering the importance of European standards in supporting public procurement contracts.

3.3 **Implementation Guidelines** - Some international standardisation bodies do not produce implementation guidelines for using the standards developed. ESOs should meet that need, producing clear and concise implementation guidelines in order to ensure ease of implementation.

SMEs will be able to gain access to markets in which common standards are used, reducing complexities and costs for SMEs and improving competition.

Encourage the use of EU standards where national standards are lacking or ensure convergence of national standards with EU standards, by providing clear roadmaps.

3.4 **Awareness and representation for SMEs:** targeted workshops, training and awareness-raising activities should be deployed at regional and national level, since SMEs can be reached more easily through local industry or SME associations and public administrations.

3.4.1 SMEs are often unaware of the mechanism for developing standards and simply accept products with pre-defined standards embedded. SME associations at national and EU level often do not have the resources required to provide input into standardisation developments, thus further reducing their influence.

3.4.2 The EESC agrees that the position of European associations representing SMEs and societal stakeholders should be strengthened. Voting rights for EU SME associations and societal stakeholders in ESOs should be given serious consideration. The EESC is interested in participating in this debate, which is controversial at the moment, given that the ESOs are private bodies.

3.4.3 The EESC appreciates the work carried out, with the financial support of the European Commission, by NORMAPME as the European Association representing crafts and SMEs in standardisation and by ANEC, representing the consumers.

3.4.4 To raise awareness and increase use of standards, the EESC suggests that standardisation organisations at EU and national level provide potential users with simplified access to standards, including a summary of their content. If the use of standards is made mandatory through legislation, the legislator must take care to ensure that these standards are just as easily accessible as the legislation itself.

3.5 **Education:** Standardisation concepts should be included in the curricula of European secondary schools and universities. Specific incentives for students and researchers to develop standards-based interoperable solutions and applications should be supported. For example, EU funding for students and researchers as single entities, or as cross-border groups, should be easily granted.

3.5.1 The Commission should monitor innovation trends by working closely with the ICT industry, research centres and universities, in order to ensure that standards are developed in line with product/service innovation. The Work Programme for Standardisation should cater for this, prioritising actions based on market adoption behaviours and needs.

3.6 Standards represent a voluntary process of assessing the needs, requirements and rules to be met in order to facilitate the acceptance of related products and services. However, these rules evolve into standards only when they gain market acceptance through wide user adoption. Balanced stakeholder requirements and consensus should therefore be the foundations of any standardisation work. However, it is mainly large private and public companies that participate in the development of standards, resulting in unbalanced stakeholder representation.

3.7 Standardisation is an important tool for competitiveness. The EESC calls on Member States to provide an effective national standardisation framework, able to contribute to the development of European and international standards, and able to provide standardisation solutions for exclusively national needs.

3.8 NSBs should be strengthened. However, this greatly depends on national industrial policy and the degree of national commitment therefore varies across countries. Specific incentives could be developed, coupled with a communication campaign on best practices from EU Member States which view standards as a strategic asset for their competitiveness.

3.9 The EESC agrees on the crucial role of the development of **standards for services**. However, it is crucial to ensure that service standards are market driven and consensus-based.

3.9.1 National standards may create obstacles to the achievement of a single market. It is crucial that standards are

developed at EU level before Member States begin to develop country-specific standards which are often non-interoperable.

3.10 The EESC strongly supports the European Commission's actions relating to ICT standards and interoperability. In particular, this concerns the possibility of employing widely accepted ICT standards in public procurement in order to create demand for interoperable services led by the public sector, which will act as a key driver for standardisation.

3.10.1 As already proposed, 'the Committee considers it essential that the ESOs and the Commission carry out preliminary checks to ensure that specifications adopted by international industry forums and/or consortia, to be used as a reference for the purpose of public procurement, have been developed in a neutral, fair and transparent manner with appropriate involvement of representatives of small and medium-sized enterprises, consumers, environmentalists, workers and organisations representing important social interests'.

3.11 The EESC is also sceptical about the proposal with a view to improving global competitiveness; policies and standards should be supported by legislation, not the opposite. Standardisation should not hamper innovation and development.

3.12 Standards-based products and/or services resulting from successful EU-funded initiatives should be incorporated into subsequent related EU initiatives with a view to eliminating duplication and promoting further expansion/adoption of those standards.

Brussels, 19 January 2012.

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 on prudential requirements for credit institutions and investment firms’

COM(2011) 452 final — 2011/0202 (COD)

(2012/C 68/07)

Rapporteur: **Mr MORGAN**

On 30 November 2011, the Council, and, on 17 November 2011, the Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms

COM(2011) 452 final — 2011/0202 (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 19 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 179 votes to 2 with 7 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the main thrust of Capital Requirements Directive IV⁽¹⁾ (CRD IV) and the Basel III accord on which it is based. However, CRD IV will increase banking costs and this is an important consideration for EU business, especially SMEs. The Basel framework is designed for internationally active banks all of which should adhere to the framework.

1.2 EU Capital Requirements Directives have always applied to all banks and this is important because of the role of regional banks and non joint stock banks in supporting the economy.

SMEs are very dependent on bank funding and so care should be taken to avoid imposing cost penalties on EU SMEs in relation to their international competitors. It is in this context that the EESC urges the Commission to facilitate the further development of ethical and participatory banking⁽²⁾.

1.3 The impact study conducted by the Commission found that SMEs would not be especially disadvantaged by the new capital requirements but the Committee remains *meffiant* and requires that the Commission closely monitors the development of bank lending and bank charges to SMEs. In addition, the EESC supports the risk rating review for SME lending to be conducted by the Commission.

1.4 The new framework brings together both micro-prudential and macro-prudential elements. On the micro-prudential side, there is higher and better quality capital,

better coverage of the risks, the introduction of a leverage ratio as a backstop to the risk-based regime, and a new approach to liquidity. On the macro-prudential side, CRD IV requires the build-up of capital buffers in good times that can be drawn down in periods of stress, as well as other measures to address systemic risk and interconnectedness. Conceptually, at least, the proposals address all the problems revealed by the banking crisis and spelt out in the previous EESC opinion on CRD III⁽³⁾.

1.5 Ultimately, the effect of the legislation will depend on its implementation and the actors involved. The banking crisis had no single cause; all the actors were culpable. The directors responsible for the governance of many banks were clearly at fault, but so were statutory auditors, rating agencies, institutional investors and analysts, Member State regulators and supervisors, central bankers, treasury ministries and politicians, while academic economists and media commentators also failed to see what was happening. The EESC would like to believe that the actors have learnt the lesson of the last crisis, but the way the sovereign debt crisis has been handled suggests otherwise. In some cases, bank recapitalisation has not been addressed, stress tests have been unconvincing (Dexia), auditors have not required rigorous provisioning against sovereign debt write downs while politicians, by applying political remedies to economic problems, are responsible for letting the crisis get out of control.

1.6 The counterweight to the new Regulation must be the implementation of recovery and resolution regimes based on devices such as living wills. While the State will continue to

⁽¹⁾ OJ L 329, 14.12.2010, p. 3–35, EESC opinion: OJ C 339, 14.12.2010, p. 24–28.

⁽²⁾ OJ C 48 of 15.02.2011, p. 33.

⁽³⁾ OJ C 228, 22.9.2009, p. 62–65.

provide guarantees for small deposits, the moral hazard represented by unlimited State support to failed banks must be removed. If the situation is clear enough, investors, creditors and directors will have to take direct responsibility for the future health of each credit institution.

1.7 To restore stability and confidence in the markets, the EU Heads of State and Government in their crisis resolution plan of 26 October 2011 agreed to require a number of banks to hold a capital ratio of 9 % of the highest quality capital by June 2012, including an exceptional and temporary buffer against sovereign debt exposures. This was necessary since under the proposal for Regulation the transition of new capital requirements was foreseen to take place over a number of years. As a result of this fiat, some banks will find it very difficult to raise new capital, not least because they must also roll over existing debt which is itself a critical issue because funding had already dried up in the second half of 2011. The Committee recognises that these measures are exceptional but, nevertheless, the impact is immediate, whatever relief might be ultimately available.

1.7.1 If they were to apply, these capital requirements could have a tremendous effect on smaller banks and local banks, which are normally more SME and micro enterprise friendly than international banks. If the smaller banks were to have difficulty in raising such capital, then it will be harder for SMEs to gain access to finance.

1.8 This fiat gives rise to two major concerns if the present funding crisis continues. For banks that cannot or do not want to raise new Tier 1 equity capital in the short term, an action which could dilute existing shareholders, the alternative is to shrink their balance sheets, reducing their loan books to bring them in line with their capital reserves. At a time when all Member States are seeking to revitalise their economies, the withdrawal of bank credit would be a disaster. To avert such an outcome, Member State and EU authorities should seek to collaborate with the banking sector, rather than continually confronting it. They should also seek to take comprehensive measures to encourage alternative financing such as participatory banking as was already proposed in an earlier EESC opinion ⁽⁴⁾.

1.9 The second concern affects those banks that do raise additional own funds in the markets. Most of the available capital is in Sovereign Wealth Funds and Asian and Middle Eastern banks. There is a real danger that the ownership of the EU banking system will move out of the control of EU Member States.

1.10 A particular problem which has emerged during the sovereign debt crisis is the clear evidence that, contrary to the guidelines in both the Accord and the series of Capital Requirements Directives, sovereign debt is clearly not risk

free. This is an important weakness of the quality of capital provisions of the Regulation. It has profound implications for banks which have been left little choice by the regulations but to load up on sovereign debt. The mechanistic application of the risk free rating must be reconsidered by regulators while banks will have to revise their internal risk methodologies.

1.11 The cumulative effect on capital, liquidity and leverage of CRD II, III and IV, the forthcoming resolution regimes, the growing interest in the Volcker type proposals to limit bank own account trading and in the concept of ring fences between retail and investment banking are likely to mean that the business model employed so profitably by the larger banks in the last decade will have to be redeveloped for the austere and capital constrained circumstances of the present decade. It is in the interest of all stakeholders – borrowers and lenders', employees and investors – and society at large, that the banks can establish a new business model – certainly less profitable but hopefully more sustainable for the years ahead.

1.12 In the opinion of the EESC, new business models must be ethical and sustainable. Customer relationships need to be improved, business practices need to be scrupulously ethical and reward structures must be radically revised. All the actors were culpable as the crisis developed. They must all come together now to build credit institutions capable of supporting the EU economy in the difficult decade ahead.

2. Introduction

2.1 EU Capital Requirements Directives are designed to establish the framework for the banking internal market. In doing so, they transpose Basel Accords into EU law. The Basel Committee was established in 1975. In 1988, the Committee decided to introduce a capital measurement system commonly referred to as the Basel Capital Accord. This system provided for the implementation of a credit risk measurement framework. The EU transposed the Accord into its first Capital Requirements Directive (CRD) ⁽⁵⁾ on the capital adequacy of investment firms and credit institutions in March 1993.

2.2 A second Basel Accord (Basel II) was published in 2004. The EU transposed this into a new CRD adopted in June 2006 to come into effect in December 2006. The EESC had approved its opinion ⁽⁶⁾ on the proposed CRD at its plenary meeting in March 2005.

2.3 The Commission adopted a proposal of key amendments to the CRD in October 2008 (CRD II). This review of the CRD was, in part, a response to the recommendations of the G-7 Financial Stability Forum (FSF) and the market crisis. The text was published in July 2009 for implementation in December 2010.

⁽⁴⁾ OJ C 48 of 15.02.2011, p. 33.

⁽⁵⁾ OJ L 141, 11.6.1993, p. 1–26.

⁽⁶⁾ OJ C 234, 22.9.2005, p. 8–13.

2.4 Consistent with the parallel work undertaken by Basel, the Commission consulted and issued proposals (in July 2009) on amendments to the trading book, re-securitisation and banker remuneration as part of the CRD III package. The EESC approved its opinion ⁽⁷⁾ at the plenary in January 2010.

2.5 In response to the financial crisis, the third Basel Accord was published in December 2010. The capital and liquidity buffers proposed are many times greater than before. Basel III requires banks to hold 4.5 % of common equity (up from 2 % in Basel II) and 6 % of Tier I capital (up from 4 % in Basel II) of risk-weighted assets. Basel III also introduces additional capital buffers, (i) a mandatory capital conservation buffer of 2.5 % and (ii) a discretionary countercyclical buffer, which allows national regulators to require up to another 2.5 % of capital during periods of high credit growth. In addition, Basel III introduces a minimum 3 % leverage ratio and two required liquidity ratios. The Liquidity Coverage Ratio requires a bank to hold sufficient high-quality liquid assets to cover its total net cash flows over 30 days; the Net Stable Funding Ratio requires the available amount of stable funding to exceed the required amount of stable funding over a one-year period of extended stress. The proposals to transpose Basel III into CRD IV were published in July 2011 and form the basis of this present opinion.

3. Summary of the Proposals

3.1 The European Commission has brought forward proposals to change the behaviour of the 8 000 banks that operate in Europe. The overarching goal of this proposal is to strengthen the resilience of the EU banking sector while ensuring that banks continue to finance economic activity and growth. The Commission's proposals have three concrete goals.

- The proposal will require banks to hold more and better capital to resist future shocks by themselves. Institutions entered the last crisis with capital that was insufficient both in quantity and in quality, leading to unprecedented support from national authorities. With its proposal, the Commission translates for Europe the international standards on bank capital agreed at the G20 level (most commonly known as the Basel III agreement). Europe will be leading on this matter, applying these rules to more than 8 000 banks, amounting for 53 % of global assets.
 - The Commission also wants to set up a new governance framework giving supervisors new powers to monitor banks more closely and take action when they spot risks, for example to reduce credit when it looks like it's growing into a bubble.
 - By putting together all legislation applicable on this matter, the Commission proposes to have a Single Rule Book for banking regulation. This will improve both transparency and enforcement.
- 3.2 The proposal contains two parts: a Directive governing access to deposit-taking activities and a Regulation governing how activities of credit institutions and investment firms are carried out. The two legal instruments form a package and should be considered together. The proposal is accompanied by an impact assessment which demonstrates that this reform will significantly reduce the probability of a systemic banking crisis.
- 3.3 The Regulation contains the detailed prudential requirements for credit institutions and investment firms and it covers:
- Capital: the Commission's proposal increases the amount of own funds banks need to hold as well as the quality of those funds. It also harmonises the deductions from own funds in order to determine the net amount of regulatory capital that is prudent to recognise for regulatory purposes.
 - Liquidity: to improve short-term resilience of the liquidity risk profile of financial institutions, the Commission proposes the introduction of a Liquidity Coverage Ratio (LCR) - the exact composition and calibration of which will be determined after an observation and review period in 2015.
 - Leverage ratio: in order to limit an excessive build-up of leverage on credit institutions' and investment firms' balance sheets, the Commission also proposes that a leverage ratio be subject to supervisory review. Implications of a leverage ratio will be closely monitored prior to its possible move to a binding requirement on 1 January 2018.
 - Counter party credit risk: consistent with the Commission's policy vis-à-vis OTC (over the counter) derivatives, changes are made to encourage banks to clear OTC derivatives on CCPs (central counterparties).
 - Single rule book: the financial crisis highlighted the danger of divergent national rules. A single market needs a single rule book. The Regulation is directly applicable without the need for national transposition and accordingly eliminates one source of such divergence. The Regulation also sets a single set of capital rules.

⁽⁷⁾ OJ C 339, 14.12.2010, p. 24–28.

3.4 The Directive covers areas of the current Capital Requirements Directive where EU provisions need to be transposed by Member States in a way suitable to their own environment, such as the requirements for access to the taking up and pursuit of the business of banks, the conditions for their exercise of the freedom of establishment and the freedom to provide services, and the definition of competent authorities and the principles governing prudential supervision. New elements in this directive are:

- Enhanced governance: the proposal strengthens the requirements with regard to corporate governance arrangements and processes and introduces new rules aimed at increasing the effectiveness of risk oversight by boards, improving the status of the risk management function and ensuring effective monitoring by supervisors of risk governance.
- Sanctions: if institutions breach EU requirements, the proposal will ensure that all supervisors can apply sanctions that are truly dissuasive, but also effective and proportionate - for example administrative fines of up to 10 % of an institution's annual turnover, or temporary bans on members of the institution's management body.
- Capital buffers: it introduces two capital buffers on top of the minimum capital requirements: a capital conservation buffer identical for all banks in the EU and a countercyclical capital buffer to be determined at national level.
- Enhanced supervision: the Commission proposes to reinforce the supervisory regime to require the annual preparation of a supervisory programme for each supervised institution on the basis of a risk assessment, greater and more systematic use of on-site supervisory examinations, more robust standards and more intrusive and forward-looking supervisory assessments.

3.5 Finally, the proposal will seek to reduce to the extent possible reliance by credit institutions on external credit ratings by: a) requiring that all banks' investment decisions are based not only on ratings but also on their own internal credit opinion, and b) that banks with a material number of exposures in a given portfolio develop internal ratings for that portfolio instead of relying on external ratings for the calculation of their capital requirements.

3.6 The Commission estimates that:

- The proposal will increase risk weighted assets of large credit institutions by 24.5 % and of small credit institutions by 4.1 %.

- The need to raise new own funds due to the new requirement and the conservation buffer is estimated to be EUR 84 billion by 2015 and EUR 460 billion by 2019.

4. EESC Perspective

4.1 The Directive has not been referred to the EESC. Therefore, with two exceptions, the Committee's opinion is confined to the Regulation.

4.2 CRD IV is a major step forward for capital regulation. It will raise prudential requirements substantially, ensure regulatory capital is truly loss-absorbing and discourage some of the risky activities for which the pre-crisis regime required far too little capital. More generally, both this crisis and past crises have shown that insufficient amounts of high-quality capital and liquidity create large economic costs to society when banks face problems. It is important that this is rectified. While the EESC is supportive of the general thrust of the Regulation, it does have a number of reservations which are spelt out in this opinion.

4.3 Banks need to have sufficient liquid assets to meet the liquidity problems they may face without requiring public support. Only in extreme circumstances should the central bank contemplate acting as a lender of last resort. The liquidity coverage ratio (LCR) therefore fulfils a useful task. Also, banks need to limit the maturity mismatch in their balance sheets. Funding very long-term assets with very short-term liabilities creates risks not only to the bank itself but also to the wider economy. Therefore the EESC supports the proposal to develop and introduce the net stable funding ratio (NSFR) in due course.

4.4 Even so, the liquidity requirements will need to be calibrated very carefully if they are not to inflict severe banking dislocation. The EESC is pleased that the proposals provide the flexibility to allow changes to the NSFR and LCR as the supervisors gain experience of their impact. The traditional business of banks has been maturity transformation, i.e. borrowing short and lending long. If this were to be overly restricted, the economy would suffer. The EESC is wary of the idea of maturity matched bank balance sheets.

4.5 There is an element of pro-cyclicality inherent in the way the financial system works. Risks tend to be underestimated during phases of economic expansion and overstated in times of crisis. But the crisis which followed the Lehman failure has shown how extreme fluctuations can become. In addition to the capital and liquidity requirements of the Regulation, the Directive will also introduce a capital conservation buffer

and a countercyclical capital buffer. The EESC welcomes this. Long-term financial stability should be enhanced as a result, which in turn should support economic growth.

4.5.1 Even so, the application of the Basel rules to all banks, systemic or otherwise, may put particular strain on smaller community banks. The Committee calls on the Commission, the EBA and Member State supervisors to ensure that capital buffers for smaller banks are adapted to the business models of those banks.

4.6 The calculation of capital requirements depends on the accounting rules employed. In its investigation into the role of statutory auditors during the financial crisis, the UK House of Lords found that the application of IFRS was a material impediment to the veracity of bank balance sheets. In recent months it has been evident that banks in one or more Member States have not marked sovereign debt to market in reports to shareholders, resulting in inconsistent application of IFRS. Keeping in mind that IFRS is a principles-based system, the EESC urges the Commission to work with the accounting standards authorities, the audit profession and Member State supervisors to ensure that harmonised capital adequacy regulations are supported by harmonised and accurate accounting practice. ESMA should have an important co-ordinating role in this process. This is a vital prerequisite for a harmonised implementation of the new prudential framework.

4.7 The Commission will naturally expect the success of CRD IV to be judged by the way in which the new capital and liquidity regimes react to future financial crises. The EESC, conscious of the scale of the economic crisis which now engulfs the EU, is concerned that nothing in the new regime will restrict credit to the economy or the flow of export credits or trade finance. If banks can only meet prescribed capital and liquidity ratios by shrinking their balance sheets and restricting credit, then the Regulation will have failed. Such a failure would be unacceptable. The Committee is not convinced by the impact assessment already conducted and calls for a more detailed assessment. The EESC proposes that the availability of credit should be continuously monitored (perhaps by an observatory with EESC involvement) until the CRD IV timetable is finished (2019) and the EU 2020 strategy (which must rely on banking support) is completed.

4.8 Accordingly, while the rationale for maximum harmonisation is clearly understood, the economic crisis and the flow

of credit may require sensitive tuning of both ratios and timetables if the performance and recovery of each separate Member State economy over the next several years is to be optimised.

4.9 The required total capital proposed by the regulation is 8 %. Of this, the required common equity capital ratio is 4.5 %, additional Tier 1 capital is 1,5 % and Tier 2 capital 2 %. In addition the capital conservation buffer is 2,5 % common equity Tier 1. When all the changes are phased in by 2019 the required total capital plus conservation buffer will be 10,5 %. The Regulation requires maximum harmonisation i.e. homogeneous prudential capital requirements across the European Union achieved by a truly single rule book. The rationale is that inappropriate and uncoordinated stricter requirements in individual Member States might result in shifting the underlying exposures and risks to the shadow banking sector or from one EU Member State to another. It is possible that some Member States which intend to propose higher rates will choose to challenge this view before the Regulation is finalised. The EESC would oppose such a move if it were to have an adverse impact on small banks and or credit for SMEs.

4.10 The Basel framework is designed for internationally active banks. The EU makes its Capital Requirements Directives applicable to all EU credit institutions. The Basel framework more or less restricts the definition of common equity Tier 1 capital to just shares and retained earnings. This could present a problem for non-joint stock companies, such as co-operatives, mutuals and savings banks in Europe. Article 25 of CRD III does recognise that these institutions require a different approach to core capital. It is essential that the final provisions of the Regulation fit with the alternative business models of these institutions.

4.11 Although this is not an opinion on the Directive, the EESC feels that it must comment on the proposal to reduce the reliance placed by credit institutions on credit ratings (point 3.5 above). In its May 2009 opinion ⁽⁸⁾ on the regulation of Credit Rating Agencies, the EESC urged EU regulators not to place undue reliance on ratings, especially in the light of the experience with mortgage backed securities where the ratings had been found to be worthless. The EESC therefore welcomes the current proposal because, although it continues to allow the use of external credit ratings, it does require that Member States ensure that their regulated institutions do not rely solely or mechanistically on external ratings and that they have internal methodologies for assessing creditworthiness. It also implies that where an institution's internal methodology would imply a higher level of capital than that implied by an external rating, the internal methodology should be applied.

⁽⁸⁾ OJ C 54, 19.2.2011, p. 37-41.

4.12 A particular problem which has emerged during the sovereign debt crisis is the clear evidence that, contrary to the guidelines in both the Accord and the series of Capital Requirements Directives, sovereign debt is clearly not risk free. This is an important weakness of the quality of capital provisions of the Regulation. It has profound implications for banks which have been left little choice by the regulations but to load up on sovereign debt. The mechanistic application of the risk free rating must be reconsidered by regulators while banks will have to revise their internal risk methodologies.

4.13 The EESC accepts that the Regulation will maintain the capital requirements for loans to SMEs at 75 % of the norm, but doubts that it will be sufficient in the current climate. The Committee believes that the key issue for SMEs is the risk appetite of banks. Historically, banks have been prepared to partner promising SMEs and support their growth. Defaults as a result of the financial crisis and the general weakness of bank balance sheets have made banks increasingly risk adverse. Therefore, to mitigate this risk aversion, the EESC recommends that the ratio be reduced to 50 % for SMEs. The Committee understands that the Commission plans a further examination of this issue.

4.14 It is in this context the EESC urges the Commission to facilitate the further development of ethical and participatory banking. This form of banking has survived the test of the financial crisis and even though it was not immune to the repercussions of the crisis, it has certainly proved its resilience

and its value. Given the pressures on the banking system, it can offer a valuable additional source of credit to SMEs. Therefore the Committee urges the Commission to come forward with a Directive relating to ethical and participatory banking, as already proposed by the EESC in a previous opinion ⁽⁹⁾.

4.15 Taken together, CRD II, III and IV are a huge burden on banking operations, increasing the regulatory burden and conformance costs while reducing the return on capital and long term profitability. Given the role of bankers in the recent crisis, and in the context of their incomprehensible reward structures, most European citizens will feel that bankers are getting what they deserve. Yet the EESC must express a caveat. For the EU to prosper, banks must prosper. If they are to supply credit, they must be profitable. Unfortunately, EU banks are not now in good shape: It is difficult to estimate how much more damage the sovereign credit crisis may yet do to the balance sheets and long term profitability of EU banks.

4.16 In these circumstances, the final drafting and subsequent implementation of the CRD IV package will be critical to the success of the project and, in particular, the ability of the banks to both make the required changes and restore themselves to health. In the fall out of the sovereign debt crisis, banks in different regions of the EU may not be able to move at the same speed. Legislators and supervisors must be prepared for this, even though the implementation time-table extends to 2019.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁹⁾ OJ C 48 of 15.02.2011, p. 33.

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation — Administrative Cooperation in the field of excise duties'

COM(2011) 730 final — 2011/0330 (CNS)

(2012/C 68/08)

Rapporteur-General: **Ms LOUGHEED**

On the 28 November 2011 the Council decided to consult the European Economic and Social Committee, under Article 113 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Regulation — Administrative Cooperation in the field of excise duties

COM(2011) 730 final — 2011/0330 (CNS).

On 6 December 2011 the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms LOUGHEED as rapporteur-general at its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), and adopted the following opinion by 138 votes to 0 with 10 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports and approves the proposal for a new 'Regulation governing administrative cooperation in the field of excise duty' as being a necessary and useful updating of the rules currently in place in order to support national administrations' cooperation to ensure effective tax collection and to fight excise duty fraud.

2. Main elements and background to the opinion

2.1 Duties are levied on three categories of products in the EU in the form of excise duties: alcohol and alcoholic drinks, manufactured tobacco and energy products. These excise duties play an important role in trying to influence public behaviour and in contributing to the public finances of the Member States and the EU ⁽¹⁾.

2.2 For a number of reasons, including the possibility of making significant profits on relatively small levels of activity, the level of fraud (particularly in the tobacco and alcohol sectors) has been very high in the EU. So much so that a 'High Level Group on Fraud in the Tobacco and Alcohol Sectors' was set up ⁽²⁾ and its recommendations to combat

this fraud were endorsed by the ECOFIN Council in May 1998. A number of recommendations were made, but the most substantive and long-term recommendation was that the EU should establish a 'fully computerised movement and control system'.

2.3 As a result, the European Union has spent several years progressively developing and rolling out a new, modern system for monitoring the movement of goods under suspension of excise within the Internal Market - the 'Excise Movement and Control System' (EMCS).

3. The Excise Movement and Control System

3.1 The 'Excise Movement and Control System' (EMCS) was constituted by Decision 1152/2003/EC. Putting it in place has been a substantive piece of work involving the European Commission, the Member States' excise authorities and operators, all working through various phases of development so that a largely paper-based system which was fairly onerous for all involved, will be replaced by a computer and electronic system which will be almost totally paperless. More importantly, the new system should allow the relevant authorities to track the goods' movement in 'real time' and allow the databases to collate information immediately which will allow for easier and more in-depth analysis and automated risk analysis.

3.1.1 For the operators involved, the new automation speeds up the necessary administrative processes (all movements are now already accompanied by an electronic Administrative Document replacing paper documents). It has standardised many of the required documents and includes web-support to check the credentials of potential trading partners.

⁽¹⁾ An estimated EUR 307 bn is raised annually (2010 figure) in excise and similar charges in the EU, made up of EUR 22 bn in alcohol and alcoholic beverages, EUR 207 bn in energy products and EUR 77 bn in manufactured tobacco – figures are aggregated totals from the figures presented in the European Commission's separate 'Excise Duty Tables' for alcoholic beverages, energy products and electricity and manufactured tobacco which can be consulted on DG TAXUD's website at: http://ec.europa.eu/taxation_customs/taxation/excise_duties/index_en.htm.

⁽²⁾ At the time the High Level Group estimated the losses as a result of fraud in the year 1996 to be around ECU 3.3 bn in the tobacco sector and ECU 1.5 bn in the alcohol sector.

3.1.2 The EESC believes that the EMCS facilitates legitimate trade within the Internal Market whilst adding to the tools available to Member States to address fraudulent excise duty avoidance.

4. Proposal for a Council Regulation in administrative cooperation in the field of excise duties

4.1 This proposal is one of the last 'pieces of the puzzle' for the system to be used to its full capacity. The proposal replaces the existing Regulation governing administrative cooperation in the field of excise duty (Regulation 2073/2004) by recognising the modernisation that is almost complete and allowing Member States' administrations to take advantage of that in their cooperation with each other, thereby really enhancing their capacity to coordinate to best effect.

4.2 The EESC recognises and endorses the widening of the scope of the proposal to include cooperation in the enforcement of excise legislation and not simply the assessment of level of duties owed as being a useful development in fighting fraud and in strengthening the Internal Market and the trust that citizens place in it.

4.3 Out of necessity, much of the proposal sets out the legal rules to cover how administrative cooperation should take place under the new system. The EESC believes that the proposal is a balanced approach that will allow Member States to take advantage of the inherent advantages of the new system whilst not increasing the administrative burden for themselves or for operators.

4.3.1 The EESC also believes that it is a clear description of the rights and responsibilities of all, most importantly national administrations and that the processes and timelines proposed are both ambitious enough to ensure somewhat timely responses whilst being easily achievable by all. On this note, the EESC is interested in the content of the implementing act currently being developed which is due to detail the categories of information which will be liable for either mandatory or optional exchange under the automatic exchange framework.

4.4 Most of what is new in the proposal is directly linked to the modernisation of the system and the new possibilities that exist in improving cooperation between administrations. The

EESC strongly supports the European Commission and the Member States in making best use of the enhanced system to improve the efficient assessment and collection of tax and to recognise and combat fraud, in particular by improving administrative cooperation between Member States in order to do that.

4.4.1 In this, the Committee hopes that the new system will improve the quality of automatic reporting, allowing Member States to narrow their focus to problematic activities quicker. The proposal's introduction of a system of 'follow-up' is particularly helpful and should help to review and improve the quality and usefulness of the information being exchanged on an on-going basis.

4.5 Whilst the EESC agrees with the proposal's need for a legal basis for the collection of data from individual movement records and the use of such records in Member States' analysis, it would caution their use and remind authorities to take care to use such information in an appropriately proportionate manner.

4.6 The EESC believes that the proposal accurately recognises the balance of responsibilities in the area of excise duties and the EMCS, with the European Commission responsible for the mechanism and maintenance of the system itself and Member States for the information contained in the system, the sharing of information and obviously discovering and taking measures against fraud.

4.7 The EESC believes that bringing the rules for excise duties in line with changes in EU rules in administrative cooperation in the fields of VAT and direct taxation in the proposal is helpful. The EESC supports all of these efforts for national taxation, revenue, excise and customs services in improving their communication and working together, believing that this, ultimately, will serve to improve the Internal Market.

4.8 The EESC particularly supports the proposal's legal basis for the SEED-on-Europa, believing that this is a helpful tool for legitimate operators to quickly establish the credibility of those they hope to trade with.

Brussels, 18 January 2012.

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 establishing a multiannual plan for the Baltic salmon stock and the fisheries exploiting that stock'

COM(2011) 470 final — 2011/0206 COD

(2012/C 68/09)

Rapporteur: **Seppo KALLIO**

On 13 September 2011 the European Parliament decided to consult the European Economic and Social Committee, under Article 43(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council establishing a multiannual plan for the Baltic salmon stock and the fisheries exploiting that stock

COM(2011) 470 final — 2011/0206 COD.

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

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 169 votes to 4 with 9 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee welcomes and endorses the objectives of the multiannual plan to ensure sustainable exploitation and safeguard the genetic integrity and diversity of all Baltic Sea salmon stocks. However, the timetable is unrealistic for weak southern stocks in the light of current information.

1.2 The EESC believes it is essential for fishing restrictions to apply to the entire life cycle of salmon and to all forms of fishing. Recovery of weak salmon stocks will require not just fishing restrictions but also measures to restore salmon breeding areas. In the EESC's view, setting total allowable catches (TACs) for river areas does not make sense because it is administratively cumbersome and its monitoring would entail considerable additional costs. Responsibility for regulating and monitoring fishing in internal waters should lie primarily with the Member State concerned. The European Commission would oversee the implementation of national monitoring programmes based on the reports from the Member States.

1.3 The EESC agrees with including service vessels in the scope of the Regulation. However, recreational fishing outside the scope of the plan still accounts for a large proportion of the total salmon catch. Recreational fishing should also be regulated and monitored at national level and this should be kept track of through the reports submitted to the Commission by the Member States.

1.4 As regards the viability of fishing, the EESC believes it is important for quotas and restrictions on fishing activity to be gradually switched to fishing mortality rate targets. Regulation of salmon fishing at sea should in future be based not on TACs for a number of salmon stocks but on technical rules set for fishing periods and gear in order to protect weak salmon stocks.

1.5 The EESC does not agree with prohibiting compensatory restocking without strong scientific evidence that such restocking is harmful. The quality of smolt for release must be monitored. The EESC recommends that the genetic risk of stocking activity be reduced by producing smolt from parent salmon caught in the wild every year.

1.6 The European Economic and Social Committee considers it essential to monitor salmon fishing adequately and effectively, and recommends that resources be focused urgently on monitoring salmon fishing. However, rather than new permanent monitoring obligations, the EESC believes that the main measure should be effective implementation in all Member States of the monitoring regulations developed intensively over recent years. The EESC calls for further clarification of the International Council for the Exploration of the Sea's assessment concerning widespread misreporting of salmon catches.

1.7 The EESC emphasises the importance of state-of-the-art salmon research for successful implementation of the multiannual plan. Only sufficiently reliable information can ensure adequate measures to protect and restore salmon stocks, and the possibility of exploiting those stocks sustainably. As well as reliable statistics on catches, more information is needed on the causes of at-sea mortality.

1.8 The EESC considers that the proposal for a regulation might entail negative employment effects for commercial fishermen, the processing industry, sales, equipment, fishing tourism and aquaculture. The extent of these effects will vary between Member States and between regions within them. The EESC calls for negative employment effects to be minimised

when measures are implemented under the proposed regulation, and for effects produced to be widely taken into account when approving EU structural support and in the future reform of the Common Fisheries Policy. The EESC notes that improving and streamlining access to the structural funds would increase salmon stocks in a sustainable way and create more jobs in the Baltic fishing industry.

2. Introduction

2.1 Earlier regulation of Baltic salmon stocks included fishing restrictions set by national governments, as well as technical fishing provisions laid down by Council regulation and fishing quotas (TACs) fixed annually. Up until 2006, quotas were set by the International Baltic Sea Fishery Commission (IBSFC). All measures relating to salmon up until 2010 were coordinated through the International Baltic Sea Fishery Commission's Salmon Action Plan (SAP).

2.2 Since 2006, Baltic Sea fishing quotas available to the EU Member States have been established on an annual basis by Council regulation. The European Commission's proposal for a Regulation has been drawn up based on advice from the International Council for the Exploration of the Sea (ICES) and the Scientific, Technical and Economic Committee for Fisheries (STECF).

2.3 The EU continues to allocate agreed quotas to its Member States on the basis of 'relative stability'. This means that each Member State's relative share of the quota remains unchanged from one year to the next although the quota amount itself may vary.

2.4 The only non-EU country with fishing operations in the Baltic Sea is Russia. The EU and Russia discuss the status of Baltic Sea fish stocks and salmon fishing opportunities in separate bilateral talks. There is currently no formal negotiating procedure like that of the Baltic Sea Fishery Commission for sharing of fish quotas between the EU and Russia.

2.5 The Baltic Sea commercial salmon quota is divided into two parts: the main basin and the Gulf of Bothnia (ICES 22-31) quota and the Gulf of Finland (ICES 32) quota. In practice, the quota has not restricted salmon fishing for several years. Of the total 2010 Baltic Sea salmon quota of 309 665 only 150 092 (i.e. 48.5 % of the quota) were caught. The percentage of the quota that was used varied between countries, from 2.8 to 84.9 per cent. Salmon is caught by both commercial and recreational fishermen at sea, in estuaries and in river areas. Recreational fishing accounts for 20-30 % of the total amount of salmon caught in the Baltic Sea region and nearly one half of the coastal or river catch. Recreational salmon catches are not included in the fishing quota calculation.

2.6 The state of the major northern salmon rivers improved significantly in the mid-90s as a result of national time

restrictions on coastal fishing imposed by Sweden and Finland. Since then, smolt production from these rivers has remained at a substantially higher level, close to their potential production capacity and to the maximum sustainable yield set as a target by the multiannual plan. Baltic Sea salmon fishing is based largely on production from these healthy northern salmon rivers.

2.7 Despite measures taken to date, smolt production from salmon rivers to the central and southern parts of the Baltic Sea has remained low. Mixed salmon stock fishing in the Baltic main basin has declined significantly owing to the 2008 driftnet ban. Increased drift-line fishing means that salmon fishing has increased again in the main basin.

2.8 Despite the significant rise in smolt production, the size of the fishable salmon stock has not grown to the same extent. More research data is needed on the factors causing salmon mortality at sea.

2.9 In its advice on fishing opportunities for 2012, ICES identifies widespread misreporting of salmon catches as sea trout in drift-line fishing in the Baltic Sea.

2.10 ICES has expressed its concern about the situation of Baltic Sea salmon stocks and genetic diversity. The Baltic Marine Environment Protection Commission (HELCOM) has also drawn attention to the status of salmon stocks in the Baltic Sea.

2.11 Salmon fishing is important socially and economically for coastal fishing communities. The most recent estimate of the total number of Baltic Sea salmon fishermen is for 2007, when the European Commission calculated the total of commercial salmon fishermen at around 400, of which 340 fished off the coast. In 2010 an ICES working group on salmon estimated the total number of vessels fishing for salmon on the high seas at 141, which is significantly higher than the estimate for 2007. Salmon provides work not just for commercial fishermen but also for at least as many people in fishing tourism. The employment implications of commercial and recreational salmon fishing in the Gulf of Bothnia are estimated to be equally significant. Salmon fishing also employs a large number of people indirectly in fish processing and selling, and the fishing equipment industry. Smolt production to maintain salmon fishing and salmon stocks is also an important source of employment locally.

3. Commission proposal

3.1 On 12 August 2011, the European Commission submitted a proposal for a regulation (COM(2011) 470) to the European Parliament and the Council establishing a multi-annual plan for the Baltic salmon stock and the fisheries exploiting that stock.

3.2 The management plan for Baltic salmon stock would apply to commercial fishing in the Baltic Sea and the rivers draining into it. It would also apply to companies offering guided fishing trips and their recreational fishing services in the Baltic Sea. The proposal provides scope, subject to certain conditions, for the regulation of river fishing by EU provisions, and it covers salmon releases.

3.3 The main objective of the proposal is to ensure that the Baltic salmon stock is exploited in a sustainable way, in line with the principle of maximum sustainable yield, and that its genetic integrity and diversity are safeguarded.

3.4 A target for Baltic Sea wild salmon stocks is set per river at 75 % of the river's estimated potential smolt production capacity. Depending on the current condition of the salmon river, the target should be reached within five to ten years of the regulation coming into effect.

3.5 Compulsory TACs per river are proposed for wild salmon stocks. The Member States would be responsible for fixing these. On the basis of scientific data, the Member States would have to determine the maximum permissible fishing mortality and corresponding TAC level per river.

3.6 Every three years, the EU Commission would assess the above-mentioned measures by the Member States and their compatibility with achieving the objectives. Should a Member State not publish data, or should its measures not be adequate to meet the objectives, the Commission could amend the fishing mortality levels set for that Member State's wild salmon rivers and/or the TAC or prohibit salmon fishing in all those rivers.

3.7 A single fishing mortality rate for sea fishing of 0.1 is proposed for all Baltic Sea salmon stocks. This mortality rate would mean that approximately 10 % of salmon for fishing could be caught annually. In setting the annual TAC, the regulator should ensure that a maximum fishing mortality rate of 0.1 is not exceeded. The Commission can amend fishing mortality rates at sea should circumstances change in such a way as to jeopardise achievement of the objectives.

3.8 Salmon caught by service vessels should be counted as part of the Member States' use of the national salmon quota.

3.9 The Member States would be required to set river-specific technical fishing rules for those weak wild salmon stocks which have not reached the 50 % target for wild salmon river smolt production capacity. Member States would have two years from when the regulation enters into force to draw up those provisions. The Member State itself could select and decide on these technical fishing provisions (e.g. gear restrictions and prohibited fishing periods or areas).

3.10 The Commission will assess the technical fishing provisions introduced by the Member States every three years. If a Member State does not introduce measures within the time limit, or if it fails to publish them or its measures are inadequate in terms of meeting the objectives for wild salmon rivers, the Commission may set technical river-specific fishing rules.

3.11 Salmon releases would be restricted to stocking and direct restocking. 'Stocking' refers to the release of stock into wild salmon rivers and 'direct restocking' to the release of fish into potential salmon rivers with the aim of establishing self-sustaining wild salmon populations.

3.12 A seven-year transitional period is proposed for releases. After this transitional period only the above types of release would be permitted.

3.13 The proposal sets out new monitoring provisions to complement those already in force. The new monitoring obligations apply to commercial salmon-fishing vessels, irrespective of length, and vessels used for recreational fishing trips.

3.14 Catches are to be inspected as they are landed. Landing inspections must cover at least 10 % of the total landed catch.

3.15 The Commission proposes that, if necessary, it be granted delegated powers for an indeterminate period of time for the regulation of salmon fishing both at sea and in rivers.

4. Specific comments

4.1 The European Economic and Social Committee welcomes and endorses the objectives of the multiannual plan. The plan's aim that production should reach at least 75 % of potential wild smolt production within ten years at most is extremely ambitious. According to ICES assessments, the objective is being realised in the major northern salmon rivers of the Baltic, but for the weak southern salmon stocks the timetable is unrealistic despite the level of fishing restrictions.

4.2 The regulation covers commercial fishing and service vessels. The significance of the latter in terms of the total salmon catch is small. However, the combined coastal and river salmon catch of recreational fishing falling outside the scope of the Regulation is comparable to the commercial catch of an area of equivalent size. The EESC does not consider setting a TAC purely for commercial fishing in a river area to be a sensible option because almost all river fishing is recreational. The EESC believes that fishing restrictions must cover the entire salmon life cycle and all forms of fishing. Responsibility for regulating commercial and recreational fishing in its internal waters must lie primarily with the Member State concerned.

4.3 In management and recovery plans that have already been adopted for fish stocks in the EU, the fishing mortality rate set for each stock is the rate that is most appropriate for achieving sustainable exploitation of that stock. Many different salmon stocks are fished in the Baltic Sea, and their biological status varies. The regulation and its explanatory memorandum do not make clear why the proposal sets just one single fishing mortality rate for all Baltic Sea salmon stocks at sea and how that rate was arrived at.

4.4 Baltic Sea northern salmon stocks are already very close to the maximum sustainable yield target. Reducing the salmon quota for the Baltic Sea main basin and the Gulf of Bothnia to a level at which the fishing mortality of southern salmon stocks would also be at its maximum sustainable yield would place unnecessary restrictions on fishing of northern salmon stocks. Regulation of salmon fishing at sea should therefore be based in future not on the TAC for a number of salmon stocks but on the technical rules governing fishing periods and gear, which can be directed specifically at protecting weak salmon stocks. If regulation of salmon fishing continues to be based on annual fixing of the TAC, the progressive decrease in fishing mortality to a target level that applies in management plans for other fish stock should also obtain for quotas for salmon fishing at sea. Sudden and radical changes in regulation where there is no compelling need are highly problematic from the perspective of the fishing industry.

4.5 In the main basin region of the Baltic Sea, salmon fishing consists entirely of so-called mixed fisheries, comprising different salmon stocks. The nearer to a salmon river the fishing takes place, the better it can target that river's salmon stock. Rules on and monitoring of drift fishing in the Baltic Sea main basin will in future be important for the recovery of weak salmon stocks in the south. It has been noted that in the autumn more undersized salmon are caught by drift-line fishing than are caught by other forms of fishing; line-fishing time restrictions could therefore be used also to reduce the number of fish which have to be discarded. However, it should be pointed out that southern salmon stocks in the Baltic Sea have not recovered despite a drastic reduction in fishing in the main basin. This means that recovery of weak salmon stocks requires not just limits on fishing at sea but also strict limits on fishing in estuaries and river areas, as well as measures to restore salmon breeding areas so as to ensure natural reproduction.

4.6 The European Economic and Social Committee is concerned about estimates of misreported salmon catches; it calls for the matter to be further elucidated and considers it important to monitor salmon fishing adequately and effectively. The Commission proposal would result in a permanent increase in public sector monitoring obligations, and costs would increase. Costs would be incurred by changes to and maintenance of IT systems in particular, and by the need to increase human and other resources in order to monitor and study regulatory compliance. The EESC calls for monitoring resources to be increased as far as possible and for available resources to be concentrated on monitoring of salmon fishing until the multiannual plan for salmon has been approved and

reporting problems are deemed to have been resolved. As regards rules on monitoring of salmon fishing, the EESC considers efficient implementation in all the Member States of existing monitoring rules, which have been developed intensively over the past few years, to be the priority. The European Commission should keep a check on the implementation of national monitoring programmes through the reports provided by the Member States.

4.7 Salmon are released by stocking and direct restocking or as compensatory restocking ordered by court decision to make up for catch losses resulting from the building of hydroelectric power plants. The proposal would halt all forms of release other than stocking and direct restocking into potential salmon rivers seven years after entry into force of the regulation. The seven-year deadline for replacing compensatory restocking by other provisions is just too short, because it is likely that time would be taken up with planning and implementing alternative provisions in addition to the transition process that would involve judicial hearings at all three levels.

4.8 Prohibition of compensatory restocking is justified by the threat such restocking poses to the genetic diversity of salmon stocks. However, there is no scientific proof to support this assessment. Catches from compensatory restocking are of unquestionable importance to estuaries and coastal fishing in salmon stocking areas, and also represent a boost to employment of several dozen person-years for aquaculture businesses operating on the coast. Compensatory restocking should therefore not be prohibited without solid scientific proof that such activity is harmful. The EESC also believes that the quality of smolt for release must be monitored and the adipose fins of all smolt released clipped so that salmon which have reproduced naturally can be distinguished from released salmon in the catch. The risk to genetic diversity posed by stocking can be minimised by wherever possible in smolt plants using parent salmon caught yearly in the wild that have gone through natural selection instead of salmon stocks that need to be conserved.

4.9 The situation of the Gulf of Finland provides a good illustration of the importance of salmon stocking. If salmon stocking were to be prohibited in the built-up Kymi river estuary, for example, this would in practice mean the end of salmon fishing in the Gulf of Finland and an end to the significant recreational fishing taking place below the Kymi river power plant. This fishing is of considerable importance to fishing tourism, and the situation is the same for many rivers in the Baltic Sea region.

4.10 By reducing the quota, for instance, the proposal would have a considerable economic impact on commercial fishermen, as well as sectors that are dependent on primary production such as fish processing and selling, and producers of fishing equipment. The long migration routes of salmon, different fishing methods and different regulatory needs at each stage of migration mean that the economic effects vary between and within Member States. Because of the short salmon-fishing season, most fishermen also catch other types of fish. But salmon is the most important species in economic terms for the majority, and even minor regulatory changes may

produce considerable shifts in the sustainability of the fishing industry. From the perspective of fishermen who may have to abandon their occupation, the proposal will reduce the supply of salmon and other fish caught along with it for consumption, processing and sale, thereby increasing dependence on fish produced outside the EU. Fishing tourism in river areas could also suffer financially due to more stringent regulation of river fishing and compliance with the TAC for river fishing. In the longer term, however, the proposal could have the effect of increasing jobs in fishing tourism in river areas as salmon stocks recover.

4.11 The proposal also has financial implications for aquaculture businesses. Aquaculture businesses that produce smolt for use in compensatory restocking employ several dozen staff in areas where there are few alternative employment opportunities. If aquaculture businesses have to abandon their activities

because compensatory restocking is discontinued, the employment situation in those areas will deteriorate. Closing these operations would also mean losing the long experience and know-how of aquaculture.

4.12 The negative employment effects of the proposal for a regulation should be taken into consideration when applying existing EU structural funding rules and reforming the Common Fisheries Policy. Possible support options would include for example aid for discontinuation of fishing activity or investment and training for reorienting fishing operations. However, the EESC believes that such assistance should be only a complementary measure. The priority is for jobs in salmon fishing and related industries to be considered at the stage of planning practical measures in such a way as to keep negative employment effects to a minimum.

Brussels, 18 January 2012.

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 — The Sixth Community Environment Action Programme — Final assessment’

COM(2011) 531 final

(2012/C 68/10)

Rapporteur: **Mr CHIRIACO**

On 31 August 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

The Sixth Community Environment Action Programme - FINAL ASSESSMENT

COM(2011) 531 final.

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 December 2011, on the basis of the text prepared by the rapporteur.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 174 votes to 4 with 8 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the Commission initiative aiming to provide an assessment of the Sixth Community Environment Action Programme (EAP). The Commission considers that the programme was helpful in that it provided an overarching framework for European environment policy. The Committee cannot completely support this conclusion. Although an important contribution to policy development, the 6th EAP has had a limited impact on the adoption of specific instruments. Despite difficulties in collecting information with which to analyse the implementation of the programme's measures, it is possible to see significant delays in the adoption of the legislative instruments, problems in identifying specific objectives and inadequate control and monitoring mechanisms.

1.2 Therefore, the Committee calls on the Commission to improve the instruments available, including monitoring and assessment mechanisms, in order to ensure effective implementation of existing legislation. At the same time, the Committee recommends greater consistency between legislative initiatives and programming on environmental matters and improved integration of environmental issues in interconnected sectoral policies. As stated in a recent opinion ⁽¹⁾, the Committee urges the Commission to take a clearer, more practical approach to tackling environmental challenges, clarifying what is meant by 'efficient use of resources' and 'green economy' and stating precisely what changes producers and consumers are called upon to make, in terms of quantity and quality.

1.3 Furthermore, the Committee considers that a stronger focus on the international dimension is needed. Environmental

challenges are global in scope, and so require an approach based on stronger multilateral cooperation and better instruments for global governance.

1.4 Lastly, the Commission Communication lacks a long-term strategy, there is no reference to any further action programme and the intended added value of the 7th EAP is not mentioned. The Committee considers that this programme should be consistent with and support the Europe 2020 strategy and the flagship initiatives, should identify objectives and priorities selected realistically and on the basis of broad political consensus, and should plan for instruments capable of ensuring that the proposed measures are effective.

2. Summary of the Communication

2.1 Political context

2.1.1 Environment Action Programmes have guided the development of EU environment policy since the early seventies and the 6th Environment Action Programme (EAP) should therefore be seen as part of an uninterrupted and continuous process.

2.1.2 The 6th EAP stresses the importance of the concepts of green growth and a resource-efficient, low-carbon economy, as confirmed by the Europe 2020 strategy ⁽²⁾, which is an effective framework for ensuring that environmental objectives are integrated into the EU's overall socio-economic agenda, and by the new strategy to halt the loss of biodiversity and ecosystem

⁽¹⁾ OJ C 376, 22.12.2011, p. 97.

⁽²⁾ COM(2010) 2020, 3.3.2010.

services in the EU by 2020 ⁽³⁾, the preparations for the Rio+ 20 Conference ⁽⁴⁾, the Roadmap for moving to a low-carbon economy in 2050 ⁽⁵⁾, the White Paper on Transport ⁽⁶⁾, Communications on Energy 2020 ⁽⁷⁾ and an Energy Efficiency Plan 2011 ⁽⁸⁾.

2.2 General findings

2.2.1 The Commission's overall conclusion is that the 6th EAP was helpful in that it provided an overarching framework for environment policy. Most of the actions set out in the programme have been or are in the process of being completed.

2.2.2 As it was adopted by co-decision, stakeholders see the 6th EAP as having greater legitimacy than previous programmes. This has helped to create a wider sense of ownership for subsequent policy proposals.

2.2.3 The seven thematic strategies ⁽⁹⁾ of the 6th EAP – air, pesticides, waste prevention and recycling, natural resources, soil, marine environment, urban environment – were developed in order to strengthen policy integration and to improve the knowledge base. Although progress varied across the areas covered by the thematic strategies, in some cases their preparation helped to build political will for the adoption of effective targets and timetables, and their subsequent implementation. However, evidence of the 6th EAP's capacity to leverage the adoption of specific environmental instruments is not compelling.

2.3 Priority areas

2.3.1 Nature and biodiversity: the 6th EAP instigated the development of the thematic strategies on soil protection and on the protection and conservation of the marine environment. It pointed to the need to build a stronger knowledge base, to improve financing and to step up current activities. More progress could have been made towards the unachieved goal of halting the decline of biodiversity by 2010 had it been matched by the necessary political attention and financial commitments from both EU and Member States.

2.3.2 Environment and health: the 6th EAP prompted a useful stock-taking of existing commitments and planned actions and brought greater focus to the linkages between environmental factors and human health. Specifically, it helped to

push forward actions which otherwise might not have happened (for example on the urban environment), or which may have taken longer or been less comprehensive without the impetus of the programme (for example in relation to pesticides). There are also a number of gaps in legislation and research findings and information on the impacts of environmental quality on health should be integrated into the broader policy objective of improving public health.

2.3.3 Natural resources and waste: the 6th EAP strengthened the link between waste policy and resource policy, and helped to improve waste management and move towards a policy based on sustainable consumption and production. Resource use is no longer increasing at the same rate as economic growth. However, in absolute terms resource use is still increasing, which is not compatible with the goal of respecting the carrying capacity of the environment in the longer term. Substantial differences in resource productivity among Member States persist and in general there is an increasing reliance on imports.

2.3.4 Climate change: the 6th EAP helped in the climate change area. Although ambitions in relation to action by the international community were not achieved and, in particular, quantifiable targets were more aspirational in nature and more difficult to achieve, the 6th EAP made it possible to pursue key policy objectives.

2.3.5 International issues: the 6th EAP reiterated EU commitments to integrate environmental considerations into all EU external relations and into the external dimension of the EU Sustainable Development Strategy. Despite the EU's efforts to strengthen multilateral cooperation and demonstrate its commitment to international conventions and agreements, little progress was made towards improved global environmental governance. Environmental challenges, which are increasingly global, require a more cohesive and focused effort within the EU so that it can play its role more effectively in shaping international policy and continuing to strive for better global environmental governance.

2.4 The effectiveness of the strategic approaches and instruments

2.4.1 The 6th EAP strongly encouraged and promoted principles and instruments for better policy-making, particularly integrated impact assessments and increased use of market-based instruments. It also highlighted the importance of solid scientific foundations for policy making. Despite recent positive developments, environmental information, in particular official data and statistics, is still incomplete and not always available on time.

⁽³⁾ COM(2011) 244, 3.5.2011.

⁽⁴⁾ COM(2011) 363, 20.6.2011.

⁽⁵⁾ COM(2011) 112, 8.3.2011.

⁽⁶⁾ COM(2011) 144, 28.3.2011.

⁽⁷⁾ COM(2010) 639.

⁽⁸⁾ COM(2011) 109, 8.3.2011.

⁽⁹⁾ COM(2005) 446 (Air pollution); COM(2006) 372 (Sustainable use of pesticides); COM(2005) 666 (Prevention and recycling of waste); COM(2005) 670 (Sustainable use of natural resources); COM(2006) 231 (Soil protection); COM(2005) 504 (Protection and conservation of the marine environment); COM(2005) 718 (Urban environment).

2.4.2 The changing nature of environmental challenges requires better coherence between i) policy formulation and delivery; ii) the European, national and regional level; and iii) priority areas.

2.4.3 Poor implementation of environmental legislation undermines the achievement of objectives and the credibility of environment policy, and does not help to secure the commitment of other sectors to better performance. Moreover, those policies with a clear added value in creating a green economy and that can be delivered in the short/medium term should be prioritised.

2.5 Challenges for the future

2.5.1 The principal pillars of environment policy and legislation, with the exception of soil, are now in place, although their full potential to deliver improvements has yet to materialise due to shortfalls in implementation. Traditional environment policy still has a very important role to play in protecting the environment, but changing circumstances and the increasingly interlinked nature of environmental challenges imply a need to be flexible and to adapt.

2.5.2 The underlying key challenge for future environment policy is to evolve from remediation to prevention of degradation and to help further integrate the environment in all relevant policies, through the adoption of a longer-term vision.

2.5.3 In order to achieve the Europe 2020 goal of a green, resource-efficient, competitive and low-carbon economy, it is imperative to integrate environmental and low-carbon considerations into business models in other sectors, and ensure coherence, from policy formulation through to implementation. Obstacles to proper implementation of existing legislation need to be addressed, in particular governance issues at all levels in Member States, in order to protect the environment and limit negative consequences on public health.

2.5.4 Environmental pressures are increasingly global and systemic in nature. Because of the complex inter-linkages, we require a more extensive knowledge base; the potential to change the behaviour of consumers must also be fully examined.

3. General comments

3.1 The 6th EAP constitutes a formal political commitment by the Parliament, the Council and the Commission and provides an important indicator for assessing the development of European environment policy. Following the adoption of the 6th EAP, the EU has successfully undertaken many initiatives, achieved impressive results and developed a number of strategies and cross-sector programmes. However, establishing exactly how much the general framework introduced by the programme has influenced policy development is not easy. It would be useful to hold discussions on this point, analysing the implementation of actions set out in the programme as well as

the interaction with and reciprocal influences of the European Sustainable Development Strategy and the Lisbon Strategy ⁽¹⁰⁾.

3.2 The debate on the assessment of the achievements and future prospects of European environment policy ⁽¹¹⁾, which in recent years has involved the European institutions and civil society, has focused attention on two key issues: identifying new priorities and strengthening the instruments available to ensure that the proposed measures are effective.

3.3 The question cannot be reduced to whether or not a new programme is needed; discussions need to focus primarily on its structure, aim, content and timeframe. First and foremost, means must be found to ensure that the forthcoming environmental measures become a visible, important and effective strategic instrument, learning from past experience and avoiding the pitfalls which compromised the effectiveness of the 6th EAP.

3.4 In view of the wealth of experience built up in other areas (such as the ERDF, the ESF and the EAFRD), it might be useful to consider experimenting with reinforcing the instruments for *ex ante*, *in itinere* and *ex post* monitoring and assessment, including for the environment programme.

4. Specific comments

4.1 Thematic strategies

4.1.1 The introduction of thematic strategies has resulted in a more strategic approach and made it possible to correct some of the shortcomings of the 5th EAP, such as the fact that the programme did not have specific responsibility in some areas. However, the process of developing the thematic strategies has slowed down the overall decision-making process, as well as the adoption of related measures.

4.1.2 Many of the legislative instruments flanking the thematic strategies are still in the earliest stages of implementation. Delays in adoption, the failure to identify specific targets, the delegation of responsibility to the Member States for implementation and even for setting further specifications for many of the measures planned, together with the inadequate control and monitoring mechanism, have in some cases seriously undermined the likelihood of reaching the programme's goals within the timeframe.

4.2 Consistency and integration

4.2.1 It is clear that at the current time, environmental challenges cannot be tackled solely by means of specific environmental policies; the economy and society as a whole must play their part. Greater consistency is therefore needed, both between areas with a direct link (such as climate change, energy and health protection) and between sectoral policies (such as food,

⁽¹⁰⁾ Strategic Orientations of EU Environmental Policy under the Sixth Environment Action Programme and Implications for the Future, Final Report, IEEP, May 2010.

⁽¹¹⁾ All contributions relating to events and preparatory studies are available at www.eapdebate.org.

transport, construction and innovation). As part of the ongoing CAP reform, as the Committee has also pointed out ⁽¹²⁾, this principle has been applied with the introduction of the single payment's greening component.

4.2.2 It is also imperative to support and develop environment policy's integration into the 'metastrategies' (Europe 2020) and the framework of financial instruments. With regard to the Roadmap for a resource-efficient Europe ⁽¹³⁾, attention was drawn during a workshop held recently in Brussels ⁽¹⁴⁾ to the programme's vital importance for promoting the transition to the green economy and the complementarity of the two initiatives, particularly as regards implementation, natural resources and ecosystem management.

4.3 Priority objectives

4.3.1 Priority objectives must be identified, with specific reference to environmental issues such as the scarcity of natural resources, atmospheric pollution, biodiversity and the urban environment.

4.3.2 Specifically, new patterns of behaviour in consumption, trade and production must be identified and encouraged. Technological change must go hand in hand with changes in habits.

4.4 Better instruments

4.4.1 Better instruments for European environmental policy means primarily better regulation through the adoption of

legislative measures and the choice of clear, binding rules, including on economic issues. Furthermore, as stated by the Committee in its 2001 opinion, ensuring effective implementation of existing legislation is a key factor in avoiding market distortions and protecting the competitiveness of European businesses ⁽¹⁵⁾. As regards the Environmental Compliance Assistance Programme (ECAP) for SMEs, the Committee has stressed the importance of ensuring that companies integrate environmental impact assessments into their horizontal management systems ⁽¹⁶⁾.

4.4.2 Secondly, the instruments for assessing the state of the environment, the progress made in implementing policies and the policies' effectiveness ⁽¹⁷⁾ must be improved by independent, open and just-in-time impact assessments.

4.4.3 Lastly, it is imperative to improve the implementation phase by establishing international mechanisms for assistance, monitoring and sanctioning. In other words: shape, transpose into regulations, implement, monitor and impose sanctions ⁽¹⁸⁾.

4.5 The role of the key players

4.5.1 Local and regional authorities should be involved right from the policy-shaping stage. In a recent opinion, the Committee of the Regions ⁽¹⁹⁾ upheld the need for proactive participation by these authorities and proposed that innovative methods of multilevel governance be developed, including the mobilisation of existing platforms and networks.

Brussels, 18 January 2012.

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

⁽¹²⁾ OJ C 132, 3.5.2011, p. 63-70.

⁽¹³⁾ COM(2011) 571.

⁽¹⁴⁾ Expert Workshop: 'The future of European Environmental Policy: what role for the Resource Efficiency Roadmap and what role for the Environment Action Programme?', Brussels 13.9.2011.

⁽¹⁵⁾ OJ C 221, 7.8.2001 p. 80-85.

⁽¹⁶⁾ OJ C 211, 19.8.2008, p. 37.

⁽¹⁷⁾ The issue of Evaluation in the Framework of European Environmental Policy, Brussels Environment, 11.6.2010.

⁽¹⁸⁾ 'Better instruments for European Environmental Policy' Workshop hosted by the Spanish Ministry for the Environment, in collaboration with Brussels Environment, Madrid, 20.5.2010.

⁽¹⁹⁾ Committee of the Regions opinion of 5-6 October 2010.

Opinion of the European Economic and Social Committee on 'GMOs in the EU' (additional opinion)

(2012/C 68/11)

Rapporteur: **Martin SIECKER**

On 16 March 2011, the European Economic and Social Committee, acting under Rule 29A of the Implementing Provisions of its Rules of Procedure, decided to draw up an additional opinion on

GMOs in the EU
(additional 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 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 160 votes to 52 with 25 abstentions.

1. Genetically modified organisms in the EU – orientation for future debate

1.1 Genetically modified organisms (GMOs) are a thorny issue. Genetic modification (GM) is a subject that arouses much interest, and much concern. The debate is often emotional and polarised: even where there is rational discussion, both supporters and opponents tend to be selective with the truth and neglect nuance in their arguments. Moreover, as well as differences of opinion over the pros and cons of GM, many ambiguities and assumptions seem to exist - even within the EESC - about matters such as the type and degree of legal regulation of GMOs in the EU. This is regrettable, since this important and politically sensitive subject merits a better quality debate.

1.2 The current EU legal framework for GMOs is undergoing change. In this context, the EESC will soon be giving its views on GM policy and legislation more often. As an orientation and preparation for this future debate, the present opinion provides a basic outline of the current situation and the discussion about GMOs, as well as their regulation in the EU. Various issues are involved here, including ethical, ecological, technological, (socio-)economic, legal and policy questions. All of these, which are raised by the almost limitless possibilities of GM and the rapid development of GM applications, must be considered in a broad societal context. This opinion aims to provide a roadmap for a balanced and pertinent political discussion of these important questions.

1.3 This opinion only highlights the main points of the discussion and mentions just a few of the most significant dilemmas surrounding GMOs and their regulation in the EU. More detailed (exploratory) opinions will be needed from the EESC on many of these issues, and it intends to conduct these studies during the coming period. Priority areas include the evaluation of the EU's current GMO legislation, its possible

revision, and filling the regulatory gaps identified in this opinion. The EESC commits to issuing follow-up opinions on these important dossiers in the near future.

2. History of genetic modification

2.1 Opinions diverge even over the history of GM. Whereas critics talk about a fundamentally novel technology involving uncertain risks and ethical issues, advocates position GM along a continuum of centuries-old plantbreeding traditions and biological processes using yeast, bacteria and fungi. However, the objective facts indicate that GM is something fundamentally novel and different from these historical applications. The definitive watershed between 'old' and 'modern' biotechnology is marked by the introduction of genetics. Watson and Crick's discovery in 1953 of the double-helix structure of DNA revealed the genetic code of humans and all the flora and fauna around us, enabling scientists to conduct revolutionary manipulation at the genetic level, in the very building blocks of life.

2.2 GM technique was created in 1973 when US scientists conducted the first successful recombinant-DNA (rDNA) experiments on bacteria. By being able to identify, isolate and replicate specific genes and introduce them into another living organism, scientists were for the first time able to make specific changes to the hereditary genetic properties of organisms in a way that is not possible in nature through reproduction and/or natural recombination. In traditional (cross-)breeding, whole genomes (of a species) were crossed to then try to retain the favourable properties through reverse selection. While GM allows more precise manipulation, introducing genes into another organism (or species) is an unstable and uncertain process, with secondary effects and consequences for the recipient genome and interactions with the natural environment that are difficult to predict. The long-term effects in particular are still largely unknown.

2.3 After 1975, GM technology developed apace. The first commercial (medical) GM products were available as early as 1982. This was followed in the early 1990s by 'transgenic' plants and animals. Over the years, interspecies boundaries have also been crossed. For instance, a pig gene has been introduced into a tomato species, a firefly gene into a tobacco plant, and a human gene into a bull. The crossing of interspecies boundaries, unpredictability of long-term effects and irreversibility of potential (environmental) consequences make GM a fundamentally novel, potentially risky technology. This therefore forms the basis for GMO regulation in the EU and its Member States, in many non-EU countries and in international treaties.

3. Relevant sectors and societal reception of GMOs

3.1 The main sectors for GM applications are: agriculture and food (mainly pesticide resistance), the medical and pharmaceuticals sector (medicines, genetic diagnostics, gene therapies) and the (petro-)chemicals and weapons industries. These sectors are also often respectively called 'green', 'red' and 'white' biotechnology.

3.2 GM is not equally controversial in all these sectors. The concerns and reservations of policy-makers and the general public seem to be prompted more by particular applications than by GM technology per se. Medical applications are received in the main positively, and criticism focuses mainly on agricultural- and food applications. An important aspect of this debate is the balance between utility and need on the one hand and possible risks and reservations on the other. Thus many people see GM as making an important and promising contribution to curing serious human illnesses, whereas the consumer benefits of (current generation) agricultural- and food GMOs are much less evident (to date purely agronomic properties with producer advantages). The safety requirements and clinical studies that precede authorisation of medical applications have always been stricter and more exhaustive than procedures prior to the introduction of GMOs into the environment or food.

3.3 It is also important, from both a societal and a regulatory point of view, to distinguish between GM that takes place in closed, isolated spaces such as laboratories, factories and greenhouses, where containment and safety measures can prevent accidental release of GMOs, and applications in which GM plants or animals are released into the environment with no possibility of containment, as living organisms that can replicate, spread and proliferate in an uncontrolled and irreversible way in the biosphere, with unpredictable effects on and interactions with biodiversity.

3.4 In the case of plants introduced into an open environment, however, a distinction must be made between two different situations: firstly when cross-breeding between a

cultivated plant species and a wild plant species is possible because the two are in close proximity, and secondly when cross-breeding is impossible owing to the absence in the environment of wild species close to the GM plant. This distinction must be incorporated into the regulatory framework governing the introduction of GM plants into an open field.

3.5 This is not by definition a distinction between 'red' and 'green' biotechnology: fundamental scientific research can also be conducted safely and innovatively in isolated laboratories in the agricultural- and food sectors, in the same way as has long been accepted in medical biotechnology. GM enzymes are also widely used in food production in isolated environments without remaining present as living organisms in the end product or being released into the environment. The distinction between contained use and release into the environment, and the distinction between basic scientific research and commercial applications, are key aspects of the policy debate and of public perception of and the consumer response to GMOs.

3.6 Many opinion surveys including Eurobarometer ⁽¹⁾, and academic literature, consistently show that an increasing majority of the EU population feels sceptical, if not hostile, to GMOs - particularly in the food, animal feed and agriculture sectors. Diverging views and policies on GMOs are also espoused by Member State governments. On the one side are staunch opponents such as Austria, Hungary, Italy, Greece, Poland and Latvia; on the other are declared advocates such as the Netherlands, the UK, Sweden, Spain, Portugal and the Czech Republic. There are also many Member States that decline to take a position.

3.7 This dividedness has resulted in a contentious and protracted decision-making process for GMOs. Authorisations are generally granted unilaterally by the Commission, owing to the inability of the Member States to decide on GMO approvals by qualified majority through the comitology procedure. Although there was a de facto moratorium on GM approvals between 1999 and 2004, it proved impossible to use that period to have a fundamental discussion leading towards a more consensus-based approach to GMOs in the EU. The number of Member States that have banned cultivation of GMOs on their territory has risen in the past years. The latest Commission proposal for more latitude in (sub)national decision-making to prohibit GM crops has received much criticism from Member States, the EP, various civil society organisations and industry, and in a recent EESC opinion ⁽²⁾. It is unsatisfactory, from all perspectives, that a political impasse looms over an issue as important as GMOs.

⁽¹⁾ The most recent of these is 'Europeans and Biotechnology in 2010': http://ec.europa.eu/public_opinion/archives/ebs/ebs_341_winds_en.pdf.

⁽²⁾ CESE, OJ C 54, 19.2.2011, p. 51.

3.8 Various civil society organisations and stakeholders voice concerns about GMOs in connection with the environment, animal welfare, consumer interests, farming, beekeeping, rural and global development, ethics, religion, etc. The EP has also often expressed critical views about GMOs and their regulation, as has the EESC, and national, regional and local authorities, and independent scientists. The main advocates are large companies with GM patents and other stakeholders including certain GM farmers and scientists and international trading partners with a strong economic interest in more flexible regulation of GMOs in the EU. Some of the main claimed advantages of GMOs are discussed in chapter 5.

3.9 Outside the EU, there is also widespread (political and social) resistance to GMOs in food and the environment, notably in countries such as Japan, Switzerland, Korea, New Zealand, Mexico, the Philippines and various African countries. Yet, in some countries GMOs are cultivated widely: in 2010, GMO crops were cultivated by more than 15 million farmers on around 150 million hectares of land (mainly soya, maize, cotton). However, it should be noted that 90 % of the total hectareage was cultivated in only 5 countries: in the USA, Canada, Argentina, Brazil and India. Despite this uptake, GMOs are not uncontroversial in these countries. In fact public criticism seems to have been growing recently, owing largely to incidents involving unintentional spread of GMO crops such as maize and rice and judicial rulings on coexistence. It is important to note that these countries do not have mandatory labelling, meaning that consumers are unaware of the presence of GMOs and thus cannot make informed choices.

4. Economic interests, intellectual property and market concentration

4.1 The potential financial interests for GMOs in the plant-breeding sector are considerable. Annual global sales of seeds have now reached over EUR 35 billion, forming the basis for an even bigger product market, with a turnover of hundreds of billions of euros.

4.2 GM technology and commercialisation have developed at a dizzying pace, with significant implications for the constellation of the sector. For more than half a century, intellectual property in relation to plant breeding has been governed by the 'plant variety rights' laid down in international agreements. One exception to this temporary exclusive right held by developers of new varieties is the 'breeders' exemption'. This allows other operators to use protected varieties in order to develop new, further improved varieties without the permission of the original rights-holder. This exemption is unique to the sector, based on the realisation that new varieties cannot be created out of nothing.

4.3 Developments in molecular biology, which originated outside the agricultural sector, led to patent rights being

introduced in the plant-breeding sector. Patent rights and plant variety rights conflict with each other for a number of reasons. The first is that patent law does not recognise a breeders' exemption. This means that the patent-holder can lay an exclusive claim to genetic material and so prevent others from using that material or require them to pay for expensive licences. Unlike plant variety rights, patent rights do not produce open innovation or combine economic incentives for innovation, with protection of other public interests.

4.4 But the struggle for rights in this area goes even further. The 1998 EU Biotech Patents Directive⁽³⁾ authorises patent protection for plant-related inventions. Plant genes or gene sequences can be patented, but not plant varieties. This interpretation is not undisputed. Leading multinationals in plant-breeding claim that if genetic characteristics are patentable then the varieties concerned are themselves covered indirectly by patent law⁽⁴⁾. If this is the case, then varieties covered by a patent may no longer be used by others for further innovation. This is detrimental to agricultural biodiversity and means that plants with interesting properties are not available for further innovation by others. Developments in medical biotechnology demonstrate the potential negative implications: rigid defence of patents and high prices result in new products only being sold to people who can afford them, and not being available to the disadvantaged people who need them most. The same undesirable effects might occur in the plant-breeding sector.

4.5 The past few decades have seen extreme market concentration in the plant-breeding sector, mainly as a result of patent protection and regulatory requirements. Whereas hundreds of businesses were operating previously, the global market is now dominated by only a handful of major players. In 2009, only ten corporations controlled nearly 80 % of the global seeds market, and the biggest three even 50 %. The same multinationals also controlled about 75 % of the global agrochemicals industry. These are no longer companies that are involved only in plant-breeding, but global corporations that are also active in the food, pesticide, chemicals, energy and pharmaceuticals sectors. Also, they often produce tied products, such as GM plants that have been made resistant to a specific pesticide sold by the same company. This consolidation means that a select group of multinationals have extensive control over the whole production chain for food and related products, which may undermine consumer choice, affordability, open innovation and genetic diversity. This degree of market concentration and monopoly is by any means undesirable, particularly in key sectors like agriculture and food production, and merits priority attention from the EESC and the EU.

⁽³⁾ Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions (OJ L 213, p. 13).

⁽⁴⁾ Cf. Case C-428/08, Monsanto Technology.

5. Other issues surrounding GMOs

5.1 There are many different issues surrounding GMOs. Opinions about pros and cons are very divergent, and the debate is highly polarised and emotionally charged. This opinion is too short to explore the debate in detail, but a number of key points merit attention. Arguments that are often advanced in favour of GM include the fight against hunger and supplying food to the fast-growing world population, as well as climate change. There is a great need for independent scientific research in all these areas, and the EESC stresses the importance of (continuing) EU structural funding for such research, not only to promote scientific and commercial innovation but also to study socio-economic, environmental and other impacts of technological advances.

5.2 GM plants will never be able to solve problems relating to hunger and poverty. Simply increasing productivity will not necessarily lead to improved food distribution. Unfortunately, in order to tackle the serious problem of food security effectively, it is essential to improve access to land, promote a fairer distribution of wealth, bolster the sustainability of trade agreements and reduce volatility in commodity prices. Although biotechnology is certainly no panacea, the FAO has indicated in its recent reports that biotechnology offers important agricultural and economic benefits for farmers from third countries, mainly smallholder farmers. However, from the very inception of GM technology its advocates have suggested that GM plants are essential to combat global problems of hunger and poverty. Predictions were made that plants fortified with vitamins or nutrients would help mitigate hunger and disease in the third world. Potential properties such as tolerance for drought, salt, frost or other stress factors would make it possible to cultivate crops in areas where they could not previously be grown. Larger yields were also predicted. However, despite decades of promising suggestions, to date none of these output properties of crops have been commercially developed. The financial incentive for developing such crops is also limited, given that their benefits are intended for the most disadvantaged and vulnerable groups of the world population. Even if future generations of GMOs fulfil the promise of higher yields and better stress tolerance, this does not provide a solution to world hunger since most farmland in developing countries is used to produce luxury export goods for the rich world. In addition, the vast majority of GM crops that are now on the market are used for animal feed to support our western consumption of meat and dairy products (90 % of EU soy imports), or for biofuels and plastics. As a result of the increasing use of food crops for non-food uses, global commodity and food prices have been driven up, thereby only exacerbating global food insecurity and poverty⁽⁵⁾.

5.3 Thus, the global food crisis is a problem of distribution rather than production (global production is equivalent to over

150 % of global consumption), and therefore requires a political and economic solution more than agricultural innovation. The EESC recognises that global food security will become further strained by rapid population growth. International organisations like the UN Food and Agriculture Organisation (FAO), major NGOs such as Oxfam, and the recent report of the authoritative UN agri-science body, the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) panel, all point to the importance of sustainable agriculture as a solution to the problem of food security and sovereignty. These authoritative assessments stress the need for sustainable and ecological agricultural practices and techniques, and do not necessarily foresee a role for GMOs but rather for alternative techniques. The most prominent example of such alternative techniques cited by the IAASTD and others is marker-assisted selection, which uses genetic markers to specifically and efficiently select traits, but does not involve any risky or unpredictable genetic manipulation or transfer of genes. Since this technology is demonstrably effective and less expensive than GM, it could provide an uncontroversial alternative to GMOs, while the lower cost may create fewer patent and market concentration issues. Although the future potential of GMOs should not be excluded, a deliberate decision to develop non-GM techniques and sustainable farming practices could give the EU a considerable competitive edge where it does not have one in the GM context. Investing intensively in sustainable agriculture could give the EU a unique and innovation-driven leadership position worldwide, with positive effects for the economy and employment, innovation and the competitive standing of the EU. Moreover, this would be more in line with the EU farming model, which has a positive impact on biodiversity and is envisaged in the future CAP.

5.4 Advocates of GM also see it as a potential tool in both adapting to and mitigating the effects of climate change. But here too, the current generation of commercialised GM crops does not offer any useful properties. In fact, one of the most high-profile applications, production of biofuels from GM crops, is already negatively impacting the global price and supply of raw materials and food, and still involves heavy dependence on fossil fuels.

5.5 That GMOs could potentially help in addressing global perils such as hunger, poverty, climate change and environmental problems should certainly not be ruled out, but the reality is that the current generation of GMOs is not suited or designed for this purpose. Their properties are to date limited to 'input' benefits for producers, such as pesticide resistance. It is a matter of (scientific) contention whether such crops have led to less, rather than more, use of pesticides, but the contribution of GMOs does not appear to have been indubitably positive. Studies are accumulating that reveal their longer-term effects, which include an increase in intensive monoculture, development of pesticide resistance, contamination of groundwater,

⁽⁵⁾ As was raised in the Hearing on *The Agricultural biotechnology: genetically modified food and feed in the EU*, EESC, Brussels, 20 October 2011.

serious reduction of local biodiversity, and risks to human health caused by long-term exposure to certain pesticides used in conjunction with GMOs. Although some of these effects may be attributable to poor farming practices per se, since the current generation GMOs are sold as tied package products with the pesticides on which they depend, these products and their environmental and societal impacts must equally be assessed in conjunction ⁽⁶⁾.

5.6 Another major issue with GM is the choices available to consumers and farmers. This concerns both EU and non-EU countries. In the developing world, the high price of patented seed, together with exclusive purchasing obligations and banning of the traditional practice of saving seeds from previous seasons, create major socio-economic and cultural dilemmas for farmers, in particular poor smallholder farmers. In countries where GMO cultivation is prevalent, notably the USA, Canada, Argentina and Brazil, crop diversity has drastically declined. Globally, nearly 80 % of all soya produced is GM, in addition to 50 % of cotton, over 25 % of maize, and over 20 % of canola. In the EU, consumer and farmer choice is supposed to be safeguarded by labelling requirements. However, maintaining this freedom of choice both for farmers and consumers requires complete and reliable segregation of the GM and non-GM production chains. One important aspect for this segregation is the introduction of stringent co-existence legislation, including effective liability and redress rules for environmental and/or economic loss resulting from unintentional contamination, product chain certification and segregation schemes, as well as purity and labelling requirements for the presence of GM material in non-GM seed and derived products.

6. Legislation and policy review

6.1 Since 1990 the EU has developed a detailed legislative framework for GMOs, which just like the technology itself, is constantly evolving, having undergone many revisions. This has resulted in a complex patchwork of directives and regulations, the most relevant being:

- Directive 2001/18/EC on the deliberate release into the environment of GMOs ⁽⁷⁾;
- Regulation (EC) No 1829/2003 on GM food and feed ⁽⁸⁾;
- Regulation (EC) No 1830/2003 concerning the traceability and labelling of GMOs and the traceability of food and feed products produced from GMOs ⁽⁹⁾;

- Regulation (EC) No 1946/2003 on transboundary movements of GMOs (implementation of the international Cartagena Protocol on Biosafety to the Convention on Biological Diversity) ⁽¹⁰⁾;

- Directive 2009/41/EC on the contained use of GM micro-organisms ⁽¹¹⁾.

6.2 The current rules for approval and use of GMOs are based on a series of (legal) principles, namely:

- independent, scientifically founded approval before introduction;
- a high level of protection of human, animal and environmental health and well-being, in accordance with the precautionary principle and the polluter pays principle;
- freedom of choice and transparency along the whole food chain, and protection of other consumer interests, for instance through public information and participation;
- consideration of the internal market and of international obligations;
- legal certainty;
- subsidiarity and proportionality.

6.3 However, some lacunae remain, with specific EU legislation or policy still lacking on important aspects related to GMO introduction, in particular the following:

- co-existence of GMO with organic and conventional agriculture;
- liability and redress rules for environmental and/or financial damage resulting from the release of GMOs or the unintentional contamination of organic or conventional products, and compensation schemes for costs incurred for coexistence and chain certification to prevent comingling;

⁽⁶⁾ See footnote 5.

⁽⁷⁾ OJ L 106, 17.4.2001, p. 1.

⁽⁸⁾ OJ L 268, 18.10.2003, p. 1.

⁽⁹⁾ OJ L 268, 18.10.2003, p. 24.

⁽¹⁰⁾ OJ L 287, 5.11.2003, p. 1.

⁽¹¹⁾ OJ L 125, 21.5.2009, p. 75.

- purity and labelling requirements for the presence of GMO material in non-GMO seed and propagating material;
- labelling requirements, particularly for meat and dairy products derived from animals fed with GMO animal feed, and harmonised standards for GMO-free labelling;
- general strengthening of GMO labelling requirements to safeguard consumer choice, including legal clarification of 'adventitious presence' and possible tightening of threshold values;
- rules on transgenic or cloned animals and (food) products derived from them, particularly with regard to approval and labelling;
- a robust legal right for the Member States and/or autonomous regions to apply a partial or full ban on GMO cultivation on various grounds, including environmental, socio-economic, ethical and other concerns.

6.4 Although the Commission put forward a legislative proposal in July 2010 to permit (sub)national limits or bans on GM cultivation, that proposal seems to have raised rather more questions than it has answered, mainly due to several legal ambiguities and contradictions in the text, and the exclusion of environmental problems among others as justification for restrictions. Whilst the basic idea of increasing (sub)national sovereignty on GMO cultivation has been widely supported, the currently flawed text of the proposal has prompted a critical first reading with major amendments by the EP, following a critical opinion from the EESC⁽¹²⁾. The Council is currently deliberating on the proposal, but has been unable to reach a common position to date. The EESC considers this to be a very important dossier, which deserves priority and certainly must be taken into account in any future revision of the general legal framework for GMOs. The EESC urges the Commission to work actively, through constructive dialogue with the EP and the Council, to produce a robust legal basis for (sub)national decision-making about GM cultivation founded on legitimate justifications that include broad environmental, social and economic, ethical and cultural considerations. This should be accompanied by a legal obligation for Member States and/or regions to adopt binding co-existence rules to avoid unintended contamination between GM and non-GM crop zones.

6.5 The EESC has over the past years repeatedly called for EU legislation to be adopted on co-existence, liability and more comprehensive labelling for GM products⁽¹³⁾. Moreover, the

importance of closing these remaining legislative gaps with a harmonised EU policy was recently reiterated by the EU Court of Justice, in a judgment of 6 September 2011 relating to the coexistence issue. In this case, where honey was unintentionally contaminated by pollen from GM maize, the Court confirmed that EU law applies absolute zero tolerance for such unauthorised GMO presence⁽¹⁴⁾. This judgment underlines the importance of having an effective, coherent and stringent co-existence and production chain segregation policy to prevent mixing of GMO with non-GMO products, together with appropriate liability and redress rules for damage and compensation for costs incurred by coexistence measures and supply chain certification, as well as the option to prohibit GMO cultivation in open fields by means of zoning in certain regions (e.g. for honey production).

6.6 Although the Commission's Recommendation on coexistence of July 2010 is more flexible than its previous Recommendation of 2003, the EESC stresses explicitly that neither Recommendation is legally binding; they cannot thus impose any enforceable limits on the broad national competence for coexistence policy, but neither do they impose the necessary legal obligations for coexistence standards. The forthcoming introduction of non-food GM crops alongside GM food crops - e.g. with pharmaceutical, biofuel or industrial applications - will even further increase the need for effective coexistence and liability legislation, and the EESC believes it is important to anticipate and address these issues now, at an early stage.

6.7 In December 2008, the Environment Council called for the current legal framework for GMOs to be reinforced and better applied. Improvements were deemed necessary above all in relation to: EFSA assessments of environmental risks and post-introduction control and monitoring protocols, with a greater role for external expertise from Member States and independent scientists; evaluation of the socio-economic impacts of introduction and cultivation of GMOs; labelling thresholds for notifying traces of GMO content in seeds; and better protection for sensitive and/or protected areas, including the option of establishing GM-free zones at local, regional or national level.

6.8 Although the Commission has taken action in some of these areas, the Council's demands have still been insufficiently addressed by concrete results. The EESC underscores the importance of taking concrete, substantive steps to introduce appropriate legislation and policy on each of these points and the above-mentioned legislative lacunae as soon as possible. In relation to revising the risk assessment and risk management procedures and authorisations for GMOs, the EESC echoes the Council and Parliament in recommending that not just natural scientists but also social scientists, lawyers, ethicists and representatives of civil society interest groups should be involved, so that decision-making is informed not only by scientific evaluation of risks to humans and the environment, but also

⁽¹²⁾ See footnote 2.

⁽¹³⁾ See for example CESE, OJ C 54, 19.2.2011, p. 51; CESE 1656/2004, OJ C 157, 28.6.2005, p. 155; CES, OJ C 125, 27.5.2002, p. 69; and CES, OJ C 221, 17.9.2002, p. 114.

⁽¹⁴⁾ Case C-442/2009, *Bablok et al. v Freistaat Bayern and Monsanto*.

by 'other legitimate factors' including for example socio-economic, cultural and ethical considerations and societal values. This might also help to address the societal controversy about GMOs and the political impasse in decision-making.

6.9 An important project that is delayed is the evaluation of the current legal framework for GMOs and GM foods and animal feed, initiated by the Commission at the Council's request in 2008, the results of which were supposed to be presented at the beginning of this year. The Commission has promised the Council that by 2012 initiatives will be taken to review the legislation, and the EESC stresses the importance of this target being met. The above regulatory lacunae must in any event be addressed in this review. As a first step, the Commission must organise a comprehensive public consultation on the basis of the now published evaluation report⁽¹⁵⁾, to ensure societal input in the review of the legislative framework. This will certainly help address public concern and may improve public trust in regulators.

6.10 One aspect that will inevitably be on the future agenda is the definition of GMOs. Although GM science and applications have evolved very rapidly over the past decades, the legal definition of GMOs has remained unchanged since the first EU legislation was adopted in 1990. That legislation defines a GMO as 'an organism, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination'⁽¹⁶⁾. However, certain GM techniques were explicitly excluded, and therefore exempted from the provisions of the legal framework governing GMOs.

6.11 Over the years, however, many new plant-breeding techniques have been developed that were not foreseen when

the current legislative framework was laid down. One example is cisgenesis, in which genes are transferred between organisms of the same species, using recombinant DNA. The question arises for such new techniques of the extent to which they fall within the current definition of GM, and thus also the question of whether organisms obtained in this way are governed by the current legal framework for GMOs. In view of administrative burdens, not to mention the political and public stigma of GMOs, exemption from this legislation is very important for the plant-breeding industry in financial terms. It will allow such innovations to be brought to market sooner, without the possibility of labelling requirements provoking negative reactions from consumers. However, the same ethical, ecological, socio-economic and political concerns arise with these techniques, as is the case with the current generation of GMOs, since they use essentially the same GM technology, while experience is still limited and uncertainty high.

6.12 To guarantee a uniform regulatory approach in all the Member States to these new plant-breeding techniques and the products resulting from them, in 2008 the Commission set up a scientific working group to be followed by a policy group to make recommendations about the legal approach. The reports of both working groups were supposed to be ready by the summer of 2011 and must be taken into account in the 2012 review of the legal framework. The EESC deems it essential to maintain the EU's current process-based regulatory approach, and hence that these new plant-breeding techniques should in principle be governed by the EU legal framework for GMOs on account of the (rDNA) GM technique used, even where the resulting plants or derivative end products as such are not perceptibly different from conventional equivalents.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽¹⁵⁾ http://ec.europa.eu/food/food/biotechnology/index_en.htm.

⁽¹⁶⁾ Article 2(2) of Directive 2001/18/EC and Article 2(b) of Directive (2009/41/EC. An organism is defined as 'any biological entity capable of replication or of transferring genetic material'.

APPENDIX I

to the Committee opinion

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussion:

Point 3.8

Replace entire point:

~~Various civil society organisations and stakeholders voice concerns about GMOs in connection with the environment, animal welfare, consumer interests, farming, beekeeping, rural and global development, ethics, religion, etc. The EP has also often expressed critical views about GMOs and their regulation, as has the EESC, and national, regional and local authorities, and independent scientists. The main advocates are large companies with GM patents and other stakeholders including certain GM farmers and scientists and international trading partners with a strong economic interest in more flexible regulation of GMOs in the EU. Some of the main claimed advantages of GMOs are discussed in chapter 5. The supporters and opponents of biotechnology in farming are highly divided in this emotional and passionate debate, which from the scientific point of view, often lacks technical expertise. A large majority within the scientific community strongly argues that the use of GMOs in the production of foodstuffs presents no risk to human health; in fact, GMOs are present in our daily lives and are fully accepted in areas beyond the confines of agriculture. The European Commission's Joint Research Centre has pointed out on a number of occasions that the risks inherent in transgenic foodstuffs are certainly no greater than in organic or traditional products. Some sections of civil society, however, primarily environmental groups and consumer representatives, are raising legitimate concerns regarding the environment, co-existence among crops, ethics and the monopoly of the large multinationals, which require us to approach these issues objectively. The EESC has acknowledged that biotechnology is a key tool for meeting the food challenge ⁽¹⁾but has decided to further develop the debate on the pros and cons of biotechnology in the EU.~~

Result of the vote

For	91
Against	122
Abstentions	19

Point 5.3:

Replace entire point:

~~Thus, the global food crisis is a problem of distribution rather than production (global production is equivalent to over 150% of global consumption), and therefore requires a political and economic solution more than agricultural innovation. The EESC recognises that global food security will become further strained by rapid population growth. International organisations like the UN Food and Agriculture Organisation (FAO), major NGOs such as Oxfam, and the recent report of the authoritative UN agri-science body, the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) panel, all point to the importance of sustainable agriculture as a solution to the problem of food security and sovereignty. These authoritative assessments stress the need for sustainable and ecological agricultural practices and techniques, and do not necessarily foresee a role for GMOs but rather for alternative techniques. The most prominent example of such alternative techniques cited by the IAASTD and others is marker assisted selection, which uses genetic markers to specifically and efficiently select traits, but does not involve any risky or unpredictable genetic manipulation or transfer of genes. Since this technology is demonstrably effective and less expensive than GM, it could provide an uncontroversial alternative to GMOs, while the lower cost may create fewer patent and market concentration issues. Although the future potential of GMOs should not be excluded, a deliberate decision to develop non GM techniques and sustainable farming practices could give the EU a considerable competitive edge where it does not have one in the GM context. Investing intensively in sustainable agriculture could give the EU a unique and innovation driven leadership position worldwide, with positive effects for the economy and employment, innovation and the competitive standing of the EU. Moreover, this would be more in line with the EU farming model, which has a positive impact on biodiversity and is envisaged in the future CAP. As stated in earlier EESC opinions on agriculture and research, innovation, modernisation and new technologies in the agricultural sector should play a fundamental role with a view to the development of sustainable and more productive agriculture, managing natural resources such as water and the land in a more sustainable manner. Biotechnology can, in some cases, play a part in the fight against hunger but the European agricultural model must~~

⁽¹⁾ See the conclusions of the president, Mr Nilsson, at the EESC's conference entitled 'Food for Everyone', held jointly with the European Commission as a contribution to the G20 summit on food security.

guarantee the co-existence of organic farming, conventional agriculture and GM agriculture. The FAO, G20, World Bank and the EESC itself have recognised that, in view of the drive to increase food security, research must be directed at the development of more drought-resistant varieties which give a higher yield, make better use of the land and consume less energy. It appears to be beyond doubt that GM can make a useful contribution to this.

Result of the vote

For	83
Against	139
Abstentions	13

Opinion of the European Economic and Social Committee on the 'Proposal for a Decision of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy'

COM(2011) 540 final — 2011/0238 (COD)

(2012/C 68/12)

Rapporteur: **Mr PEEL**

On 27 September 2011 the Council of the European Union decided to consult the European Economic and Social Committee, under Article 194(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy

COM(2011) 540 final — 2011/0238 (COD).

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 20 December 2011.

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 177 votes to 1 with 10 abstentions.

1. Recommendations and conclusions

1.1 Energy is essential to our standard of living and our quality of life ⁽¹⁾. The EESC welcomes the proposed Decision as published by the Commission to set up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy. This we see as an appropriate step towards effectively implementing a common EU external energy policy, in line both with the Lisbon Treaty (Article 194 TFEU ⁽²⁾) and with the EU's Energy 2020 Strategy ⁽³⁾, as well as with the conclusions on energy of the European Council on 4 February 2011. An effective mandatory information exchange system as proposed - with the Commission playing an active role where Member States are negotiating intergovernmental energy deals with partner countries - is overdue.

1.2 To this end, the Committee also welcomes the inclusion in the proposed Decision of an information exchange of all existing bilateral energy agreements, where the Commission anticipates there may be some 30 intergovernmental agreements between Member States and third countries on oil, some 60 on gas, but fewer on electricity.

1.2.1 The Committee is surprised that such an information mechanism does not yet exist, either between the Commission and Member States, or between Member States themselves,

whilst making full allowance for confidentiality. We would observe that whereas currently neither the Commission nor individual Member States can have an overall picture opposite any specific trading partner, key partners certainly will have. It is essential that Europe should act with a united voice in securing an adequate, stable and secure supply of energy in the foreseeable future as well as continue to build an effective Single Market for energy. Estimates suggest that global energy demand – for what are finite reserves – may increase by some 40 % within 20 years, mainly due to increased competition from emerging economies but likely to be complicated further by measures as yet unforeseen to counter the effects of climate change.

1.3 The Committee likewise welcomes the inclusion in Article 5 of the Proposal of the prospect of an official statement from the Commission, where agreements are currently being negotiated, confirming that the project does not infringe internal market rules, provided that this is issued without undue delay and within the time period foreseen. As previously stressed by the Committee in its Opinion on a comprehensive EU international investment policy ⁽⁴⁾, where many issues raised here find a ready echo, legal certainty for investors is essential.

1.3.1 We are however concerned by the suggestion that silence by the Commission over four months should indicate consent. We appreciate that for procedural reasons it would not be practical or easy for the Commission to give formal consent in each case but, both because a compatibility investigation

⁽¹⁾ Giles Chichester, MEP, former EP Committee Chairman, October 2011.

⁽²⁾ Treaty on the Functioning of the European Union.

⁽³⁾ COM(2010) 639 final.

⁽⁴⁾ OJ C 318, 29.10.2011, p. 150-154.

will have been specifically requested and for the sake of clarity, we would urge that a positive, if informal, indication should be given whenever possible, or sufficient early warning where a potential problem requiring further investigation has been identified.

1.4 Agreements on energy need to be guided both by strategic and by commercial considerations. Bearing in mind the need to maintain the principles both of proportionality and of transparency, the Committee nevertheless regrets that working agreements involving commercial operators are not included in the Proposal, not least given the strong message in its Explanatory Memorandum (Chapter 1) about particular shippers gaining a monopoly or near monopoly, which would be contrary to EU law. At the very least we urge the Commission to take active measures so it can readily gain full access to those parts of commercial agreements where it is believed EU regulatory implications may be involved, especially where these might appear as annexes to Intergovernmental Agreements. We note with particular concern potential threats that may arise where strategic partnerships could lead to the enforced adoption of practices imposed by non-EU interests where these may prove to be detrimental.

1.4.1 In addition, we would stress that European consumers will not readily appreciate the difference between external inter-governmental and private energy agreements – the consequences on pricing, the choice of providers, the energy mix and other relevant considerations apply in each case.

1.4.2 The Committee would urge fair but firm action where, inevitably, some third-country suppliers will have strategic and commercial interests that differ from those of the EU. We question how readily achievable the Commission's intention that these suppliers would enhance their compliance with EU internal market rules will prove. Nevertheless the Committee believes that negotiations should be undertaken where possible in a spirit of partnership, frankness and mutual trust.

1.5 The Committee particularly regrets, however, the absence of a full impact assessment, as this would have enabled a better and open anticipation and understanding of Member States' likely reactions. Energy is of course a shared competence between the Commission and Member States, and for many it is closely connected with their understanding of sovereignty. This will work both ways: some will look for extra support where others may see unwarranted interference, especially over losing control over their negotiating mandate and autonomy, with the new mechanism perceived to be a backdoor attempt to transfer energy policy competencies to the EU. The Commission does not enjoy the same powers here as it does over Investment, where similar action is being proposed over Bilateral Investment Treaties (there are many more of the latter), but where caution would also be in the best interest of all.

1.5.1 The Commission needs to show it is mindful of such reservations by Member States that may feel so threatened, and must deal with any transition carefully in order to reinforce acceptance that a key purpose of the proposed exchange of information is to increase Member States' negotiating position vis-à-vis third countries. Full cooperation with Member States' regulatory authorities will be very important here. In welcoming the emphasis on support for Member States in negotiations, it will be essential that early instances where the Commission becomes actively involved in negotiations are demonstrably effective and show sufficient results to help overcome inevitable concerns.

1.5.2 The Committee seeks further clarification as to how Article 7, covering confidentiality, will be put into practice since all essential elements of a business contract (including prices and conditions) are, as trade secrets, confidential. This will be key in gaining acceptance of the Decision. In the absence of a fully established common EU energy policy, Member States and the Commission must continue efforts to build the mutual trust required between all interested parties: this Proposal can only serve as a starting point.

1.6 We question whether the proposal will have no budgetary implications, as asserted. Given the growing demands imposed by European energy policy we do not believe that the foreseen frequent monitoring and advisory activities can be provided without extra resources.

1.7 The Committee would urge that the first interim evaluation should be carried out after two years, rather than four, as by then there will be a sufficient amount of experience and data to assess the effectiveness of the mechanism.

1.8 Turning to the wider implications of the Proposal, mainly covered in the accompanying, much broader, Communication, the Committee welcomes the overarching objective by the Commission to strengthen the external dimension of the EU's overall energy policy. Energy efficiency, security and stability are clearly linked but we regret that in turn the link with the three more established goals of competitive, sustainable and secure energy has not been made totally clear, not least as competitive energy and sustainable energy are not always compatible.

1.8.1 The Committee also regrets that, whilst the Proposal mainly deals with technicalities and procedures, closely related aspects have not been specifically included (and only to a limited degree in the Communication), including diplomatic and socio-economic relations with supplier and transit countries.

1.8.2 Nor is it clear that this Proposal is fully linked and mutually informed with the wider trade related aspects of energy. Trade negotiations of course have been an EU competence for decades; energy here is understood to play a major role in the EU's first and pioneering Deep and Comprehensive Free Trade Agreement (DCFTA) negotiations now close to completion with the Ukraine, a key energy transit country for the EU. DCFTA negotiations are likewise under active consideration with other EU neighbouring countries, both in the Eastern Partnership and in Euro-Med, where energy should also play a key role.

1.8.3 The Committee would specifically urge the Commission that when negotiating the key comprehensive energy aspects of the proposed new EU – Russia agreement, special attention must be paid to the unique position of the three Baltic States as their power networks are synchronised with the Russian rather than any EU system.

1.9 Finally, the Committee deeply regrets that there is no reference in either the Proposal or the Communication for any mechanism to cover the involvement of civil society. This must be rectified. Formal mechanisms are or soon will be in the process of being established for the monitoring of the implementation of recently concluded EU Free Trade Agreements, notably that with South Korea, whilst there is also an active Civil Society Forum in place for the Eastern Partnership (EaP).

1.9.1 However, we do warmly welcome the inclusion of the Committee finally in the work of the EaP thematic platform on energy not least as civil society involvement is already well established in the meetings of the other three.

2. Background

2.1 On 4 February 2011, the European Council agreed that it was necessary for the Union and Member States to improve the coordination of their external energy activities and asked Member States to inform – as of January 2012 the Commission of all their new and existing bilateral energy agreements with third countries.

2.2 In September, the European Commission therefore published two documents on the establishment of an external EU energy policy: A Proposal for a Decision on *Setting up an information exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy* ⁽⁷⁾ together with a Communication *The EU energy policy: engaging with partners beyond our borders* ⁽⁸⁾.

2.3 It is only the legislative document, setting out the mechanism for implementing the European Council February 2011 conclusions, that has been referred to the Committee

for its Opinion. The Communication covers a much wider remit and only briefly deals with the Proposal. We regret this limitation as the latter covers many key aspects where we would wish to comment, such as renewable energy, energy efficiency and other issues relevant to Sustainable Development, through to EU relationships with Russia, China, other fast growing economies and developing countries in general.

2.3.1 The Commission has made it clear that the Communication will lead to a number of Proposals, of which this proposed Decision is the first, although one of the more important.

2.4 Global energy demand and the EU's dependence on imported fossil fuels are both on the rise. As the Communication points out, the EU as a whole imports 60 % of its gas and over 80 % of its oil, at the same time facing growing competing demand from elsewhere, notably the emerging economies. Global energy demand could increase by 40 % within 20 years whilst unforeseen measures related to climate change may complicate matters further. Many Member States are only able to rely upon a limited number of energy suppliers and are therefore vulnerable to bottlenecks and price volatility, especially for gas and oil. Therefore there is a real sense of urgency to give the EU's external energy policy a much firmer basis. It is essential that Europe should act with a united voice in securing an adequate, stable and secure supply of energy in the foreseeable future as well as continue to build an effective Single Market for energy.

2.5 Few effective instruments for this are yet available. It is anticipated that energy will form a key part of the DCFTA close to completion between the EU and the Ukraine. In turn the Energy Community regulates EU energy relations with nine partner countries ⁽⁷⁾ in Eastern and South-Eastern Europe. A long-term strategic international approach will require much more structured and consistent institutional provisions. The EU Energy 2020 strategy rightly identifies strengthening the external dimension of EU energy policy as a key priority, which the proposed Decision sets out to address.

2.6 The proposed Decision requires Member States to exchange information with the European Commission on their intentions to conclude intergovernmental energy agreements with third countries. Through a compatibility control mechanism (Article 5), the Commission wishes to ensure that such agreements comply with internal market rules. One major benefit would be to create legal certainty for investment ⁽⁸⁾. The Commission stresses that the new mechanism is a coordination measure intended to support Member States and strengthen their negotiating power rather

⁽⁷⁾ COM(2011) 540 final.

⁽⁸⁾ COM(2011) 539 final.

⁽⁷⁾ Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro Serbia, Ukraine and Kosovo.

⁽⁸⁾ This of course must tie in with the new EU comprehensive investment powers and policy resulting from the Lisbon Treaty – see Committee Opinion OJ C 318, 29.10.2011, p. 150-154.

than replace it or limit their availability to conclude such agreements. Article 7 emphasises that there are provisions to guarantee confidentiality of information, an extremely sensitive issue.

2.7 The Committee however regrets that agreements between commercial operators are excluded from its scope, not least given the Commission's clear warning about particular shippers gaining a monopoly or near monopoly, which would be contrary to EU law⁽⁹⁾. At the very least we urge the Commission to take active measures so it can readily gain full access to those parts of commercial agreements where it is believed EU regulatory implications may be involved, especially where these might appear as annexes to Intergovernmental Agreements.

3. The EESC: firm support for a strong European external energy policy based on security of supply

3.1 In March 2011, the Committee issued⁽¹⁰⁾ a clear call for a common EU foreign policy on energy to be rapidly and progressively stepped up. Responding to the then Hungarian Presidency, it pressed for concrete measures so as better to align internal and external policies and for an integrated, consistent approach. It also called for a new institutional footing for energy, a strategic multilateral policy direction and the efficient implementation of privileged energy partnerships with the EU's neighbouring countries.

3.2 Previously in 2009, the Committee⁽¹¹⁾ called for a comprehensive external energy strategy for the EU together with the means to implement it effectively. For the long-term perspective, it identified energy security and climate policy as the two key pillars of the EU's international energy relations. It underlined the importance of the Third Energy Package for decreasing the EU's dependence on external suppliers, but also stressed that sustainable generation and use of energy in third countries had to be encouraged. The firm link between energy and relevant trade policy was underlined, as was the obligation for partner countries to apply market rules such as reciprocity, equal treatment, transparency, the protection of investments, and respect for the rule of law and human rights. With energy set to play an increasingly key role in international disputes, we again stress the pressing need to balance Member States' national interests with a common European voice.

3.3 The Committee⁽¹²⁾ has further stressed that the promotion of renewable energies and the diversification of sources can not be separated from external European action, specifically in the Euro-Mediterranean region. So as to comply

with EU climate policy, harmful subsidies for fossil fuels in partner countries need to be phased out, funding for R&D in renewable energy projects increased and trade in energy-friendly goods and services promoted.

4. The role for civil society

4.1 Civil society's pivotal role in democratic transition, constitutional reform and institution building has again been demonstrated by the failures that led to the widespread uprisings in the Arab world in 2011. The contribution of civil society, and the social partners in particular, both here and in the Eastern Partnership (EaP) countries⁽¹³⁾ must be fully taken into account to ensure transparent and inclusive decision-making processes backed by public acceptability. The Committee deeply regrets that there is no reference in either the Proposal or the Communication to any mechanism to cover the involvement of civil society – despite the fact that the social partners will be heavily involved and will be needed to give essential feedback where problems arise, and the specific reference to 'joint industry-led projects' in the Communication⁽¹⁴⁾. However, we do warmly welcome the inclusion of the Committee finally in the work of the EaP thematic platform on energy not least as civil society involvement is already well established in the meetings of the other three.

4.2 In addition, formal mechanisms are or soon will be in the process of being established for the monitoring of the implementation of recently concluded EU Free Trade Agreements, notably that with South Korea, whilst there is also an active Civil Society Forum in place for the Eastern Partnership (EaP). In energy matters the voice of civil society is just as important. This must include consumers themselves, who often bear a disproportionate impact of market failures, not least for purposes of greater transparency, greater influence and public education.

5. Wider strategic considerations

5.1 The Committee fully supports the Commission in its intention to play a leading role in the establishment of a comprehensive and coordinated EU external energy strategy, and appeals to Member States to support its efforts in a spirit of solidarity and mutual trust.

5.2 The EESC considers solidarity to be a cornerstone of a common EU energy policy not least to help those Member States that lack sufficient bargaining power to secure energy at fair and sustainable prices.

⁽⁹⁾ Explanatory Memorandum (Chapter 1 of COM(2011) 540 final).

⁽¹⁰⁾ OJ C 132, 3.5.2011, p. 15-21.

⁽¹¹⁾ OJ C 182, 4.8.2009, p. 8-12.

⁽¹²⁾ OJ C 376, 22.12.2011, p. 1.

⁽¹³⁾ Ukraine, Moldova, Georgia, Armenia, Azerbaijan and Belarus.

⁽¹⁴⁾ Chapter 1.3, page 7.

5.3 As well as being a major energy consumer, the EU is also a major technology provider, as is recognised, together with having some of the world's highest standards of market transparency and regulation, including in nuclear and other energy safety.

5.4 We note the figures given in the Communication ⁽¹⁵⁾ that Russia, Norway and Algeria account for 85 % of EU natural gas imports and almost 50 % of EU crude oil imports (with OPEC countries supplying 36 % of the latter). Russia also plays a lead role in the supply of coal and uranium to the EU.

5.5 Together with access to raw materials, access to energy is a fundamental strategic consideration for the EU as the worldwide demand for energy soars over the next 20 years. We advocate the establishment of strategic partnerships with the major global energy players (whether suppliers, transit or fellow consumers), which should include cooperation on improving the profitability and uptake of low-carbon technologies, together with promoting energy efficiency and energy renewal and more emphasis ⁽¹⁶⁾ on the security of supply. In particular we look forward to the imminent agreement with Ukraine that should cover security of uninterrupted supply, pricing and other key issues.

5.6 This is especially important for the future of EU trade policy, but we also welcome the reference in the Communication to increased links between energy policy and policies covering the EU's development, enlargement, investment and wider international relations. A prime objective of the Lisbon Treaty was to bring the management of these diverse areas of EU policy closer together. It is essential that EU energy policy is now also fully dovetailed with these policies, not least in the sustainable economic and social development of developing countries.

5.7 We look to our partners in the Energy Community to work towards meeting and respecting EU internal energy market regulations. We are concerned by the Commission's critical assessment last March of this Community's achievements ⁽¹⁷⁾. There is still a considerable gap between political

commitment and actual implementation of the energy acquis by Community members, criticised by the Commission too for maintaining obsolete market designs, hindering investment and distorting competition through continuing to give public suppliers an advantage through regulated prices. We therefore question what instruments are best suited for the EU to manage its relations with its more distant partners and whether it should move away from supplier-buyer relationships towards greater convergence of energy markets.

5.8 Since Russia is currently the EU's leading energy supplier, the Committee urges the Commission to continue to work hard to reach a new EU-Russia Agreement, which must include a comprehensive energy agreement. Russia is equally dependent on the size of the market offered by the EU. Such an agreement would be a major breakthrough and a milestone towards common EU action in external energy relations.

5.8.1 In negotiating such an agreement, special attention must be paid to the unique circumstance of the Baltic States where their power networks are synchronised with the Russian but not with any EU system, thus making these three countries solely dependent on Russia for the stability and the regulation of frequency in their power systems.

5.9 Algeria, Libya and the EuroMed region as a whole also remain a vital area for external energy cooperation.

5.10 Finally, the Committee has recognised that Central Asia ⁽¹⁸⁾ contains 'considerable potential energy reserves that offer Europe additional and complementary (as opposed to alternative) sources of energy', urging that the viability of such links be based on practical and economic reasons, and stressing that EU links with that region 'must be closely and mutually informed with EU involvement with Russia, China and Turkey'. China is particularly important as another major energy consumer, making it essential that here too particular emphasis is laid on close cooperation on energy, technology and climate change related issues.

Brussels, 18 January 2012.

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

⁽¹⁵⁾ COM(2011) 539 final, p. 9 (footnote 20).

⁽¹⁶⁾ OJ C 318, 29.10.2011, p. 150-154.

⁽¹⁷⁾ COM(2011) 105 final.

⁽¹⁸⁾ OJ C 248, 25.8.2011, p. 49-54.

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels'

COM(2011) 439 final — 2011/0190 (COD)

(2012/C 68/13)

Rapporteur: **Jan SIMONS**

On 1 September 2011, the Council and, on 13 September 2011, the European Parliament decided to consult the European Economic and Social Committee, under Article 192(1) of the Treaty on the Functioning of the European Union (TFEU), on the:

Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/32/EC as regards the sulphur content of marine fuels

COM(2011) 439 final — 2011/0190 (COD).

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

At its 477th plenary session, held on 18 and 19 January 2012 (meeting of 18 January 2012), the European Economic and Social Committee adopted the following opinion by 110 votes to 46 with 31 abstentions.

1. Conclusions

1.1 The EESC, with the ultimate aim of virtually sulphur-free marine fuel in mind, reiterates its support for the 2008 decision of the International Maritime Organization of the United Nations (IMO) to reduce the sulphur content of marine fuels drastically by 2020. The EESC calls on all the IMO member states to ratify the relevant IMO convention as early as possible in order to ensure worldwide implementation.

1.2 The EESC also supports the Commission proposal for alignment of Directive 1999/32/EC with Annex VI on Prevention of Air Pollution from Ships to MARPOL 73/78, the IMO International Convention for the Prevention of Pollution from Ships. Certain proposals and impacts require further consideration, however.

1.3 The EESC calls for provisions seamlessly linking to the IMO's Regulation 18 on Fuel Oil Quality, with its availability clause (the 'placing on the market' request), reporting obligations in case a ship makes use of Regulation 18, and its 'non-availability' clause, to be incorporated into the directive.

1.4 The EESC has reservations about the proposed application of the 0.1 % sulphur content limit to passenger ships outside the SECAs by 2020. The proposal has not been sufficiently investigated. Nonetheless, in the interests of the health of passengers and crews of passenger ships, it is inclined to support the proposal. There should be equal concern for the health of the population across the EU as a whole.

1.5 The EESC considers that prohibiting the placing of marine fuel on the market, the sulphur content of which

exceeds 3,5 % by mass, limits the attractiveness and use of emission abatement technologies on board vessels (scrubbers). This needs to be clarified.

1.6 The EESC is concerned about the possible problems which may arise if a 0,1 % sulphur limit applies in the SECAs from 2015. No thorough report on the possible effects of this has been carried out by the IMO. The Committee recommends that in future a prior assessment of such effects be carried out by the IMO.

1.7 The EESC believes that the alternative emission reduction methods or the possible use of alternative fuels need to be further researched and improved. In view of various uncertainties, such as the availability of low-sulphur fuel in 2015 or the risk of a 'reverse' modal shift, the Commission suggests in its accompanying communication that if these uncertainties threaten to become a reality, the implementation deadline should be changed. The EESC advises that, if necessary, this is done in good time, in order to ensure the continued promotion of the necessary investment. In particular, given that 2015 is fast approaching, the deadline for implementing the 0,1 % limit should be postponed to 2020.

2. Introduction

2.1 Marine fuels are the cheapest and least refined of fuels. Often they are a by-product of more highly refined petroleum products. They currently are a significant source of atmospheric pollution, particularly carbon dioxide (4 % of the global total from man-made sources) and sulphur oxide (9 %)

2.2 Before the conventions and protocols of the United Nations' International Maritime Organization (IMO) and in particular the International Convention for the Prevention of Pollution From Ships (MARPOL) of 1973 and 1978, and later the 2008 protocol, entered into force, fuels with 4,5 % sulphur were permitted.

2.3 The 2008 Annex VI to the MARPOL Protocol provides for a progressive drastic reduction to 0,5 % by 2020, or in the event of difficulties by 2025 at the latest.

2.4 Sulphur particulates, which have been virtually eliminated from land-based sources (energy and road transport emissions), are known to cause respiratory and heart problems and there is general agreement that the sulphur content of marine fuel must be reduced.

3. The European Commission's proposal

3.1 Directive 1999/32/EC (as amended by Directive 2005/33/EC) regulates the sulphur content of fuels used for maritime transport and incorporates certain international rules, as agreed in the IMO, into EU law.

3.2 In its current form the directive in particular contains stricter provisions governing the sulphur content of marine fuels used in areas requiring special environmental protection, i.e. Sulphur Emission Control Areas (SECAs).

3.3 On 14 May 2003 the EESC issued an opinion on the proposal for a Directive 1999/32/EG ⁽¹⁾.

3.4 With the support of the EU Member States, the international IMO rules were reviewed in October 2008 and tightened up by application of Annex VI to MARPOL ⁽²⁾.

3.5 The main changes introduced by Annex VI to MARPOL regarding SO₂ pollution are the following:

- A reduction in the limits applicable to the sulphur content of all marine fuels in SECAs from 1,5 % by weight to 1,0 % on 1 July 2010, and 0,1 % on 1 January 2015.
- A reduction in the limits applicable to the sulphur content of all marine fuels outside SECAs from 4,5 % by weight to 3,5 % in January 2012, and 0,5 % in January 2020, subject to a review in 2018 and a possible postponement to 2025.

- Authorisation of the use of a broad range of emission abatement approaches (equivalents), such as equipment, methods, procedures or alternative fuels.

3.6 In order to ensure coherence with international law as well as to secure proper enforcement of new globally established sulphur standards in the Union, the Commission proposes that the provisions of Directive 1999/32/EC be aligned with the revised Annex VI to MARPOL ⁽³⁾. In particular:

- Incorporation into the directive of the 2008 amendments to Annex VI to MARPOL concerning the sulphur content of marine fuels.
- Alignment of the directive with the IMO provisions authorising a broad range of equivalent emission abatement technologies. Flanking of these provisions by additional guarantees to ensure that the equivalent abatement technologies do not have unacceptable negative consequences for the environment.

- Introduction of the IMO control procedure for fuels.

3.7 The Commission also proposes the following additional measures:

- Introducing a new 0,1 % sulphur limit for passenger ships operating outside SECAs in 2020.
- Developing a non-binding guideline for sampling and reporting. If this does not produce the desired effect, binding rules would have to be considered.

4. General comments

4.1 The EESC, like the European Commission and many other stakeholders, believes that the ultimate goal, partly for health reasons, should be the virtual elimination of sulphur from marine fuel. The public and this global transport sector will benefit most from worldwide regulation.

4.2 The EESC welcomes the IMO's decision to drastically reduce sulphur emissions from shipping. The EESC thinks that there should be no difference between worldwide rules and those of the European Union.

⁽¹⁾ CESE 580/2003, OJ C 208, 3.9.2003, pp. 27-29.

⁽²⁾ Resolution MEPC.176(58) of 10 October 2008 (Revised MARPOL Annex VI).

⁽³⁾ COM(2011) 439 final.

4.3 The EESC calls on all the IMO Convention signatory states to ratify Annex VI to MARPOL 73/78 in order to ensure worldwide implementation.

4.4 Regulation 18 of Annex VI requires all signatory states to promote the availability of the relevant fuels and to inform the IMO of availability in ports and terminals. Realistically, however, the IMO also introduced a non-availability clause.

4.5 The EESC notes that the 'non-availability' clause for a particular fuel, as set out in Annex VI to MARPOL, has not been included in the proposal for an amendment of the directive. The EESC calls for provisions seamlessly linking to the IMO's Regulation 18 on Fuel Oil Quality, with its availability clause (the 'placing on the market' request), reporting obligations in case a ship makes use of Regulation 18, and its non-availability clause, to be incorporated into the directive.

4.6 The EESC has queries about the Commission's new proposal for the introduction in 2020 of a 0,1 % sulphur limit value for fuel used by passenger vessels outside the SECAs. The proposal has not been sufficiently investigated. Nonetheless, in the interests of the health of passengers and crews of passenger ships, it is inclined to support the proposal. There should be equal concern for the health of the population across the EU as a whole.

4.7 The definition of new SECAs should be handled in accordance with the IMO procedure, taking account of scientific, environmental and economic considerations. Paragraph 2 of the new Article 4a is not clear in this respect. Are new SECAs adopted by the IMO automatically to be incorporated into the directive, or does a purely EU procedure allow the Commission to designate new SECAs and propose these directly to the IMO? Clarification is needed.

4.8 In Article 1(4) (the new Article 3a) the Commission proposes that Member States should ensure that marine fuels are not used or placed on the market within their territory if their sulphur content exceeds 3,5 % by mass in order to prevent the risk of use, which could, inter alia, result in the discharge of high-density waste water. However, emission reduction methods (scrubbing) should be taken into account that make it possible to use fuel with a higher sulphur content, without exceeding the IMO standards.

4.9 Although this is not included in the IMO rules, the Commission proposes that, when using emission reduction methods, continuous reductions must be made which are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 4a and 4b. This is difficult to achieve, as temporary interruptions in emission reduction could occur and/or the efficiency of the

equipment could deteriorate as a result of heavy use of engines, resulting in a temporary increase in sulphur emissions. This requirement should therefore be dropped.

4.10 In line with the comment in point 4.8 above, the EESC points out that a vessel cannot in practice comply with the requirement of Annex 2 to the proposal on Article 4c(3) to '*document thoroughly that any waste streams discharged into the sea, including enclosed ports, harbours and estuaries have no significant negative impacts on and do not pose risks to human health and the environment*'. Here too the EESC thinks that reference should be made to the requirements of IMO Resolution MEPC184(59), which prohibit discharges into sea ports, harbours and estuaries.

4.11 Although the drastic reduction in the sulphur content of marine fuel introduced in 2008 via Annex VI to the IMO MARPOL Convention has been generally welcomed and deserves to be incorporated into Directive 1999/32/EC, the decision to apply the 0,1 % limit in the Sulphur Emission Control Areas (SECAs) ⁽⁴⁾ from 2015 has raised concerns.

4.12 As a reaction to the IMO's decision on this specific point and in connection with the Commission's open consultation on the amendment of Directive 1999/32/EC, various stakeholders have pointed to the substantial increase in costs if the sulphur content of fuel is limited to a maximum of 0,1 %. Depending on the parameters, some studies have estimated that the use of this fuel (distillates) will entail a very large rise in costs and a loss of competitiveness. However, other studies have not confirmed that the risk would be this serious.

4.13 However, the fact remains that the IMO did not carry out any proper impact assessment before adopting this decision. The EESC recommends that Member States which are members of the IMO and the European Commission should urge the IMO to carry out appropriate prior impact assessments.

4.14 A modal shift to road haulage runs counter to the strategy set out in the White Paper - Roadmap to a Single European Transport Area - Towards a competitive and resource efficient transport system (Transport Strategy 2050) of March 2011 ⁽⁵⁾. It is likely to result in a sharp increase in external costs in terms of environmental damage, and in particular a rise in CO₂, traffic congestion, noise, accidents etc. The EESC therefore recommends that no risk be taken with a 'reverse' modal shift.

4.15 Stakeholders established in the three SECAs fear a drastic loss of competitiveness as a result of increased transport costs, with the threat of relocation of production and related jobs to other, non-SECA areas both in Europe and worldwide.

⁽⁴⁾ In the EU SECAs cover the Baltic and North Seas and the English Channel.

⁽⁵⁾ COM (2011) 144 final.

5. Specific comments

5.1 Proactive work is being done on a 'toolbox' with a view to application of the IMO decision to apply a 0,1 % sulphur limit value to marine fuel in SECAs from 2015. In this connection a thorough analysis, involving specialists, was carried out of the availability of 0,1 %-sulphur marine fuel, the use of emission reduction methods (scrubbers) and the use of LNG as a marine fuel. There is no information on availability.

5.2 The use of emission reduction methods (scrubbers/washers) is being tested in various pilot projects. Significant advances are being made with on-board scrubbers already operational. With the simultaneous removal of NO₂ and CO₂ such equipment may prove its cost-effectiveness in the near future and needs to be kept under consideration. In particular given that 2015 is fast approaching, the deadline for implementing the 0,1 % limit should be postponed to 2020.

5.3 The use of LNG as an alternative marine fuel (alone or in combination with oil – dual-fuel system) is regarded favourably by the shipping industry, particularly for use in short sea shipping. Various pilot projects have been launched, above all in northern Europe. Outstanding problems are being discussed with the stakeholders such as: the escape of methane gas, which increases greenhouse gas emissions, opportunities for taking on fuel in various European ports, safety rules during fuelling etc. This action is being carried out by the European Community Shipowners' Association (ECSA) in cooperation with the European Maritime Safety Agency (EMSA). It is clear that solving the outstanding problems will take quite some time.

5.4 The shipping industry is continuing to work on the three elements of the toolbox. As these will not be finished by 2015, however, there have been many calls for implementation to be postponed by means of an IMO derogation.

5.5 The Commission suggests in its accompanying communication that if these uncertainties threaten to become a reality, the implementation deadline should be changed. The EESC advises that, if necessary, this is done in good time, in order to ensure the continued promotion of the necessary investment.

5.6 The Commission is aware that complying with the IMO decision, set out in Annex VI to the MARPOL Convention, to apply a 0.1 % sulphur limit value for marine fuel in SECAs from 2015 will entail a significant increase in costs. The Commission deals with this issue at length in its Communication on the review of the implementation of Directive 1999/32/EC⁽⁶⁾.

5.7 The Commission states that the additional possibility for compliance through technology measures, such as emission reduction methods (scrubbers, washers), alternative fuels (LNG) and shore-side electricity, provided by Annex VI to the MARPOL Convention, and subsequently by the proposal for revision of Directive 1999/32/EC, would require capital investments by the private as well as public sector.

5.7.1 To this end, it established a number of short-term accompanying measures to assist the sector via the existing EU transport funding instruments, i.e. the Trans-European Transport Networks (TEN-T) and Marco Polo II Programmes, the European Clean Transport Facility (ECTF), the European Investment Bank (EIB) and the use of Member States' funds to support measures on vessels and develop onshore infrastructure.

5.7.2 Regarding the medium term, the European Commission is developing a multi-dimensional action approach, such as a 'sustainable waterborne transport toolbox'.

5.7.3 The EESC welcomes the Commission's intentions, while pointing out that the costs of applying alternative methods are very heavy. Emission reduction technologies, particularly when used to deal with NO₂ and CO₂ emission control, could be more cost effective. The support programmes mentioned by the Commission are a good thing in themselves but it is questioned whether the current resources and time-frames allow for a contribution to reducing the implementation costs by 2015.

5.8 With regard to the IMO control procedure for fuels, the EESC points out that there is a difference between this and the International Organization for Standardization standard. This needs to be made clear.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

⁽⁶⁾ COM (2011) 441 final, 17.7.2011.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multiannual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock’

COM(2011) 760 *final* — 2011/0345 COD

(2012/C 68/14)

On 30 November 2011 the European Parliament and on 13 December 2011 the Council decided to consult the European Economic and Social Committee, under Article 43, paragraph 2 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation Directive of the European Parliament and of the Council amending Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock

COM(2011) 760 *final* — 2011/0343 COD.

Since the Committee endorses the content of the proposal, it decided, at its 477th plenary session of 18 and 19 January 2012 (meeting of 18 January 2012), by 171 votes with 14 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 18 January 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON

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