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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

490TH PLENARY SESSION HELD ON 22 AND 23 MAY 2013

Opinion of the European Economic and Social Committee on 'For a social dimension of European Economic and Monetary Union' (exploratory opinion)

(2013/C 271/01)

Rapporteur: **Mr JAHIER**Co-rapporteur: **Mr DASSIS**

On 24 January 2013, the President of the European Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

For a social dimension of European Economic and Monetary Union

(exploratory opinion).

The subcommittee on the social dimension of European Economic and Monetary Union, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 April 2013 by a majority with one vote against.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 161 votes to 50 with 47 abstentions.

1. Summary of proposals

1.1 **European Economic, Social and Political Union** is still to be achieved. Monetary Union was launched with insufficient economic and social dimensions, but with considerable economic and social consequences. Moves towards financial, fiscal and banking union are now in motion, but without the consequent EU budgetary means for an accompanying policy to support economic growth and social cohesion. At the same time, progress towards social and political union remains blocked. However, Economic, Monetary and Social Union are all mutually dependent; they sustain and amplify each other. Together, they should offer a more tangible Europe rooted in real lives, to which citizens can relate and which investors, producers, workers and consumers can have confidence in

and ownership of, a more dynamic Europe for leveraging up competitiveness, smart and inclusive growth, economic opportunity, employment and effective enjoyment of all social rights. Without such a balance, there will be no future for a Political Union.

1.2 Between 2008 and February 2013, the unemployment rate of the EU-27 has risen from 7 % to 10,9 %, a total of 26,4 million unemployed, while that of the eurozone has reached as high as 12 %; it has risen in 19 countries and fallen in 8; 5,7 million young people are now unemployed in the EU-27 (23,5 %), while at the beginning of 2013 the overall unemployment rate in the USA was 7,7 % and in Japan

4,2 % ⁽¹⁾. These figures run entirely counter to the objectives of the Europe 2020 strategy and the EESC therefore believes that it is a matter of the utmost priority to tackle our declining competitiveness, to generate more growth, create new jobs and reduce poverty. It is essential to set up a strengthened surveillance mechanism on the impact of economic and monetary policies on the social situation and on the labour market in the Member States, and that social and employment policies should be added to the provisions subject to surveillance of national economic policies as part of the European Semester. The EESC believes that a similar approach is not just urgent in view of these dramatic figures, but is also fully in compliance with Article 9 of the TFEU regarding the Union's social and sustainable development objectives. The social dimension of the EMU needs clear instruments, indicators and qualitative and quantitative objectives that are as effective as the economic and financial obligations of the EMU. More than anything else, it is for the EU leaders to bring the European ideal close to the people again.

1.3 A new **European Social Action Programme** should be launched to accompany moves towards closer financial, banking and fiscal union. The programme should set out clear **tangible targets**, both qualitative and quantitative, based on and improving those already set for **Europe 2020**, especially to support efforts to re-industrialise Europe, **reduce and eradicate mass unemployment, ensure fundamental social rights, promote entrepreneurship and new jobs, combat poverty, sustain social inclusion, facilitate social investment, promote higher education and training, and develop social governance and participatory ownership** of the European project. The new European Social Action Programme should be activated by non-legislative and legislative actions, whichever works best, throughout the EU or through enhanced cooperation. It should jointly encompass the **European stimulus package, European Social Investment Package, European Social Impact Assessments, European Youth Guarantee and Single European Skills Passport**, and ensure respect for the **Horizontal Social Clause, fundamental social rights and civic participation**. The programme should also explore and promote the right of European citizens to a minimum guaranteed income.

1.4 The EESC would propose **two new exploratory initiatives**: 1) the issuance of **European Social Bonds** for financially viable social investment projects, to be channelled

through a **European Social Action Fund**, facilitated by the competent EU authorities, but financed, owned, managed and supervised transparently by civil society stakeholders (private, corporate and public); and 2) the setting-up of a **European Education Network for Unemployed Workers**, offering long-term, efficient, qualitative educational opportunities matching labour market needs, through the issuance of **cross-border education vouchers** and ERASMUS-type course credit exchange schemes to assist unemployed workers towards new educational horizons, to develop new cognitive and professional skills and to open new career paths and reinsertion in the European labour market. At the same time, a Europe of free movement requires a more secure and updated basis for mobility, (for example, proper rights on information and assistance for those working in other members states) in order to facilitate the movement of intra-community populations in search of work throughout the EU, ensuring a level playing field of fair competition and respect of basic social rights and collective agreements.

2. Economic governance requires a social dimension

2.1 The European Economic and Social Committee is on record in calling for a comprehensive *step-up* towards **Economic, Social and Political Union**.

2.2 An **Economic Union** should include a **financial and banking union**, with a common deposit guarantee scheme, a common resolution fund and EU-wide supervision; and a **fiscal union** should be based on joint debt instruments, within a framework of budgetary discipline, fiscal consolidation and a more **dynamic European growth model**, to which citizens can relate and in which investors, producers, workers and consumers can have confidence. Continuing uncertainties on the integrity of the euro area should be overcome, as they are detrimental to people's trust and business confidence. The June 2012 summit, including the **compact for growth and jobs** and the planned leveraging of EUR 180 billion for this purpose, together with ECB announcements to *do whatever it takes* to break the viscous circle between weak banks, sovereign debt and unsustainable spreads, are reasons to have more confidence in the developing European economic framework. Europe needs a new investment programme ⁽²⁾ to leverage resources to support reindustrialisation, restore growth and tackle unemployment.

⁽¹⁾ Eurostat data, <http://ec.europa.eu/eurostat/euroindicators>

⁽²⁾ A kind of new Marshall plan: see EESC opinion on 'Growth and sovereign debt in the EU: two innovative proposals', OJ C 143, 22.5.2012, points 2.8 and 2.13 – See the Commission Green Paper on the Long-term financing of the European Economy, COM(2013) 150 final/2 of 9.4.2013.

2.3 But this is only half the picture. At the same time, the consequences of austerity measures have had a devastating effect on social cohesion, social protection, an inclusive labour market and poverty levels. There are now 26 million unemployed and 120 million people experiencing poverty or social exclusion in the EU. The goals of economic revival, monetary stability, sustainable growth and competitiveness will not be achieved without a renewed social dimension. **The European Spring Council meeting of 14-15 March 2013** at last recognised this reality and called on Member states to **include 'social policies as drivers of economic governance', notably by changing the focus of the European Semester** to support employment, social investments, social inclusion and the mainstreaming of social targets⁽³⁾. The European Economic and Social Committee takes note of this new emphasis on social policy at national level, but considers that an EU-wide lead is also necessary in terms of social action, social investment and social benchmarking.

2.4 It is time, therefore, to **build the social pillar of the EMU** within the framework of a social Europe, without which citizens' adhesion to the European project as a whole will remain at risk. Indeed, the current 'spreads' in European social imbalances not only undermine sustainable solutions for economic growth and social cohesion, they also pose a fundamental challenge in the upcoming 2014 European elections between those who look towards a European dimension for recovery and those who fall back on national alternatives. The European elections will concentrate minds and votes; it is essential that these elections act as a springboard for, not as a brake on, **more Europe, a Europe closer to its citizens, families and companies, a more social Europe**.

2.5 **Fundamental social rights** are indivisible from civil and political rights, and there is a Treaty obligation to uphold and promote them. The Commission and the ECB, as members of the Troika, have to abide by fundamental social rights' obligations in all their activities. In the framework of the social dimension of EMU, the Commission should efficiently monitor, evaluate and ensure full compliance with these fundamental social rights' obligations.

3. Towards a new European Social Action Programme and Social Investment Pact

3.1 In 2008, the European Economic and Social Committee adopted an exploratory opinion, requested by the French EU Presidency and proposing the need to launch a new **European Social Action Programme**. The opinion referred to the pioneer work of the Committee in helping to launch the Community

Charter of Fundamental Social Rights of Workers, the 1989 European Social Action Programme and the resulting social acquis relating to the single market, the Treaty and EU activity in general. The opinion argued that a new European Social Action Programme was needed **'so that EU social developments can keep pace with economic and market developments'**. Sadly, despite the support registered at the informal Ministerial meeting for Employment and Social Affairs during the French EU Presidency, the Committee's proposal was soon eclipsed by the economic crisis and five frantic years in trying to save the EMU and forge closer economic cohesion in the eurozone. The time has surely come to revisit the idea of a new European Social Action Programme, in order to catch up with and sustain the new forms of economic governance with equivalent social cohesion and social policy action.

3.2 In its 2008 opinion, the Committee called for **'multilevel governance'** of a new European Social Action Programme, based on legislative action, social dialogue, civil dialogue, co-regulation and self-regulation, open coordination, social policy mainstreaming, enhanced cooperation and the citizens' right of initiative. It placed no hierarchy in the form of action, only in the sense of what worked best, with the maintenance of the **Community Method** and with respect for the new horizontal **social clause** (Article 9, TFEU). It also called for financial commitment, for example through more focused and accessible use of the European Social Fund, a possible European Social Innovation Fund to support new social initiatives of an experimental character, and the idea of a 'European wide loan facility for social infrastructural development'.

3.3 In the intervening period, the Committee has stepped up its calls to apply the *Community Method* and to respect the binding nature of the horizontal *social clause*. It has also specifically proposed the launching of a **European Social Investment Pact** to ensure that austerity measures and semi-automatic sanctions in the framework of economic governance and the implementation of the European semester are offset by social impact assessments, respect for fundamental social rights, real commitment to meeting the EU 2020 anti-poverty targets and the general development of European **'social governance'**.

3.4 The Committee is encouraged that the European Parliament recently stressed **the need for a 'social pact for Europe'**, for 'employment and social benchmarks' in the 'binding supervision of budgetary discipline', for the Annual Growth Survey to take account of the 'sustainability of the

⁽³⁾ European Council Conclusions of 14/15 March 2013, EUCO 23/13.

social model' and for an **'integrated employment and social policy framework' as a 'fifth building block' in the EMU roadmap** ⁽⁴⁾. It also welcomes the European Council's objective to present measures and a time-bound roadmap for 'the social dimension of EMU' at its meeting in June 2013 ⁽⁵⁾. Commissioner Andor has likewise recently highlighted the need for a 'monetary union with a human face' and that in his view 'the social dimension of the EMU must be understood as the ability of the EMU's rules, governance mechanisms, fiscal capacity and other policy instruments **to ensure that economic efficiency and social equity are pursued at the same time** ⁽⁶⁾.' The Committee is also encouraged by President Van Rompuy's conclusions at the 14 March Tripartite Social Summit that 'the European social model remains an important asset and a global competitive advantage' and that **'we need to find mechanisms to help reduce social divergences in our Union'** ⁽⁷⁾. The 'Social Investment Package', published by the Commission, setting out guidance to Member States to support social protection and social inclusion ⁽⁸⁾, goes in the direction of developing social dimension indicators. However, the Committee considers that a 'scoreboard' of employment and social imbalances in the EU also requires a more committed framework for EU-wide action. The Committee therefore reiterates the need for a comprehensive, pro-active **European Social Action Programme** with multilevel governance, including the competent **European** authorities, bodies and stakeholders concerned both in legislative and non-legislative action, and with the mission to at least meet and preferably improve on the social targets set out in the Europe 2020 strategy.

4. Specific proposals

The EESC supports the objectives of the Europe 2020 strategy stressing the importance of tackling our declining competitiveness, generating more growth, creating more jobs and reducing poverty. In keeping with Article 9 of the TEU, namely 'the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health', the Committee calls for a more

binding and properly financed **EU-wide programme of social action and commitment** including the following specific objectives.

4.1 The European Semester exercise must include **employment and social inclusion benchmarks** within the same **surveillance framework** as that governing economic policy coordination and structural reforms. **Quantifiable European employment and social targets** must match and be integrated with stability and growth rules governing debt and deficit targets. Consequent **adjustment mechanisms** should be applied to reduce both macroeconomic and **social imbalances**, with the objective to promote smart, sustainable growth, quality jobs, access to high-quality affordable services of general interest and the reduction of social inequalities throughout the EU. Short-term economic efficiency must not be at the expense of longer-term **investment in social capital**. Fiscal consolidation measures must be evaluated by their effects on growth, employment and social inclusion. **European solidarity mechanisms** should accompany structural reforms. In order to ensure that a genuine economic and monetary union is supported by the EU citizens, national reform programmes need to be **secured with proper social and civil dialogues and within a European social dimension dynamic** which does not trigger a *race to the bottom* resulting in downwards competition, wage deflation and lower aggregate demand. **Free and autonomous collective bargaining must be guaranteed. European social dialogue** should play an essential role in the development and the practice of the new economic governance. **EU-wide fundamental social rights must be better monitored and respected.**

4.2 The European Social Fund and the European Globalisation Adjustment Fund must be raised to a level commensurate with what President Van Rompuy has termed the 'human tragedy and social emergency' ⁽⁹⁾ of the European employment and social situation. This will clearly require 'a compulsory and comprehensive revision of the MFF' as demanded by the EP resolution of 13 March ⁽¹⁰⁾. In the framework of the flexibility mechanisms mentioned therein, the ongoing negotiations between the EP and the Council and the highly desirable

⁽⁴⁾ European Parliament Report with recommendations to the Commission on the report of the Presidents of the European Council, the European Commission, the European Central Bank and the Eurogroup *Towards a genuine Economic and Monetary Union* (2012/2151 (INI)), p. 29, plus accompanying opinion of the EP Committee on Employment and Social Affairs, *suggestion J and recommendation 6*.

⁽⁵⁾ European Council conclusions on completing EMU, adopted on 14 December 2012, point 12b.

⁽⁶⁾ Speech of László Andor, European Commissioner responsible for Employment, Social Affairs and Inclusion, to the ETUC (28.1.2013, Madrid).

⁽⁷⁾ 'The focus of today's meeting, the social dimension of the European social model, remains an important asset and a global competitive advantage' – Remarks by the President of the European Council Herman Van Rompuy following the Tripartite Social Summit, Brussels 14.3.2013, EUCO 68/13.

⁽⁸⁾ *Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020*, COM(2013) 83 final.

⁽⁹⁾ 'As a result, a growing number of people are simply leaving the labour market, abandoning any training and running the risk of marginalisation (this figure may be as high as 13 % for 15-24 year-olds). This is a human tragedy and a social emergency.' Speech by Herman Van Rompuy, President of the European Council, at the EESC, Brussels, 17.1.2013, EUCO13/13.

⁽¹⁰⁾ European Parliament resolution of 13 March 2013 on the European Council conclusions of 7/8 February concerning the Multiannual Financial Framework (2012/2803 (RSP)), point 9.

structural revision of the MFF after the election of the new European Parliament, the amounts in the European Commission's initial proposal must at least be re-established, including through more appropriate use of the EU own resources provided for, and significantly increasing the resources for the territorial cohesion fund, the social fund, resources for education and training and the globalisation adjustment fund.

4.3 At the same time, the EU should better **assist socially responsible investment** and the supportive role of the **social economy**, notably through the re-introduction of European statutes for associations and mutual societies, explicit inclusion in structural fund planning of programmes for starting up and developing social enterprises, facilitating social labelling and compensatory measures and public procurement facilities for enterprises with confirmed social value. A **European Social Innovation Fund** should also be created in order to restore valuable transnational pilot projects aimed at tackling discrimination and disadvantage in the labour market, which were undermined when the European Commission abandoned the *Equal* programme.

4.4 It is also crucial to take all the necessary actions and employment measures to **re-industrialise** Europe and achieve the target of 20 % of GDP in industry by 2020. The EESC stresses the importance of **competitiveness** for companies, which needs to be achieved through a coherent **European framework**.

4.5 The EU must get *on the move for youth*, or risk permanently alienating young people from the European project as a whole. The dramatic scale of the **youth unemployment crisis** in Europe requires a more credible EU budget than the inadequate EUR 6 billion proposed for the **European Youth Employment Package and Guarantee** for ensuring employment, training or education for unemployed young people especially where most needed. Without sufficient funding, the European Youth Guarantee risks being seen as a sham. A stronger EU lead should also be developed by **single European skills passport**, expanding on the European Qualifications Framework by combining all qualifications and skills in formal, informal and non-formal education. A **European framework of partnerships between schools, businesses and the social partners** is patently necessary, together with similar strategic synergies putting higher education and life-long learning at the centre of job creation, the resolution of

skills' mismatches and the promotion of employability, innovation and entrepreneurship. The European Semester must ensure that public investment in education and training is not be jeopardised by measures to cut sovereign debt and national deficits.

4.6 **Real jobs, decent work and portability of social rights must lie at the heart of a sustainable European recovery programme.** The European social model is an asset for attracting inward investment and business development in Europe; it should be valued by encouraging fiscal support for employment-creating activities, including micro-businesses and genuine self-employment. **Guaranteed social standards** must be upheld in EU-wide employment and labour market policies. Competitiveness and flexibility must go hand in hand with decent work and wages that are not set at levels beneath the poverty thresholds. **The European Social Partners have a special responsibility** to tackle the problem of the **working poor**, within their working programme.

4.7 **The EU must engage more seriously and tangibly in the reduction and eradication of poverty.** Indeed, the economic and social benefits to Europe of actively reducing poverty are more cost-effective than the lasting economic and social damage caused by inaction or by measures actually making poverty worse. At the very least, in the framework of the European Semester, the **Europe 2020 'flagship' commitments to take 20 million people out of poverty** must be actively pursued, not undermined by deficit reduction measures. In the first instance, this requires a better EU-wide set of indicators to measure the impact of poverty and to ensure proper monitoring and possible correction of National Reform Programmes and austerity measures that may actually exacerbate poverty and undermine recovery. The EESC is also conducting a review of **guaranteed minimum income schemes** in Member States, with the view to identifying and promoting good practice throughout the EU. It has also supported the EP's call to study and envisage a legislative proposal to introduce an adequate minimum income of at least 60 % of median income in each Member State⁽¹¹⁾. A dedicated **European Anti-Poverty Solidarity Fund** could be set up to facilitate such income support measures, as a European Semester social stabiliser adjustment mechanism. The Committee would also reiterate its proposal that 20 % of all ESF resources should be reserved for dealing with social inclusion and poverty.

⁽¹¹⁾ The EESC calls for a detailed roadmap for the implementation of the active inclusion strategies at local level. It supports the European Parliament's call for the Commission to study the impact of a legislative proposal to introduce an adequate minimum income of at least 60 % of median income in each Member State (OJ C 248/130, 25.8.2011).

4.8 A European Accessibility Act is essential to ensure persons with disabilities of their rights to freedom of movement and access to goods, services and the built environment. To this end, a European Mobility Card would be a concrete and effective tool. The Commission should also develop an **impact assessment tool on the United Nations 'Convention on the Rights of Persons with Disabilities'** and factor this into the European Semester process.

4.9 Likewise, an EU methodology and framework of comparable and measurable indicators on health protection and reduction of health inequalities should be drawn up in order to audit the situation in Member States as part of the European Semester.

4.10 EU-wide societal benchmarks and good practice guidelines on the reconciliation of work and family life, access to child-care services, active ageing, volunteering, housing rights and combating homelessness should also be integrated within the social dimension of the European semester.

4.11 Immigrant workers are making a positive contribution to Europe's economic development and well-being. The EU's labour immigration procedures must be legal and transparent. Legislation on immigration must respect human rights and guarantee equal treatment. The EESC believes that the EU must strengthen integration policies and the fight against racism, xenophobia and discrimination towards immigrants and minorities.

4.12 Sustainable recovery requires more economic and monetary symmetry and more social cohesion throughout the EU as a whole. A European Social Action Programme including the specific objectives listed above would help establish a more coherent social basis for pulling together and reconnecting the EU with its citizens. A twin-track social rebalancing both of the EU and EMU is therefore preferable, respectful of subsidiarity in its dynamic sense. However, if there is insufficient consensus or political will for such a revitalised EU social dimension, the EESC would propose the option of enhanced cooperation within the EMU, with own financial resources, a supplementary Social Fund, a Social Progress Pact for Europe, based on the same democratically accountable and rigorous contractual arrangements governing economic and monetary convergence, and social standards, objectives and stabiliser mechanisms (there should be debate with social partners and civil society if and how an EMU unemployment insurance or unemployment benefit scheme as recently proposed by Commissioner Andor may be useful) matching the fiscal, budgetary and monetary stabiliser mechanisms of closer Economic and Monetary Union – EMU with a corresponding social dimension.

4.13 **Contractual obligations for competitiveness and growth**, which were discussed at the EU summit in December, have **to be democratically accountable** and should not undermine the European social market economy as set out in Article 3.3 of the TEU. It is also necessary to better define and stipulate the **solidarity mechanisms to support** the efforts of the States, which can gradually take the form of genuine financial transfers, with an initial specific budget of EUR 50-100 billion, to be funded by mechanisms similar to those of the European Stability Mechanism (ESM).

4.14 In order to achieve this greater balance and correspondence with the social market economy laid down in the Treaty, the increased role of the Commissioner responsible for economic and monetary affairs within the College must be accompanied by a **strengthening of the role of the Commissioner responsible for employment and social affairs**. The increasing role of the ECOFIN Council should be also balanced with a **similar strengthening of the EPSCO Council**.

4.15 It is also urgent, in this context of European economic and social governance, with particular reference to the European Semester and the Europe 2020 strategy, for the role of both the **European Parliament and of national parliaments** to be strengthened, and for the involvement of **social partners and civil society organisations** to be extended and guaranteed at all levels of political negotiation.

5. Exploratory proposals

5.1 European Social Bonds

5.1.1 In parallel with the aforementioned proposals, perhaps more thought could be given to additional ways of involving European citizens, civil society and corporate stakeholders in the re-launch of European social action, namely through the mobilisation for, and issuance of, **European Social Bonds**. This would also make it possible, at a time of scant public resources, to mobilise additional resources for well-defined purposes from significant reserves of unused private savings.

5.1.2 This initiative would be separate to ongoing discussions on the EU issuance of stability bonds (to help mutualise debt) and recovery and growth bonds (as part of an EU economic stimulus package). Instead, **European Social Bonds** would not be paid for out of national exchequers or co-financed by EU budgetary mechanisms; they would be acquired and invested in by individual citizens, businesses,

trade unions, and civil society groups willing to exercise individual and corporate social responsibility by participating in a **European Social Action Fund**, financed by themselves, managed by themselves, with reasonable interest rates and on a non-for-profit basis, supervised and regulated transparently, and facilitated and underwritten to the appropriate amount by the competent EU authorities.

5.1.3 The issuance of the bonds should be **logistically facilitated by the competent EU authorities, popularly organised and mutually managed by the private, corporate and public stakeholders** who choose to participate in the scheme and take responsibility for the European Social Action Fund. They would buy, collect and invest bonds in social programmes of their choosing, preferably **in the framework of the proposed European Social Action Programme**, with the technical help of appropriate EU institutional and advisory bodies, in order to verify their financial viability and potential social impact. **Such social investments could include:** social housing; co-operative ventures and social enterprise; support for self-help groups, mutual associations, community social and health services, educational, training and re-skilling networks, social innovation, research and development; loans and partnerships for infrastructural development, agri-tourism, travel exchanges, cultural activities; charitable actions, etc.

5.1.4 Subsequent more structured plans for developing these European social bonds could be examined, such as developing a range of such bonds, promoted and managed at local and/or national level by the actors mentioned. These bonds, conforming to the criteria of the general European scheme, both in terms of objectives and in terms of management methods, would obtain appropriate European certification for participation in the general scheme and, on that basis, also possible tax relief for subscribers.

5.1.5 The **European Social Action Fund Management Board** should be composed by the stakeholders involved in the scheme, represented proportionately, according to the level of their investments in European Social Bonds, and with logistical and advisory assistance from appropriate EU bodies (including the EESC).

5.2 European Education Network for Unemployed Workers

5.2.1 Mass unemployment in Europe will not be resolved in the short to medium term, even if growth forecasts improve by 2014 and a Europe-wide stimulus were to start to take effect. The European labour market must become more relevant as a means for our workforce to move freely, to bring skills to where they are needed and learn skills to bring back and develop. It is essential that our workforce remains active, preferably in employment or possibly part-time employment, or, if not, in education, training and re-skilling. It is important to make sure that education is efficient, forward-looking, innovative and relevant to labour market needs. Many educational and training schemes tend to be short-term, often without sustainable job openings at the end. Older workers becoming unemployed are less likely to participate in such schemes. A longer-term approach with a European perspective could be explored, including on the basis of certain proven European best practices, such as the adult education programme carried out in Sweden from 1997 to 2002 or the dual training system in Germany and Austria. The EU could perhaps facilitate the setting up of a **European Education Network for Unemployed Workers** with the view to offering a comprehensive, two-year educational opportunity to change career path, participate in work, training or educational exchange experiences in other Member States through the issuance of **cross-border education vouchers** with course-credit transfers, and to obtain a mutually recognised professional qualification at the end.

5.2.2 This system, if provided with adequate resources and adopted widely by the Member States, in the context of precise contractual arrangements with workers joining such programmes on a voluntary basis, could make it possible to keep a significant number of long-term unemployed people in high-quality jobs who would surely not have found employment opportunities, and this would have positive effects both for the people concerned and for the overall social capital of the countries of Europe.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

Opinion of the European Economic and Social Committee on 'Ten years on, where is the euro headed? The EU's economic and political future and the new Treaty' (own-initiative opinion)

(2013/C 271/02)

Rapporteur: **Carmelo CEDRONE**

On 12 July 2012 the European Economic and Social Committee, under Rule 29(2) of its Rules of Procedure decided to draw up an own-initiative opinion entitled

Ten years on, where is the euro headed? The EU's economic and political future and the new Treaty.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May 2013), the European Economic and Social Committee adopted the following opinion by 134 votes to 27 with 22 abstentions.

1. Conclusions and recommendations for the future of the euro

1.1 The EESC considers the establishment of the euro and Economic and Monetary Union (EMU) to be the most significant milestone in Europe's development. It was part of a strategic EU plan, framed within the vision inspired by the ECSC and the Treaty of Rome. It was a significant and courageous effort, a bid for the future, which had raised such high hopes that everybody believed that the strength of the single currency would overcome the continued resistance which had prevented the completion of EMU and total political union, as would have been required. The euro nevertheless remains the basis for all this.

1.2 We must however agree, a full twenty years down the line, that this is not the way things have turned out, possibly because the euro, throughout this period, was not subjected to any severe internal or external shocks, or possibly due to the lack of trust that persists between creditor and debtor countries in Europe. This in turn means lack of cohesion and trust vis-à-vis their governments. Thus everyone preferred to be lulled by the calm seas; it all seemed plain sailing, but it was a superficial calm. In fact, when the international economic and financial crisis struck, washing over the EU, it set alarm bells ringing and exposed the **structural limitations and contradictions in EMU**, depriving the euro of its propensity to attract. It was initially thought that all it would take to make EMU work was a set of 'accountancy' rules such as the stability pact, whereas the problem was not technical but economic and political.

1.3 The EESC recognises the importance of stability. Yet stability must not only concern prices or financial institutions, but also politics and social conditions. There is a legitimate public perception that they are paying the heaviest price for the crisis, that debt redemption is primarily being demanded of them rather than of the banks that caused the crisis, and that this is unjust. The EESC is convinced that austerity cannot be sustained politically for long. In fact, the line has already been crossed in some countries.

1.4 This is why the EESC believes that a single currency will be unsustainable unless we achieve convergence between the economic capacities of the euro area countries and improve overall competitiveness, objectives which require economic as well as political commitment. A little temporary maintenance is not enough. We therefore need to make a qualitative leap, bringing together not only the currency and the economy, but politics, sovereignty, people and the capacity for dialogue between European peoples. We need more political integration and less dirigisme and a social market economy to spread growth and employment and to restore perceptions of the euro as an advantage, and not the opposite.

1.5 This opinion makes it clear that the EESC's proposals are proactive whereas the Commission's and Council's responses to the crisis have been and remain predominantly reactive. For example, the Treaty on Stability, Coordination and Governance stresses stability without proposing joint financial instruments for recovery and employment, even if the agreement on a single supervisory mechanism (SSM) is a significant step forward, albeit in the absence of a credible and practical roadmap for political union. Europe needs to go back to generating wealth in order to redistribute it fairly. It is the best way to reduce protests. Austerity cannot be imposed on its own.

1.6 The EESC is now calling, as it has done for a 'reality check' on the euro and Europe in order to save them, on their political and economic limitations, on profits and losses, on who is responsible for getting us into this situation. Swift action is required. There is no more time for rhetoric, deception and illusions. It is the only way to prevent the dissolution of Europe, which has been in decline for some time. It would therefore be better to avoid accusing those protesting against the sacrifices of populism. Europe must learn to listen without arrogance. It cannot continue to turn a deaf ear.

Recommendations for completing EMU: the missing connections

The economic connection

1.7 The EESC believes that the best way to complete EMU, avoid recession, reduce national debts and stabilise budgets is to reverse the principle currently underpinning the EU's economic culture (stability for growth), and build on growth, not austerity, thereby making it the main objective, in order to facilitate a new **pact for promoting (mutualising) growth, employment and stability**, also by involving the social partners (growth for stability). The EESC is convinced of the following points:

- i) recovery cannot be pursued exclusively through monetary policy (e.g. abundant money supply to the banking system and low interest rates) and fiscal measures (currently limited due to the need for fiscal consolidation in many countries). It also needs to be promoted through increased investment in alternative forms of energy, the environment and **social investment**, thereby generating demand for investment goods and services from the private sector that takes the needs of households into consideration;
- ii) this can reduce current **extremely high levels of unemployment** and **generate the fiscal revenues** which can lower national debt and deficits;
- iii) such investments should not only be financed through 'tax and spend' but also through **bonds attracting excessive global savings that lack investment outlets**, thereby supporting EU and global growth, which can be fuelled by returns from the financed projects rather than fiscal transfers between Member States;
- iv) it should be a priority to **enhance the financial viability of firms**, and especially SMEs, many of which are currently threatened with extinction because they lack sufficient bank credit to ensure that they can purchase components and materials, partly because central banks require too many guarantees from banks that grant loans to SMEs;
- v) immediate steps should be taken to promote public investment to facilitate growth, keeping such investment off the balance sheet by using 'golden rules' i.e. a system of common rules that also take into account the countries' private indebtedness, while awaiting the Eurobonds ⁽¹⁾.

1.8 **Symmetrical policies** are required to make the **euro sustainable** and reduce the differences between national economies through a solidarity-based plan that transfers investment resources to countries with weaker economies, through targeted projects, using fiscal displacement if necessary, and integrating the labour market and social policy. This means acting through symmetric adjustments: common funds to rescue failing banks, a European deposit insurance system, Union bonds, Eurobonds, common policies for reducing the EU's external deficit, etc. (creating common compensation or adjustment funds).

1.9 **An EU economic governing body** should be established to go further than the current method of policy coordination, which has not delivered good results, transforming the Eurogroup into a body that reaches majority decisions, making it the voice of the euro. It is no longer sustainable to have monetary and banking union and to keep economic policies separate. In contrast, joint governance (as occurred in the case of the fiscal compact) at the macro and micro level (with the launch of an industrial compact) might steer economic and fiscal policy in the direction of growth, employment and social inclusion.

1.10 A **common budget**, needless to say with common rules, must be created for the euro area, integrating trade policy and the balance of payments, whereas today the differentials are significant. Fiscal consolidation must be completed by taking action vis-à-vis the structure of multipliers, to free up resources for jobs and growth, and launch reforms that can increase the productivity of the weaker countries ⁽²⁾.

1.10.1 What is required, in any case, is to reduce and/or dilute current austerity measures for the most indebted countries and to boost demand in creditor countries. Member States need to take simultaneous action on debt and structural reforms while the EU needs to promote growth through a solidarity-based plan designed to increase employment and social justice. You cannot add austerity to recession, as the EU is doing. Superimposing further debt reduction on the credit crunch is harming the economy.

The monetary and financial connection

1.11 This is why we need a system that can absorb the mistakes and weaknesses of individual countries to run alongside the reform process and reduce economic differences and imbalances between the euro area countries, including through monetary policy.

⁽¹⁾ OJ C 143, 22.5.2012, p. 10.

⁽²⁾ OJ C 133, 9.5.2013, p. 44.

1.12 The **ECB** has also been adversely affected by the limitations to EMU. Under the Treaty it has had to apply **a single, quasi-federal, monetary policy even though the countries' economies were and are different** and there are serious imbalances between them. As has been said, these therefore required, and still require corrective EU measures. This would avoid overexposure and enable the ECB to take more effective and even-handed action to stabilise prices, reducing existing distortions and imbalances, which could call into question the very existence of the single currency if they persist, as demonstrated by the most recent phase of the sovereign debt crisis, which was only avoided by a measure decided by the ECB President. This is necessary to promote economic integration, which is lagging behind monetary integration, at least until the ECB's current lack of a mandate and the EU's political deficit are bridged.

1.12.1 The ECB's role is currently over-exposed. In order to fill its role better and under equal conditions it should have the same functions and mandate as the Fed, including that of lender of last resort, in order to reduce the differences in interest rates. It should therefore have a full mandate that would even allow it to act as a growth driver if necessary.

1.12.2 A major debate is ongoing between the central banks about the strategies to use to restart growth. It is the age-old debate on the austerity-growth balance, i.e. inflation/growth and growth/employment. We have only to consider that the Fed, in order to fulfil its mandate, of reducing unemployment by 6 %, feeds USD 85 billion per month into the market (the Bank of England would also be prepared to apply a similar policy). This puts the ECB, which does not have a 'parent government' or a budget, in a weaker position than other central banks. This is a condition that also concerns control over relations between currencies. The ECB should also exercise a responsibility for exchange rate policy, subject only to the Council's right, under the Treaty, to conclude formal agreements on an exchange rate system for the euro in relation to the currencies of third states.

1.12.3 **Debt:** another important aspect of EMU. On this issue, the EESC has already made a specific recommendation to take 60 % of national debts out of the market in order to prevent the impact of market speculation on the euro area ⁽³⁾. It is clear that complete EMU and a common budget for the euro area would also make it possible to issue common bonds (needless to say, from within the common euro area budget).

1.13 With regard to the financial and banking system as a whole, the EESC believes that all aspects of the provisions laid down by the EU ⁽⁴⁾ must be completed within strictly required

and necessarily short timeframes since these are among the most efficient instruments for completing EMU.

The political and institutional connection

1.14 The EESC believes that the future of the EU and its institutional underpinning need to move away from schemas based on the 'ideological model' - even if the 'federal' model seems the most appropriate. It seems more appropriate to focus on the functional and substantive issues to ensure the survival of the very idea of Europe; a Europe where people and solidarity are central to its primary objective, with the economy revolving around them and not the other way round. The time has now come to restart work on **political, social and economic union**. The Council's laudable but hesitant and inadequate effort seems very little indeed to us. We need to abandon egoism, the 'utopianism of interests', which seems to have pervaded Europe, in favour of solidarity. Austerity policies should be called off or mitigated in order to relieve hardship, and jobs and growth should be put back at the heart of its initiatives.

1.15 Convergence towards social and **political union** is needed to complete EMU and achieve the abovementioned recommendations. The decision-making process must become more democratic (majority voting) and transparent in order to achieve positive, less uneven, integration, and to manage sovereignty jointly, thereby reducing differences in the integration process. This would also give the EU one voice within international organisations.

1.16 **New treaty:** the EESC maintains that most of the economic recommendations set out in this opinion can be applied without amending the Treaty. Where necessary, countries that agree with these recommendations could act together on the basis of strengthened cooperation (as in the case of the fiscal compact), also in order to make faster progress and to avoid the risk of the EU's dissolution in the face of renewed external attacks and continued austerity policies. Another scenario for deeper integration might involve giving the next European Parliament a constituent mandate. This could be put to a referendum at the same time in all countries concerned.

The international connection

1.17 European events have **international consequences** and vice-versa. This is why more efficient international bodies with greater decision-making powers are needed to ensure greater **global governance**. In this sphere, the EU needs to have a single representation, at least for the euro area. In particular, the G20 should be able to set up an 'Economic and Social Committee' for international development, to take action through fiscal stimulus.

⁽³⁾ OJ C 143, 22.5.2012, p. 10.

⁽⁴⁾ OJ C 44, 15.2.2013, p. 68 and OJ C 11, 15.1.2013, p. 34.

1.18 However, only a different, more cohesive and democratic, political framework, combined with better internal governance, will provide the EU with more efficient external governance, giving it one voice at the international level. This is particularly true with respect to the relationship between currencies, in order to avoid harming the EU economy, and the relationship between world economies, especially with developing countries

1.19 Briefly, these are the four recommendations for completing the euro framework:

- i) EU economic governance (for growth, employment and economic and social cohesion); common budget for the euro area and reduction of economic asymmetries between the euro countries;
- ii) Monetary and financial governance: stronger ECB mandate; completion of the internal market for the financial and banking sector;
- iii) Political and social union;
- iv) Stronger international role for the EU and global governance.

2. Introduction

2.1 The EU is going through a particularly difficult and dangerous period which could have negative consequences that go well beyond the economic and social ones already with us. This own-initiative opinion addresses a range of issues including the need to respect earlier Treaty commitments to economic and social cohesion for growth and jobs, to promote a new economic and monetary policy for growth and employment, more proactive innovation policies, a European Venture Capital Fund for small and medium enterprises, and finally to work for the future of the EU ⁽⁵⁾.

2.2 We are dealing with major economic interests, even in the EU, which instead of converging, are clashing. The euro is in no way responsible for what is happening ⁽⁶⁾. It is a currency which has long been left to take care of itself and is still waiting for the 'contenders' (the governments) to decide what to do.

2.3 The EESC has a duty to respond to these challenges in straightforward and clear language, and with farsightedness, knowing what is at stake and the level of confrontation,

without hiding the facts. Through this opinion the EESC wishes to contribute actively, and unreservedly, to completing EMU and overcoming the crisis, in the interests of workers, businesses and citizens in the EU, especially the euro area, which is experiencing the ongoing crisis very keenly.

3. The Maastricht Treaty: monetary policy and cohesion

3.1 Monetary union

3.1.1 The adoption of the single currency would have been optimum for countries that are exposed to symmetric shocks or that have mechanisms to absorb asymmetric shocks. Empirical studies show that the likelihood of asymmetric shocks is higher in Europe than in the USA. Naturally, the ECB's common monetary policy, whose main objective is price stability in the monetary union, cannot react to asymmetric shocks in individual euro area countries. For this reason, another, sufficiently effective, mechanism is needed to cope with these shocks. The lower the mobility of production factors, openness of national economies, synchronisation of economic cycles, diversification of production and financial integration, and the lower the level of mutual trade, the more rigid the labour market and higher the inflationary differentials between Member States' economies, the less suitable the ECB common monetary policy is for euro area members. The worse the adaptive mechanisms perform in alleviating the adverse effects of asymmetric shocks (price and wage flexibility, mobility of labour and capital across borders of Member States, or fiscal federalism), the harder it will be for the country to deal with the loss of its own monetary policy.

3.1.2 EMU is possibly the main pillar of the Maastricht Treaty but not the only one. The reason which inspired it, after the Berlin Wall came down, was mainly political, as well as economic. Many countries looked on with surprise and indifference as the new framework took shape, even in the face of the almost immediate absorption of East Germany and the parity rating (1 = 1) guaranteed by the Deutsche Bundesbank for the Deutsche Mark and the East German Mark. Preference was given to delaying the decision to complete EMU, raising common, but ultimately vain, expectations that monetary union would bring political union in its wake and that the euro would give impetus to a federal Europe, but this was not what happened.

3.1.3 Union, in addition to giving the euro coverage and a single voice, should have provided everything that the euro lacked. It was thought, however, that a few rules, such as the stability pact, with arbitrary parameters, would be enough to make it work, self-referentiality was deemed infallible, but did not work as expected. Even the ECB's remit is one-way and more limited than that of other central banks. These contradictions were brought to a head by the financial crisis, which the EU was seriously slow to notice, and then the sovereign debt, which deprived the euro of the aura and miraculous powers it was represented as having when it was created. This reduced its propensity to attract to the point that it is now perceived as a threat, or as an insidious justification of austerity policies.

⁽⁵⁾ OJ C 143, 22.5.2012, p. 10.

⁽⁶⁾ 'All the talk of a so-called "euro crisis" is just idle chatter', Helmut Schmidt.

3.2 This policy is jeopardising **social and economic cohesion**, another pillar of the Single Act, of the Maastricht Treaty, which sets **high employment and living standards** as an EU objective, an objective which the ongoing crisis had in fact swept off the European agenda. Although it has been reinstated in words, it has been left without implementing instruments, and therefore has no practical impact on the real economy and on employment.

4. The euro's first ten years

4.1 The advantages

4.1.1 Until 2008, EMU worked quite well from a monetary perspective for the euro countries. It simplified trade, eliminated exchange rate risks and competitive devaluations, ensured price stability (average annual inflation of 2.03 % except for excessive hikes in some countries during the transition from the old system to the new), led to the reduction and convergence of debt rates (until 2009!), generated growth and employment (14.5 million new jobs)⁽⁷⁾, kept all current accounts in balance, and debt-to-GDP ratios below Japan's and the USA's, and contained the exchange rate with the US dollar (around 30 % higher), due to the weaker economies.

4.1.2 This is the overall picture. It is different if you look at the situation in each country. The main advantages went mainly to the countries on whose economies the euro's original parameters had been based, boosting their growth and productivity and dramatically increasing exports (about 2 000 billion US dollars between 2000 and the present for Germany alone) and the corresponding balance of payments⁽⁸⁾, whereas other countries benefitted in part and/or suffered real disadvantages, mainly due to asymmetries of the system associated with the single currency, to the point that countries with deficits are obliged to make corrections, while those with surpluses are not. The different reactions of countries to the situation created by the euro must also be considered.

4.2 The costs

4.2.1 The costs that must be taken into consideration are those associated with differences in the competitiveness of countries, loss of sovereignty in macroeconomic policy, the exchange rate, and competitive devaluations, etc.

⁽⁷⁾ Although at different rates (average growth of 1.6 % between 2001 and 2006), while it was 2.3 % in the three EU15 countries that did not join the euro; similarly, the unemployment rate in these countries was almost 3 % lower.

⁽⁸⁾ 'Our surpluses are in fact deficits for the others. Our credits vis-à-vis others are their debts', (H. Schmidt).

4.2.2 The crisis, in the absence of adequate and complete EMU, has brought other costs, such as the transfer of bank liabilities to national budgets, increased debt, with greater difficulties for the countries that were already in greater debt. This has split the EU in two, with creditor countries on one side, and debtors on the other, and which, moreover, increasingly resemble third world countries. In fact, creditor countries are causing greater poverty in the South, and elsewhere, and greater wealth in the North. We need only think of the surpluses accumulated in Germany, not through internal euro area accounting, (in this case the EU budget would be in balance!) but through its surpluses vis-à-vis third countries, which are so substantial that in the long-term they could expose Germany itself to a financial risk which could damage its own economy.

4.3 Critical issues

4.3.1 Monetary policy is affected by various structural problems and weaknesses in the governance of the currency: the limits of the Stability and Growth Pact, which some countries tried to dismantle when it created problems for them (Germany, France and Italy); the lack of monitoring of productivity indicators; the lack of crisis management instruments; the costs of staying in the euro; systemic risk; economic imbalances between countries; maintenance of fiscal and budget sovereignty by national States.

4.3.2 Exchange rate risk and competitive devaluations were not, however, eliminated between euro-in and euro-out Member States, particularly the UK, and a significant depreciation in the sterling-euro exchange rate could occur in a relatively short space of time, thereby undermining the level playing field presumed to operate under the Single Market.

4.3.3 From an economic point of view, the greatest problem concerns economic imbalances dating back to before 2000. This situation has penalised the weaker countries, causing fully-fledged 'asymmetric shocks', also encouraged by massive capital flows towards Germany. At present, the ECB does not have the tools to address these asymmetric shocks. Another problem relates to the international context and was only brought to light following the financial crisis⁽⁹⁾.

4.3.4 Yet the biggest mistake was to believe that you could have a single currency without limiting the Member States' sovereignty, and not just the budget, but separate debt management in particular, a banking and financial system that remained national, alongside the supervisory system.

⁽⁹⁾ OJ C 255, 22.9.2010, p. 10 and OJ C 143, 22.5.2012, p. 10.

4.3.5 Finally, the gravest mistake was to have created the euro without giving it a common home and a single voice, notwithstanding the ECB's sporadic efforts to fill this void. Thus the ECB has shifted from the autonomy 'enshrined' in the Treaty to a role of policy substitution, in order to prevent damage to the single currency and the EU itself ⁽¹⁰⁾, as has been revealed by the role of the strongest country.

4.3.6 The EESC nevertheless believes that the euro can be made more sustainable through the convergence of the euro area countries' economic performances, in order to encourage more uniform growth and a political union that would make these differences more acceptable because the **problem is not about accounting, it is political**. This includes the issue of democracy and therefore a fairer weighting of votes in the various decision-making bodies. We can no longer afford the illusion and the error of focusing entirely on the economy and on 'accounting'.

5. The international context

5.1 Events in Europe have international consequences and vice-versa. There are very strong links between economies, the debt, finance, trade, relations between currencies, etc. In particular, we are thinking of the even closer links between the economies on both sides of the Atlantic. At least, this is how it used to be until 2009. However, at present, the US economy is recovering whereas Europe's is in recession, partly because there are two different schools of economic thought, not to mention the differences between the roles of the Fed and the ECB.

5.2 With regard to the global economy, however, more efficient international bodies with greater decision-making powers are needed to ensure greater **global governance** (IMF, World Bank, ILO and WTO). The G20 would need to be more structured in order to be able to take binding decisions. For example, it should set up an 'Economic and Social Committee' for international development, take action through fiscal stimulus, and govern relationships between currencies in order to reduce trade discrimination, also by increasing the ECB's scope of action.

5.3 **Surplus global savings:** indeed growth is vital also for the rest of the world economy. The IMF warning that Europe needs to couple debt and deficit reduction measures with measures to stimulate growth is timely and justified. There is a surplus of global savings that is not finding investment outlets. Almost USD 2 trillion-worth of private equity funds

have been seeking outlets in vain ⁽¹¹⁾. Norway's major sovereign wealth fund is reducing the proportion going to European investments from over half to two-fifths ⁽¹²⁾. Asia's biggest SWF, the China Investment Corporation, made a loss on its private equity investments in 2011, has cut its holdings of private securities to a quarter from a half, and is looking for longer term public rather than private sector investment outlets ⁽¹³⁾.

6. Ongoing EU action

6.1 **EFSF/ESM:** faced with the onset of the crisis, which then devolved into speculative attacks on the euro without any action being taken against the speculators, the EU has attempted to take action on various fronts. Strengthening the European Stability Mechanism by granting it a banking licence, is an example which would make it an efficient, albeit limited, instrument against speculation on bank shares and debt, to help countries that could go bankrupt through no fault of their own, even if it is not the solution to the crisis.

6.2 **Banking union** is another of its pillars. It is impossible to maintain an area with a single currency and 17 financial and debt markets in the long term, especially since the crisis has reinforced national segmentation. Banking union therefore becomes an indispensable and priority aspect for the reciprocity of risk, to protect depositors, including through 'winding-up procedures', and restore confidence in the system, which has stopped working, and to put credit for businesses back in circulation in all countries, on the basis of the affected population and not the size of the banks, thereby avoiding the transfer of liquidity to countries which are considered to be lower risks and reducing the interest rate spread. Banking union would also reduce the systemic risk and break the link between public debt and banks. Again, we should not forget that the euro was established while banking systems remained separate, a serious weakness. This is largely due to the fact that some strong countries have largely public banking systems.

6.3 **European banking supervision** completes the existing measures - a European competence, exerted directly by a single authority. In order to demonstrate that Europe adds significant value, it is vital to promote greater transparency in bank practices, inhibiting conflicts of interest and malpractice such as the LIBOR manipulation of interest rates. The EESC welcomes the proposal to set up a single supervisory mechanism (SSM) hosted by the European Central Bank covering the euro area and open to all Member States ⁽¹⁴⁾.

⁽¹⁰⁾ 'The euro could exacerbate political tensions between MU States, to the point of creating conditions for new conflicts, even military ones', Martin Feldstein and Milton Friedman.

⁽¹¹⁾ Bain & Company Global Private Equity Report for 2012.

⁽¹²⁾ Reuters (2012). *Norway USD 610 bln wealth fund to cut Europe exposure*, 30 March 2012.

⁽¹³⁾ http://www.upi.com/Business_News/2012/07/25/Chinas-sovereign-wealth-fund-reports-loss/UPI-38111343274421/#ixzz2AcHV3HNP

⁽¹⁴⁾ OJ C 11, 15.1.2013, p. 34.

6.4 The EESC welcomes the new OMT programme (Outright Monetary Transactions), which will allow the ECB to undertake transactions in secondary sovereign bond markets, to put a stop to speculation and reduce the spread on Member State debt spread, and hence on the euro. This, coupled with other non-standard monetary policy measures adopted (like others in the past) to address the financial crisis, constitutes a change of course for the ECB, albeit in the spirit of the Treaty and in the right direction. However, unfortunately, even these are technical instruments which do not solve the problem, but give EU governments time to adopt the necessary measures.

6.5 The ECB

6.5.1 The ECB's objective is 'to maintain price stability' and in order to do this it must maintain its political independence, i.e., it cannot 'seek or take instructions' from governments or the EU. This status is appropriate even though the Treaty states that the Council 'may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States' ⁽¹⁵⁾. In the absence of any such agreements, or in intervening periods between them, the ECB should regard exchange rate policy as part of its responsibility. The ECB also has secondary objectives, such as, for instance, to contribute to financial stability, even if its measures during the crisis concerned the primary objective insofar as they were mainly dictated by the need to re-establish an effective transmission mechanism for monetary policy in order to maintain the financial stability of all euro countries.

6.5.2 With regard to price trends, the question necessarily arises whether it is right for the Maastricht inflation criterion to be based on the average inflation of the three most successful countries in the EU rather than in the euro area.

6.5.3 In general, the ECB's remit is more limited than that of other central banks. Firstly, the ECB has no mandate to support growth and employment, as the Fed does, although the monetary policies resemble each other. There are however fundamental differences between the USA (centralised fiscal system) and the EU in the implementation of budgetary policy. Moreover, at present, the ECB's role as a **lender of last resort** is restricted to the banking system and does not extend to governments (the EU government) as implied in 'national' contexts. This is something that should become possible in a situation of complete EMU. Furthermore, the ECB's single monetary policy is made more difficult by differences and imbalances between the economies of the euro area countries, in the absence of corrective EU measures.

6.5.4 It is positive, however, that **the principle of the 'singleness' of the euro area** has led the ECB to state that the euro is 'irreversible' and, as we have seen, has enabled it, after a hard struggle, to adopt measures to reduce the public debt spread of the relevant countries through the acquisition of bonds on the secondary market. This process requires, in parallel with a return to growth, a 'European' plan for emerging from debt to accompany those of the individual countries ⁽¹⁶⁾.

6.5.5 This at least serves to reduce the distortion of competition through debt and investment financing rates: even today this is an outright financial differential, which increases existing imbalances, including imbalances of payment.

6.5.6 Furthermore, the EESC believes that it is necessary to reconsider the **conditions set by the ECB** and the EU. It is unacceptable to provide banks with liquidity at very low interest rates with no strings attached, for example with regard to the use of the funds. Indeed, at least part of the funds should be geared to investment, whereas stringent conditions are being applied to countries for the acquisition of sovereign debt bonds by the ECB (OMT), even if this concerns another issue. These conditions are mainly justified by the need to respond to the rules of a distorted, unscrupulous, anonymous and extremely fast 'market', which actually bears little semblance to a market ⁽¹⁷⁾. The EU cannot lend itself to this game: extreme austerity and stringent rules for people and businesses at a time of crisis, and neutrality for investors/speculators, who hide behind business banks and international investment funds, except for the ECB President's steadfast defence of the euro at the most critical moments of the attack.

6.5.7 The ECB's action needs to be able to provide even-handed support for the economies of the relevant countries in order to reduce existing distortions and imbalances, with the current instruments, in order to move beyond the EU's current mandate and political deficit. For instance, the interbank market in some euro area countries could be boosted through negative rates for overnight deposits at the ECB.

6.5.8 The EESC is convinced of the need to solve the **debt** ⁽¹⁸⁾ problem immediately, on the basis of its proposal, and that action by the ECB and the Council is essential to achieving this objective.

⁽¹⁶⁾ OJ C 143, 22.5.2012, p. 10.

⁽¹⁷⁾ 'The markets are not there for the people, but against them. Our task is to incorporate the social economy's spirit of solidarity in the markets and finance', Angela Merkel, Chancellor of Germany.

⁽¹⁸⁾ OJ C 143, 22.5.2012, p. 10.

⁽¹⁵⁾ Article 219 of the TFEU.

6.5.9 The Committee thinks it appropriate to give more transparency to ECB decisions. For instance, the voting results from ECB Governing Council meetings could be published, in the interests of raising the accountability of the governors of national central banks in monetary union members. That would encourage them to make decisions on the basis of overall economic conditions in the euro area rather than developments in their national economies.

6.5.10 Another problem worth remembering concerns the voting system of the ECB Governing Council⁽¹⁹⁾, especially with respect to the disparity between the voting rights and financial contributions of the Member States. A problem which has already occurred in connection with the payment system within the European Stability Mechanism (ESM) and which could recur in the future, e.g. in the context of banking union.

7. The EU's economic future: economic and social union – growth and jobs

7.1 The EESC sees the need for **ecological and social investment led recovery**⁽²⁰⁾ since it is convinced that stability alone will not ensure recovery, which depends on business and consumer confidence. With private sector expectations low and spare capacity high, managers cannot count on future profits from current investment. In turn, if people are unsure that they can keep or find jobs, they prefer to save, or reduce personal debt rather than spend. While higher unemployment means that fewer people are in a position to spend.

7.2 Thus, for reasons of both business and public confidence, as in the US New Deal⁽²¹⁾, recovery should be investment led. The key criteria for this are those adopted by the EIB as far back as the 1997 Amsterdam Special Action Programme – with a remit to promote cohesion and convergence in health, education, urban renewal and the environment – plus the trans-European networks.

7.3 **Recycling excessive global savings** is an attainable goal, as mentioned in point 5.3. In fact some investment funds are looking for long-term outlets for surplus global savings generated in other parts of the world. This presents mutual advantages for third-country investors and for the EU

economy. A key role in this context can be played by both the sister institutions of the EIB and the EIF (European Investment Fund) in the European Investment Bank Group.

7.4 Thus, the increase in the subscribed capital of the EIB is to be welcomed. An important role in recovery also can be played by Project Bonds. But Eurobonds is a good name for the recycling of global surpluses into investments, even if markets are very likely to refer to them in shorthand as € bonds. The resistance of some governments to Eurobonds is well known, but this is because they wrongly assume that they would be mistaken for Union bonds, which are intended to address debt⁽²²⁾.

7.5 The EIF has always maintained that it could issue European bonds for long-term social investments⁽²³⁾, with an increase in its subscribed capital from its currently low level of EUR 3 billion, but without needing a Treaty revision⁽²⁴⁾. None of the major and other euro area Member States includes EIB finance in their national debt. The same should apply to EIF finance. EIF bonds, like EIB bonds, can be serviced by returns on project finance.

7.6 **Product innovation and creating markets:** We also submit that the Union should be less 'arms length' in terms of innovation policy. Industrial policies fell out of fashion in the 1970s on the grounds that governments could not 'pick winners' or 'national champions'. But there are grounds for rethinking this⁽²⁵⁾.

7.7 Moreover, first, 'arms length' policies are not necessarily virtuous. In the past, they have led to misinvestments in the financial sector. Second, there needs to be even more decisive action to counter climate change. Third, too many of the technology projects submitted under the Framework Programmes are rejected not on merit, but for lack of own resources,

⁽²²⁾ Idem.

⁽²³⁾ Stuart Holland (1993). *The European Imperative: Economic and Social Cohesion in the 1990s*. Foreword by Jacques Delors, Nottingham: Spokesman Press.

⁽²⁴⁾ Article 1.2 of the Statutes of the European Investment Fund allows that 'The activities of the Fund may include borrowing operations'. In principle, as the Fund has confirmed to us, it could issue bonds simply by a decision of its General Meeting and on approval of an increase of its subscribed capital, such as has just been agreed for the EIB. But if the EU is to recognise the significance of bond issues both to finance a social investment led recovery and also for the recycling of global surpluses, more explicit endorsement is vital. This could in principle be by the European Council as a 'general economic policy' of the Union to fund recovery, rather than only by Ecofin, and, if needed, the endorsement could be by enhanced cooperation, as in the recent proposal for a Financial Transaction Tax, which also could have macroeconomic significance.

⁽²⁵⁾ Philippe Aghion, Julian Boulanger and Elie Cohen. *Rethinking Industrial Policy*, Bruegel Policy Brief, April 2011.

⁽¹⁹⁾ Decision of the European Council of 21 March 2003.

⁽²⁰⁾ See the Resolution of the Amsterdam European Council of 1997, point 9, and the Conclusions of the Luxembourg Extraordinary European Council of 1997, points 37-40.

⁽²¹⁾ OJ C 143, 22.5.2012, p. 10.

which could be overcome by a bond-financed **European Venture Capital Fund**. Fourth, emerging economies have been able to promote a range of national champions with considerable success ⁽²⁶⁾.

7.8 The investment finance generated by shifting surpluses into EU bonds should be available to all Member States and would have **cumulative macroeconomic, social, employment and political gains, reinforcing the case for 'more Europe'**, on which electorates and some governments have become increasingly sceptical.

7.9 **Growth can also reinforce stability.** Based on the EIB precedent that bond finance need not count as national debt, Eurobond finance for recovery would make national debt reduction more feasible and release national fiscal revenues to reduce or maintain low deficits, while also protecting key social expenditures. To this end, common parameters and criteria would have to be defined by the countries and Eurostat for a fairer and better evaluation of data.

7.10 It also has been widely overlooked that the 'crowding out' hypothesis assumes **full employment**. With high current levels of unemployment in most Member States, either separate or joint EIB-EIF project bond finance could 'crowd in' rather than 'crowd out' private sector investment, income and jobs with investment multipliers of up to three, and positive fiscal multipliers in the sense of generating direct and indirect tax revenue ⁽²⁷⁾.

7.11 In light of the difficulties facing some countries, and in particular Greece and Cyprus, the EESC suggests that short-term structural adjustment demanded by the troika should be reviewed in terms of the longer term prospects for these countries following the discovery that the eastern Mediterranean has huge, essentially untapped oil and gas reserves ⁽²⁸⁾.

8. The EU's political future

8.1 As a result, the EESC is convinced that it is not enough for the EU to carry out sporadic 'maintenance work'. It cannot

perpetuate the vacuum which has existed since Maastricht, without rising to the challenge that the euro presents, and which the crisis has brought to a head, revealing its major 'deficits', the first of which is democratic ⁽²⁹⁾, and giving European integration a purpose again in order to keep the idea of Europe alive.

8.2 The EESC believes that a single currency will be sustainable if we achieve convergence between the economic capacities (performances) of the euro area countries, an objective which requires economic as well as political commitment. We therefore need a political union that makes differences acceptable and makes it possible to transfer part of the wealth of strong countries to the weak ones through a transparent decision-making process and a new form of solidarity between countries ⁽³⁰⁾.

8.3 This crisis is reawakening Europe's 'old differences'. The fault of looking inwards is back, digging up ghosts or preconceptions we thought had disappeared, as though austerity and debt were the product of misconduct rather than the errors of governments on both 'sides'. Just as the countries in difficulty cannot foist their own responsibilities on the EU (or Germany), the richer countries cannot ignore the greater benefits the euro has brought them, partly at the cost of the others, due to existing economic imbalances. This is why we need a **new capacity for political and cultural action and dialogue between Europeans**, with unquestionable mutual advantages, as the German poet Holderlin suggested a long time ago ⁽³¹⁾, taking his inspiration from Greek civilisation.

8.4 We therefore need to make a qualitative leap, **putting together** not only the economy, but politics and the **SOVEREIGNTY of all**. There is no point in discussing what European 'model' to develop, but rather the instruments we need: efficient, democratic and transparent instruments to determine and achieve the common good; to **unite the people of Europe**, not divide them.

⁽²⁶⁾ The Economist (2012), *The Rise of State Capitalism: The Emerging World's New Model*, Special Report, 21-27 January 2012.

⁽²⁷⁾ Blanchard, Blot, Creel et al in studies for the *Observatoire Français des Conjonctures Économiques*.

⁽²⁸⁾ In such a context, it is unacceptable that the troika is demanding that Greece sell its majority stake in the national oil company to foreign interests, which would bring in only some EUR 50 billion. The Greek public is justified in seeing this as serving markets rather than people. As a result, the EESC proposes that the European Council should request the Commission to re-evaluate the structural adjustment that it is demanding of Greece in the short-term so as to take account of the impressive revenues expected in the longer term.

⁽²⁹⁾ 'For the first time in the EU's history, we are witnessing the dismantling of democracy', Jürgen Habermas.

⁽³⁰⁾ 'Countries cannot pursue policies that could harm another euro area country', Mario Draghi.

⁽³¹⁾ '...For we are a conversation, and we can listen/To one another', from the poem *Celebration of Peace* by F. Holderlin, poet (1770-1843).

8.5 For the same reasons, the EESC believes that the question about whether or not to amend **the Treaty** is not the right one. This clearly depends on what needs to be done to complete EMU. However, most of the EESC's recommendations can be implemented without amending the Treaty (growth, debt etc.), while for others it might be enough to step up cooperation. In any case, the most important thing is the objective to be met for the good of the economy, the euro, and EU citizens. The Treaty is just the tool. This must be explained to citizens in the most appropriate way by involving them directly in decisions and/or through the EP and national parliaments.

8.6 The EESC believes that the euro area has the **resources to plan its own future**: more political integration and less *dirigisme* and a social market economy to spread growth and employment and to achieve **political, economic and social union**.

9. Integration or disintegration?

9.1 If we do not take this additional step, the crisis, as addressed thus far, could lead to the disintegration of the euro area, and consequently of the EU. The policy of austerity and cuts, such as debt reduction, cannot be applied alone, even when they are appropriate. Other instruments must be used (to increase demand in creditor countries) within a framework of solidarity. The citizens of the relevant countries must be made to understand that their surpluses derive from the debt of others, and that attacks on the euro have nothing to do with the level of debt ⁽³²⁾, even if it has to be reduced. On the other hand, the citizens of the southern countries must put pressure on their governments to consolidate the debt and manage their countries' budgets more prudently; eliminate overspending and tax evasion; cut taxes; and increase growth, employment, productivity and the competitiveness of their systems, not only through a few reforms, but through greater solidarity and a different EU and ECB economic policy ⁽³³⁾.

9.2 Otherwise, none of the countries will be able to reduce their debts and achieve fiscal consolidation. This is why we need

to **relax austerity** and change economic policy. Unless we do, the risks could grow. This is where history could come to our aid ⁽³⁴⁾. We need to affirm a new perspective for integration, i.e. positive integration, not negative, damaging and forced integration.

9.3 We need to consider that at present nobody in Europe is safe, out of danger, even if an anomalous situation has been created. In fact, the economic growth of some countries, fostered by the euro, and the weakness of the EU institutions, have led Germany, the strongest country, to take on a central role in Europe, often in opposition to the 'peripheries', especially, but not exclusively of the South. 'This fuels the anxiety of others' (Helmut Schmidt), particularly because of the way in which this role is perceived; hence the need for action to disprove this perception ⁽³⁵⁾.

9.4 The EESC believes that Europe is currently dominated by egoism and national interests, as though we were faced with a '**utopianism of interests**'. The economic approach has taken over and relegated to second place the values upon which Europe was founded and which are the basis for its existence. Europe emerges as egoistic and devoid of solidarity. Recent tensions carry the risk of a dangerous '**psychological dissolution**' of the EU, affecting the public and governments, which needs to be addressed by listening without arrogance and providing concrete answers.

9.5 **We are at a crossroads**: the EESC cannot understand how the procrastination and indecision of Europe, the first economy in the world, are being allowed to risk strangling Greece, the mother of its principles and a minute entity in economic terms ⁽³⁶⁾, requiring sacrifices from people and businesses, which do not go hand in hand with a plan to support growth, which is the only way to repay the debt, and a plan to relieve the serious social hardship of part of the population of Greece and Europe as a whole. What sort of Europe, we might ask, is this?

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽³²⁾ As illustrated by Spain, which has a lower debt (68.5 % of GDP) than Germany (81.2 % of GDP). Eurostat data for 2011.

⁽³³⁾ The 1956 Spaak Report recognised that the integration of economies with different efficiencies could aggravate structural, social and regional disparities and needed to be offset by common structural, social and regional policies.

⁽³⁴⁾ 1933: the consequences of the deflationary policies of German Chancellor Heinrich Brüning after the 1929 crisis.

⁽³⁵⁾ 'We do not need a German Europe, we need a European Germany', H. Kohl.

⁽³⁶⁾ 2 % of EU GDP.

Opinion of the European Economic and Social Committee on ‘The green economy — Promoting sustainable development in Europe’ (own-initiative opinion)

(2013/C 271/03)

Rapporteur: **Joana AGUDO I BATALLER**

Co-rapporteur: **Pedro NARRO**

On 15 November 2012 the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on

The green economy – promoting sustainable development in Europe.

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 26 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 108 votes with 2 abstentions.

1. Conclusions and recommendations

1.1 The EESC believes that developing an inclusive green economy will be Europe's main challenge in the coming years if it wants to remain a global economic power. At the Rio+20 conference, the EU pledged its commitment to the green economy as a form of sustainable development. Now is the time for the EU to take action. This is why we need an economic development model that prioritises public investment and draws up adequate incentives for private investment to develop ‘green’ infrastructure and R&D&I, with the dual purpose of promoting production in order to emerge quickly from the current recession and guiding our transition through this third industrial revolution from a leading economic and social position.

1.2 The EESC believes that the far-reaching and much-needed changes to production and consumption make it absolutely essential to involve civil society throughout the transition to an inclusive green economy at all levels, especially at the sectoral and territorial levels (European, national and regional). Participatory management is needed to minimise the resistance and detrimental effects that inevitably accompany change. It is this participation that will make sustainable progress possible on the economic, social and environmental aspects.

1.3 The EESC is concerned to note that green tax incentive policies have suffered a serious setback in recent years as a result of ‘fiscal austerity’, which is causing a severe contraction

of economic activity and the job market. The IMF has recognised that the real economic contraction resulting from these policies has been far worse than estimated so far.

1.4 The EESC emphasises that developing an inclusive green economy will increase job creation opportunities. Green jobs should not be understood just as jobs in a few new emerging sectors, but all jobs created in connection with the ‘greening’ of production processes and products in all sectors. A fair transition to a green economy requires active employment policies that create decent jobs, including vocational training and lifelong learning for active workers. Employing women and young people in these sectors will be the key to this type of growth.

1.5 The EESC believes that an industrial policy that has been agreed by the social partners is vital in order to coordinate technological innovation efforts and to promote the changes required in the production infrastructures of many European sectors affected by the establishment of a low-carbon and resource-efficient economy. This will also entail substantial investment for businesses.

1.6 The EESC believes that the EU should incorporate the objectives of the sustainable development strategy in all its policies, primarily in the Europe 2020 Strategy and the seven

flagship initiatives. The EU's various strategies need to be consistent with each other and the Commissioners should speak with one voice on this issue. Specifically the Commission should take the opportunity of a mid-term review of the 2020 Strategy to strengthen its sustainability aspects and integrate it completely with the European Sustainable Development Strategy. It will be necessary to define and use indicators relating to the quality of growth so that this can be monitored and evaluated.

1.7 The EESC emphasises the important role that the European semester and the annual growth survey play in ensuring the monitoring of sustainable development policies. The EESC considers it necessary to abandon subsidies that are harmful to the environment and to establish Member State specific recommendations regarding environmental taxation, as well as recommendations on waste water management and better recycling. Member States need to be ambitious and seek broader objectives in these areas.

1.8 The EESC is concerned by the fact that the EU's Multi-annual Financial Framework for 2014-2020 contains a significant contradiction: the economic sectors with the highest CO₂ emissions (housing, energy, industry and transport) are not the greatest beneficiaries of EU funding to facilitate the transition to a green economy, and this funding therefore needs to be increased substantially and its efficient and effective application ensured.

1.9 The EESC considers it particularly important to proceed with eco-taxation, including tax incentives for businesses that set up climate change investment funds, provided they are managed jointly with workers.

1.10 With regard to EU trade policy, the EESC believes that in order to avert the risk of industrial relocation, the establishment of tariffs equivalent to CO₂ taxes should be considered for countries that refuse to comply with international agreements on reducing emissions.

2. Introduction

2.1 In 2011 the OECD and the UNEP drew up comprehensive reports on the green economy. The ILO launched a Green Jobs Programme and one of the main themes of the Rio+20 conference in June 2012 was the *Green economy in the context of sustainable development and poverty eradication*.

2.2 In 2006, the EU renewed its sustainable development strategy and in 2009 it launched its energy and climate package to reduce greenhouse gas (GHG) emissions by 20 %, increase the use of renewable energy sources to 20 %, and improve energy efficiency by 20 % by 2020 ⁽¹⁾. The EU should aim for further reductions by 2025 and 2030. In 2011, the Commission adopted flagship initiatives entitled *A resource-efficient Europe* ⁽²⁾; *A Roadmap for moving to a competitive low-carbon economy in 2050* ⁽³⁾; *An EU biodiversity strategy to 2020* and the *Roadmap to a Resource Efficient Europe* ⁽⁴⁾.

2.3 The EESC has always supported the idea of greening the economy as a contribution to sustainable development and the need for civil society recommendations on the transition to an inclusive green economy to be at the forefront of EU and national policy, emphasising the need for close collaboration with all social partners. As a result, many of its opinions have referred to its different aspects and the Commission's successive proposals. The EESC has emphasised that the improvement of the green economy and governance cannot be separated from promoting production, employment and sustainable consumption or from the strategy for equality between women and men and the package of EU climate change measures.

3. The green economy

3.1 An inclusive green economy should strike a balance between economic prosperity, greater social cohesion and the conservation and rational use of natural resources, which ensure the wellbeing of current and future generations. It sets out to dematerialise production, which means decoupling economic growth from the use of natural resources and the generation of pollution and waste.

3.2 According to the ILO, green jobs are jobs that reduce the environmental impact of businesses and economic sectors to sustainable levels, thereby helping to reduce the consumption of energy, raw materials and water, and to a low-carbon economy and to reduced GHG emissions. The concept of 'green jobs' is fairly fluid since the boundaries between green jobs and non-green jobs depend on technological innovation processes. As a result, green jobs are not simply those associated with a few new emerging sectors, but include all jobs created in connection with the 'greening' of production processes and products in all sectors.

⁽¹⁾ Summarised in COM(2011) 21 final, Annex 1 and in http://ec.europa.eu/clima/policies/package/index_en.htm

⁽²⁾ COM(2011) 21 final.

⁽³⁾ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0112:REV1:EN:PDF>

⁽⁴⁾ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0571:FIN:EN:PDF>

3.3 The development of the green economy is determined by two main vectors, one of which is driven by climate change policies, while the other derives from growing competition with emerging countries for resources that will continue to grow scarcer and more expensive.

3.4 The green economy is not just a matter of sectoral adjustment between emerging and other more traditional sectors (derived from the technological push towards a low-carbon economy). It includes an ecological modernisation of production and consumption to integrate the objectives of increasing the added value of businesses and environmental sustainability, in terms of resource conservation, energy efficiency and work organisation, not to mention worker-employer relations and the improved productivity of all factors.

3.5 In recent years, the limits of the earth's capacity have become clear, both from the perspective of natural resources available to meet growing demand, and the earth's capacity to absorb waste and pollution.

3.6 The health impacts of climate change should not be forgotten: a growing number of extreme weather events, increasing ozone levels and particles in the atmosphere and its toxicity as a result of higher temperatures and the re-emergence of previously eradicated contagious diseases in Europe.

3.7 Changes to the energy production and transport structure of the main developed economies, and a good number of emerging economies, will focus on the transition from a high-carbon economy to a new low-carbon economy where most energy comes from clean renewable sources, i.e. from sources that do not generate GHG emissions and other hazardous waste.

3.8 This profound overhaul of production, which some are calling a third industrial revolution, will not be neutral in terms of international competitiveness, especially for those countries, such as the majority of EU countries, that are net importers of energy and raw materials. As a result, as early as 2009, the governments of many OECD countries began to launch ambitious stimulus plans, where investment in green infrastructure and R&D&I played a fundamental role, with the

dual purpose of promoting production to emerge quickly from the current recession to tackle ongoing production restructuring from a leading position.

3.9 Nevertheless, the financial development of these plans in many EU countries, like the EU budget, has been severely curtailed, partly as a result of 'fiscal austerity' policies. The IMF's chief economist has recognised that the contraction in production resulting from these policies has been far worse than estimated to date. According to a study carried out on 28 countries, since the crisis which began in 2008, the fiscal multiplier is between 0,8 and 1,7 % ⁽⁵⁾.

3.10 This loss of impetus for the green economy could create serious problems for many EU countries since the current technological differential between developed and emerging countries is far narrower and dynamic. European countries as a whole have no guarantee that they will be in the vanguard of developed countries with low-carbon economies, which in the long-term could lead to serious tensions in the EU since it would call into question its capacity to continue to develop an economically advanced and more socially cohesive and environmentally sustainable society. Nevertheless, it must be stressed that the EU holds a strong leadership position in term of technology and production in a number of industrial sectors that are clearly future-oriented.

3.11 Developing the green economy through the necessary investments and incentives will increase opportunities to create jobs in Europe. The areas of production that now currently form the economic foundation of EU countries cannot be forgotten. Many jobs in industries that are currently considered to be very polluting will become green jobs, insofar as they engage in processes that allow them to improve energy efficiency and reduce the consumption of raw materials and the pollution they generate. Examples of this in road transport include companies that develop and manufacture electric and hybrid vehicles and, not to mention public transport and civil engineering work to construct high-speed rail infrastructure, which results in significant energy savings per passenger compared to air and conventional rail transport. Examples in construction include energy efficiency improvements to energy inefficient housing stock. This has to take place as part of a broader process of developing and enhancing social dialogue and consultation, as well as collective bargaining, to ensure good final outcomes in terms of job creation (with regard to both quantity and quality) and equality (in both working conditions and salaries). Nevertheless, only eight EU countries have an official definition for green jobs. This gives rise to different calculations based on different definitions and methodologies.

⁽⁵⁾ IMF Working Paper/13/1. Growth Forecast Errors and Fiscal Multipliers. Prepared by Olivier Blanchard and Daniel Leigh. January 2013.

4. Civil society cooperation in a fair transition to a green economy in which technical innovation will be decisive for business competitiveness

4.1 An entirely new aspect of this third industrial revolution is the level of development achieved by the forces of production and the considerable civil society awareness and pressure surrounding issues of environmental sustainability. In Europe, the strong development of ecological organisations, consumer associations, unions, business organisations, and other civil society bodies is the factor that will allow the coming changes to generate an economy that ensures more manageable, sustainable, social and environment-friendly development. This was something inconceivable in previous processes, where technological and production changes were entirely dictated by micro-business decisions.

4.2 The ILO's *Recovering from the crisis: A Global Jobs Pact*, adopted in June 2009, explicitly states that 'Social dialogue is an invaluable mechanism for the design of policies to fit national priorities. It is a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for sustainable recovery'. An industrial policy that has been agreed by the social partners is vital to coordinate technological innovation efforts and promote the changes required in the production infrastructures of many European sectors affected by the transition to a European low-carbon and resource-efficient economy.

4.3 Technological innovation is part and parcel of the green economy. As a result, the sectors, businesses and technologies that will drive the greening of the economy will receive more public and private financial backing since they will enhance the European economy's global competitiveness. As a result, in order to guide private investment, Deutsche Bank has identified the following sectors as climate change priorities:

- clean and renewable energy production;
- energy distribution infrastructure and management systems;
- with respect to transport systems, a shift towards rail and maritime transport, as well as hybrid cars in the medium term and biofuels that do not compete with foodstuffs for land use;

- green chemistry and research into new materials;
- basic industries that are more energy-efficient and less reliant on the extraction of raw materials and make greater use of new and less polluting materials (including the steel industry, and low-carbon cement production, etc.);
- building activities that improve the energy performance of buildings and their energy-generating capacity;
- waste management;
- agriculture (fertilisers and pesticides, inter alia);
- water purification, decontamination and desalination plants.

4.4 Special attention should be paid to the difficulties European SMEs face in obtaining sufficient financing to make the investments required to achieve eco-innovation.

4.5 For innovation to have a competitive value, the business organisation model must incorporate practices that promote employee involvement. Optimising staff involvement in the organisation of work and business planning is an aspect that clearly allows the development of innovation and increases productivity. This presents a challenge to modernise labour relations and collective bargaining systems and their links with business management.

4.6 Staff participation in businesses is one key aspect that contributes to Europe's technological leadership in many sectors and helps it to maintain its export capacity. It should not be viewed simply from the perspective of wealth distribution; it is actually a decisive aspect of wealth generation, as acknowledged by businesses ⁽⁶⁾. To a large extent, the difficulties involved in innovation have a lot to do with rigid organisational structures that perceive employees as mere tools.

⁽⁶⁾ EPOC Project of the European Foundation for the Improvement of Living and Working Conditions.

5. The green economy and European policies

5.1 At the Rio+20 conference in June 2012, the EU advocated an inclusive green economy enabling progress towards sustainable development. The European Commission intends to promote sustainable and inclusive growth and put greening the economy at the centre of its follow-up activities to Rio+20. Governments should develop effective social dialogue to ensure the crucial involvement of civil society in this process.

5.2 In order to help implement the Commission's Flagship initiative and Roadmap to a Resource Efficient Europe the Commission established a European Resource Efficiency Platform in 2012, which will submit an intermediate report in 2013 and a final report in 2014, to work on concrete proposals for a transition to a green economy in the following fields: 'Framework conditions for investment in RE', 'Setting objectives and measuring progress'. To this end, a robust set of indicators needs to be developed, in addition to GDP, to show the outcomes of these policies in the relevant sectors and society as a whole (competitive gains, improved working conditions for workers, recycling percentages, energy and resource efficiency, percentage of renewable energies, lower pollution) and 'Circular economy/greening the economy'.

5.3 It is particularly important to proceed with eco-taxation and reductions in the high subsidies for fossil fuels in many EU countries since the prices of many products and services do not give a good indication of the total cost of production since the cost of pollution is externalised. Voluntary eco-labelling policies have proved inadequate, especially since in a crisis like this one, more and more consumers give priority to a product's price and not its environmental performance. In order to achieve a high level of social consensus for eco-taxation policies, their impact on the competitiveness of businesses and social impact on the

public in terms of what we have come to call 'energy poverty' must be factored in and mitigated through complementary policies (industrial, trade, support for disadvantaged social groups). Tax incentives are also needed to reward businesses for investing their profits in reducing CO₂ emissions (through climate change investment funds) and other adverse environmental impacts, provided that this is managed jointly with workers.

5.4 The Commission adopted its proposal for a 7th Environmental Action Programme which sets out the contribution of environment policy to a transition to a green economy. The European Parliament and the Council have to approve the programme and the EESC has contributed by drawing up a specific opinion on it ⁽⁷⁾. However, the EU Multiannual Financial Framework for 2014-2020 contains a significant contradiction: the economic sectors with the highest CO₂ emissions (housing, energy, industry and transport) are not the greatest beneficiaries of EU funding.

5.5 With regard to EU trade policy, it should be borne in mind that, with a view to reducing the risk of relocation, the increase in carbon taxation should entail the establishment of equivalent tariffs for countries that refuse to comply with international agreements on reducing emissions. Although carbon tariffs are barriers to free trade, they have already been accepted by the international community in other cases. The Montreal Protocol on Substances that Deplete the Ozone Layer recognises the possibility of establishing trade restrictions to ensure its enforcement since free trade is not an end in itself but the means to sustainable wealth creation. There is no question that avoiding a global climate change-induced disaster is more important than keeping international markets open to GHG-intensive products.

Brussels, 23 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽⁷⁾ EESC opinion on the 7th Environment Action Programme, OJ C 161 of 6.6.2013, p. 77-81.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

490TH PLENARY SESSION HELD ON 22 AND 23 MAY 2013

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission — A blueprint for a deep and genuine EMU: launching a European debate’

COM(2012) 777/2 final

(2013/C 271/04)

Rapporteur: **Carmelo CEDRONE**

On 19 February 2013 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 – A blueprint for a deep and genuine EMU: Launching a European debate

COM(2012) 777/2 final.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 149 votes to 12 with 25 abstentions.

1. Conclusions and proposals

1.1 The Commission communication makes a major contribution to the launch of a very necessary debate on the EU and represents considerable progress on past endeavours in the area of EMU in terms of both method and content. In addition, for the first time it addresses the EU's international role and political future. The EESC therefore welcomes the proposal, which may prove a historic turning point provided that the Council, after 20 years, finally musters the courage and the will to adopt and put into effect the provisions that will help to achieve the stated objectives and to implement the proposal swiftly.

1.2 With the decisions taken over 2011 and 2012, the European Council has launched a key, coordinated reform of European governance concerning surveillance of excessive macroeconomic imbalances, the tightening of budget rules and coordination of the euro area countries' economic

policies. Unconventional measures for 'conditional but unlimited' purchase of government bonds from countries in difficulty, recently decided on by the ECB, the establishment of the Single Supervisory Mechanism, intended to provide stringent, impartial prudential supervision and to cut the tie between States and banks, and the resolution rules for banks are necessary tools in securing EMU stability.

1.3 The EESC supports the strategy for strengthening the euro area set out in the Commission communication and recently reiterated by the President of the European Council, Mr Van Rompuy. However, it feels that the strategy is not sufficient to ensure that Member States, citizens and businesses reap the full benefits of EMU, as the events of the past 10 years have shown. The Council has political responsibilities going back to the Maastricht Treaty that severely **limited** the EMU created. That is why the Commission now put forward a Blueprint for a **deep and genuine EMU**.

1.4 In order to be able to give EMU greater stability and ensure economic and employment growth in the euro area countries, more incisive measures such as a growth plan and bolder economic integration mechanisms are needed, starting right now rather than in the medium-to-long term, and they must be implemented simultaneously by the Council. What is needed, in other words, is a mix of macro- and microeconomic policies, a strong commitment, a sense of solidarity, trust and belonging among Member States and between the Member States and the EU, not forgetting that the primary goal of the measures being discussed must be to benefit all the people.

1.5 While the EESC welcomes the communication, it notes that, even if everything were to be made operational, any substantial effects would be unlikely, particularly as regards the decision-making method, as there is no tangible proposal on political union to give the euro a home. The same applies to debt, coping with asymmetric shocks, growth, competitiveness and employment (where impact studies should be systematic). These are all limitations in the present situation.

1.6 The EESC points out that it has already drawn up opinions and recommended solutions regarding most of the Commission's current proposals, particularly those relating to the limitations of EMU, the ECB, growth and sovereign debt⁽¹⁾. The steps forward taken by the Commission and the Council thus far are a good basis for pursuing the work in this area. Therefore, the EESC welcomes the fact that the Commission has decided to give guidance for the future on these issues, and hopes that this will prove the right time for the Council to take swift, tangible measures on debt and growth, thus achieving a genuine qualitative leap.

1.7 Whereas the most recent decisions taken by the EU, referred to in the communication, are – albeit only partially – appropriate for the macroeconomic framework, the microeconomic proposals regarding the production sectors, which are the only sectors that can relaunch growth, are inadequate. The Commission document seeks to open a debate on EMU, an issue that goes far beyond fiscal consolidation and macroeconomic policies. Microeconomic policies are also needed, such as, for example, a genuine industrial compact.

1.8 Moreover, the Commission proposal would receive a more resounding endorsement if, in the various phases set out for launching the measures needed to make EMU more

stable and efficient, more explicit references were made to the need to pursue European policies that are in line with this aim, defining the envisaged areas for action and the new elements to be introduced to make European spending more streamlined and effective as well.

1.9 The Commission can and must help implement the reforms that are essential to increase the competitiveness of national production and administrative systems, adopting innovative criteria and methods for intervention in the area of the single market, Structural Fund management and the principal common policies. Moreover, it should take its cue from the innovations introduced by the ECB and propose equally substantial changes – as repeatedly called for by the EESC – to the implementation of the European policies that most affect the EU's most vulnerable areas, regions and sectors.

1.10 As regards the ECB, full use must be made of its structure to boost growth and employment and its role as lender of last resort. A demonstration that the euro area countries were intent on taking this path would help consolidate faith in the ECB and the euro and combat speculative attacks, particularly when it comes to those countries with the greatest budgetary difficulties.

1.11 The stability of the euro cannot be entrusted solely to the ECB and common monetary policy, leaving the Member States completely free to conduct their fiscal and budgetary policies. The EESC believes that **fiscal union with a view to a single euro area budget** cannot, as envisaged in the communication, be postponed to the longer term but must, along with the single currency and single banking supervision, become the other pillar on which to build EMU stability in the short and medium term, thus reassuring the markets of the coherence of the European project.

1.12 With regard to the **institutional proposals**, the Commission is making a considerable effort. The EESC believes it is useful that institutional considerations are on the agenda at last, as they underpin the Commission's innovative proposals, including political union; a completely new proposal. However, it feels that most of the proposals are rooted in the current framework, making very limited progress, and will therefore fail to resolve anything if the Council does not go further and treats the proposals simply as pointers for action.

⁽¹⁾ OJ C 143, 22.5.2012, p. 10.

1.13 They may constitute another intermediate stage, but, on the basis of what has already been proposed and approved, the EESC, which should be a part of this process, considers that the time for half-way measures on certain matters has passed and it is now time for a qualitative leap in terms of both policy content and the decision-making process for implementing these policies, with no more pretence so that the constant refrain that 'genuine' policies, 'genuine EMU', 'genuine' political union, etc. are needed does not strike up again afterwards. **Action** must be taken **now**, more resolutely and swiftly, both to **halt the recession** that has struck a large part of the EU and to fill the gaps that have been left unattended to for some time and which the international financial crisis has simply blown apart.

1.14 The EESC calls on the Council, taking its cue from the Commission proposals, to act more boldly and clearly in terms of respect for the agreements reached and of responsibilities to advance proposals to be adopted and implemented, more specifically, extending majority voting to all subject areas, starting with economic and employment policy, with a view to amending the Treaty.

1.15 Gist of the EESC proposals

1.15.1 Therefore, to achieve genuine EMU, the EESC believes it necessary in the immediate term (without amending the Treaty) to:

- launch a European growth initiative, as austerity alone will not suffice to meet any of the criteria set by the EU;
- introduce a convergence instrument to ensure solidarity and help overcome the economic asymmetries between countries. Micro-level measures could be taken to help the countries worst affected by the crisis, to reduce youth unemployment (e.g. giving an EU contribution for each young person hired), in other words introducing positive conditionality;
- implement a solution to the debt issue, as called for by the Commission itself and the EESC, to address the problems facing all the countries that have adopted or will adopt the euro;
- rapidly implement banking union and European supervision;

- complete the single market in all sectors (fiscal, financial, banking, energy, services, research and innovation, etc.)

- reduce the fragmentation of the credit market in order to ensure a level playing field where the cost of credit is the same in all Member States.

1.15.2 In the medium and/or long terms, possibly with changes to the Treaty, it is necessary to:

- establish genuine EU economic governance alongside monetary, financial and fiscal governance, not least in order to ensure greater consistency between EU and state policies;

- complete the mandate of the ECB;

- strengthen the decision-making method and structures by forming a single entity in order to provide governance for the euro, complete and unify the current system and implement fiscal union, starting by creating a joint euro area budget and also introducing a solidarity mechanism to reduce economic imbalances between countries;

- implement a social compact for social union, involving the social partners and organised civil society;

- establish political union on the basis of enhanced cooperation, not least so as to enable the euro to speak with one voice, and establish a more democratic, transparent decision-making process. It might be useful to this end to give the next EP constituent powers along with the Council;

- give the EU a more representative role in international bodies.

2. General comments: key points

2.1 The Committee is aware that we are discussing one of the most complicated issues of the day. Europe is entering a new phase of closer integration and this entails a number of courageous steps. The EESC greatly welcomes the launch of a debate on the future of EMU as a first step in this direction and points out that the macroeconomic reality in the EMU is a result of microeconomic decisions. Macroeconomic and microeconomic policies should therefore be aligned towards achieving the same overall objectives.

2.2 Article 9 of the Treaty on the Functioning of the European Union, supplemented by Articles 151 and 153, essentially state that in defining its policies and activities the EU must take into account promotion of a high level of employment, improvement of living and working conditions and the fight against exclusion. The EESC is surprised to note that none of these requirements are addressed by the communication in question as being part of the goal of a 'deep and genuine Economic and Monetary Union'. In addition to calling for explicit reference to these objectives, the EESC advocates greater monitoring (impact analyses) of the effects of economic and monetary policies on social situations and the labour market and measures to eliminate their potentially harmful economic and social consequences.

2.3 None of the Commission's proposals for more stable, credible EMU can actually come to fruition (in either the short or medium-long terms) unless the Member States, particularly the countries worst affected by the economic and financial crisis, start to experience growth once more, to find a solution to the issues of employment and unemployment (which is rising sharply, especially among young people) and to reduce the perennial disparities between countries. Equally, however, nothing will be achieved if the Council and the Eurogroup do not take on board the Commission's suggestions and progress with the reforms necessary to complete EMU, which have been due for 20 years, and if the Member States do not make every effort to achieve this aim and manage part of each country's sovereignty together, as is necessary to this end.

2.4 The Commission's main concern is to ensure coordination of the member countries' economic policies by means of a coordinated series of measures and instruments to increase convergence between budgetary policies and supervisory systems. This should serve to alleviate the most indebted countries' difficulties in financing public debt and complying with the rigorous plans for debt reduction and sustainability proposed by the Commission and recently approved by the member countries (Fiscal Compact). However, to restore the confidence of the public and the markets, the measures taken at national level must fit in with a common, European approach and produce tangible, positive effects for people and businesses; this means greater consistency between national-level macroeconomic policies and micro-economic policies (young people, labour market, social security, etc.).

2.5 A large number of the euro area countries have entered their fifth year of negative growth and the forecasts for the coming years predict only very slight improvements in terms of the principal macrovariables. The Commission's proposals on strengthening EMU call for other comments and/or measures if they are to be credible and form the basis of a large-scale, consensual debate on the future of EMU involving not just experts but the whole of European civil society.

2.6 In accordance with the commitments they have made with the EU, the euro area countries must continue with tough budgetary policies over the coming years, which could primarily be achieved through reforms aimed at streamlining the structure of national budgets, in terms both of spending and of public revenue, with all due regard for fair distribution and the effects of fiscal multipliers. That would allow budget-neutral efficiency gains without cuts being made in sectors where expenditure is essential for economic growth and social welfare such as health, social security systems, education, research and innovation, and infrastructure ⁽²⁾.

2.7 These national measures need to go hand in hand with European measures necessary for economic growth, employment and investment recovery such as: improving the operation of the national labour markets with a view to integrating them within the euro area, including through macro-economic dialogue ⁽³⁾, partial mutualisation of public debt in order to curb speculation, the issuing of euro bonds by the EIB and the EIF to finance growth and attract global savings surpluses ⁽⁴⁾, the possibility of excluding from public debt certain structural investments necessary to set a virtuous growth cycle in motion, and, lastly, greater focus on industrial policy by both national governments and European policy-makers.

2.8 Responsibility for implementing these policies lies with the Member States' governments, but, by virtue of its institutional prerogatives and its role managing EU budgetary resources, the Commission must ensure that they are implemented, thus helping to limit the disparities and imbalances that are still present between the various regions.

2.9 Moreover, the EESC would point out that the Commission's analysis of the historical aspects of EMU does not raise the genuine economic and political limitations that were inherent when the euro was created and that are the main cause of the crisis affecting the euro and the EU. It is equally strange for an EMU analysis not to mention or evaluate the Maastricht criteria, the 'singleness' of the monetary policy or the economic asymmetries between the countries concerned. Furthermore, it seems untenable to blame the 2008 crisis entirely on debt rather than on the political weakness of the

⁽²⁾ OJ C 133, 9.5.2013, p. 44.

⁽³⁾ Idem.

⁽⁴⁾ See footnote 1.

EU and the national governments, particularly considering that right from the start of EMU the Member States have systematically refused to launch a debate on coordination of fiscal and budgetary policies.

2.10 There is a pressing need to achieve economic union with EU economic governance (together with or prior to a banking union, etc.) and the Commission communication lays the foundations for this.

3. Specific comments on the content of the proposal: strong and weak points

3.1 In the **short term**, seven proposals are considered and described, some of which are not new as they refer to measures recently approved by the EU on the European semester, the 'six-pack' and 'two-pack' and ECB banking supervision. These are all major steps forward, which must be fully implemented in line with the relevant European legislation and country-specific recommendations adopted by the Council. The Commission proposals that the EESC considers to be most promising are the following.

3.1.1 The first is the introduction, following the Single Supervisory Mechanism (SSM), of a Single Resolution Mechanism (SRM) to solve the problems of banks in difficulty. The most innovative aspect here is that resolution costs are covered by shareholders and creditors; any 'additional resources needed to finance the restructuring process' are to be provided by the banking sector itself and no longer by the taxpayer⁽⁵⁾.

3.1.2 The second is the introduction of a **convergence and competitiveness instrument** to support the implementation of structural reforms in euro area countries. This proposal gives a highly detailed description (Annex I to the communication) of the prescribed procedure for activating and complying with the arrangements underpinning this instrument. The degree of participation and the amount of financial support that member countries could receive is left unspecified. The latter are both decisive elements for ensuring the instrument's sustainability; the Commission does, however, reserve the right to issue a more detailed proposal on the implementing arrangements (page 25 of the communication). The EESC believes that this instrument should precede, or at least accompany, the structural reforms in order to temper their negative impact. In addition, the EESC stresses that the Convergence and Competitiveness Instrument can only be effective if, little by little, it is used in coordination with national measures and initiatives.

3.1.3 Moreover, the proposal on the Multiannual Financial Framework seems to be perceived as a punishment for those who do not comply with the 'agreements between the Member States and the Commission' rather than as an incentive for implementing European policies. The tough macro-economic conditions to which the Member States are made subject should be accompanied by a plan for growth and development of new job opportunities, particularly for young people, drawn up with the active involvement of the social partners and civil society players.

3.1.4 A more incisive role for the EU and the euro in the governance of international monetary bodies and the need to strengthen the euro's external representation capacity are two of the most important points raised by the Commission, as well as by numerous EESC opinions, to give the EU and the single currency more decision-making power and clout in international monetary governance. However, the Commission fails to spell out the difficulties of the proposal, both within and outside the euro area, given the clearly unfavourable attitude of the US (and also the UK) administrations towards an increase in the euro's weight (and corresponding fall in the weight of the dollar) and the differences that continue to remain between euro area countries as regards defending specific economic and political interests in many developing countries assisted by the IMF.

3.2 In the **medium term**, the proposals concern mainly the establishment of a redemption fund, subject to strict conditionality in order to limit moral hazard, and the creation of a new sovereign debt instrument for the euro area (eurobills). These proposals have been part of the debate between the principal EU institutions and the Member States for some time. In its opinions the EESC, too, has repeatedly stressed the need to employ European bonds to partially mutualise debt (Union bonds) as an additional instrument, both to make it easier in the euro area for the most indebted countries to have recourse to sovereign debt financing and to reduce the costs of debt servicing⁽⁶⁾.

3.2.1 Although it can see the merits of the German Council of Economic Experts' proposal included in the Commission document, the EESC would therefore have preferred the Commission to have put forward its own proposal and/or referred to the EESC's previous proposals or to those of EU economic affairs ministers or others.

⁽⁵⁾ OJ C 44, 15.2.2013, p. 68.

⁽⁶⁾ OJ C 299, 4.10.2012, p. 60.

3.2.2 In any case, the emphasis placed on the redemption fund overlooks the fact that the success of sovereign debt reduction policy depends here to a large extent not just on progress made in reducing public spending but, first and foremost, on increasing revenue. This is the right path to take, and for much longer than the medium term, to bring the debt/GDP ratio back down below the Maastricht threshold. The best proposal may still be to introduce Union bonds, as the Committee has already illustrated in detail ⁽⁷⁾. Clearly, however, the problem is not what technical instrument to use but rather what solution to apply.

3.2.3 In addition, the proposal as a whole follows the rationale of the Stability Pact in terms of Member States' obligations, but fails to introduce any new element that would signify a change in the focus of these policies, which can no longer continue in the same direction.

3.3 As to the **longer term**, which is covered less fully in the Commission document, EMU is envisaged as evolving towards the completion of banking, fiscal and economic union. These are certainly goals which the EESC supports, provided that the arrangements necessary for their achievement are defined. The EESC agrees that full integration of Member States' economic policies must be achieved, particularly as regards fiscal and economic measures, along with a single EU budget with its own financial resources and autonomous fiscal capacity.

3.3.1 With regard to the institutional aspects, the communication confines itself to describing them, identifying the foundations on which it will be possible to build an Economic and Monetary Union that is stronger in terms of its legal framework and governance of the main economic policies, while making no mention of the macro- and microeconomic conditions required to secure the long-term viability of the proposals.

3.3.2 The EESC believes that with such an ambitious goal success can be achieved by implementing reinforced cooperation with the aim of moving towards political union. This process could be facilitated if the partially-implemented reforms in the international macroeconomic context concerning operating rules for the credit and financial markets, macro- and microprudential supervisory mechanisms and a reduction in the macroeconomic imbalances (starting with the US' deficits and China's surpluses) that have exacerbated the financial crisis were to be completed. Without considerable progress of this kind further economic and financial crises will be hard to prevent.

⁽⁷⁾ Idem.

4. Political union

4.1 General principles:

4.1.1 The EESC welcomes the Commission's attempt to address the EU's current democratic deficit, as well as the idea that the main problem is the transfer of sovereignty. It is thus launching a process to achieve political union whereby certain 'sovereign' policies that have remained the responsibility of the individual Member States are brought together and managed jointly by means of a more transparent, democratic decision-making process, in order to provide the euro with a single voice and European governance. This is EMU's missing link.

4.1.2 In this regard, the EESC believes that:

- in the short term, it is not necessary to amend the Treaty, as the EESC has clearly explained in its proposals, and so it would be better to focus efforts on long-term proposals;
- it is true to say that the problem is more serious for the euro area, with regard to which it is completely inappropriate to continue to talk of economic policy 'coordination', but rather of common macro- and microeconomic policies, as in the case of banking union, common European-level surveillance, monetary policy, etc.

4.1.3 The issue therefore lies not in the difficulties of involving the European Parliament, but rather in establishing a common decision-making process for the euro area countries and involving the EP in relation to this. What is no longer acceptable is to maintain independent economic and industrial policies for each country alongside a common monetary policy that penalises the weakest countries' economies and lacks compensatory mechanisms.

4.2 Optimising responsibilities

4.2.1 The EESC is in favour of involving the EP in the discussion on the proposals for growth, as well as the national parliaments. They should also be consulted and not just 'informed' on the adjustment programmes. We are still, however, in the realm of artificial formalities, a far cry from the way the EU decision-making process ought to be conducted.

4.2.2 On the other hand, the proposals on the political parties are innovative, stating that they should become European in more than just name and act accordingly as single European structures rather than as the sum of so many national bodies, acting in line with the individual Member States or other associations (trade unions, employers associations, etc.).

4.2.3 It would be advisable for not just the parties, as proposed by the Commission, but also the other major European organisations (such as trade unions, employers' associations, etc.) of the euro area at least, to get themselves organised and adopt a common, European rather than national approach with a view to the 2014 elections. This would be a considerable step forwards, although not enough. In any case it would set a good example for all to follow.

4.2.4 It will be necessary, come the elections, to give the EP constituent power which would enable it (along with the Council) to provide for the transition to political union within a set timeframe, extending majority voting to all areas and giving the European Parliament the right to vote on growth and jobs as well.

4.3 Questions that arise if the Treaty is changed

4.3.1 The EESC is in favour of merging and unifying economic policies with employment policies, which are two sides of the same coin, although this is an economic rather than a legal issue. On the other hand, a joint decision-making process for all economic policies is needed, bringing together the Europe 2020 strategy, coordination of national budgets, macro- and microeconomic policies, euro area labour market policies, etc. in order to go beyond the current decision-making system. It will take more than the establishment of a special EP committee to transform EMU.

4.3.2 Moreover, it is clouding the issue to suggest that giving the Commission vice-president responsible for economic and monetary affairs the power to coordinate EMU, even together with the EP, could improve the current situation. The example of foreign policy should suffice to illustrate this. Genuine authority should, therefore, be given to the commissioner or possibly a minister.

4.3.3 Such a key issue cannot be resolved through artificial legal and parliamentary formalities if a decision is not first taken to transfer sovereignty in matters of economic, monetary and employment policy from national to European level, as the EESC has repeatedly suggested. 'Economic governance' of the euro area should be established, managed by the Euro Group with decision-making power and majority voting, together with the EP, with the appropriate changes to the Treaty, to be made at once, with the same urgency with which the Fiscal Compact was launched or the banking union addressed, etc. This would make it possible to establish a single market for economic, industrial, growth and employment policies, with countries forming a common vision and taking mutually-supportive decisions in the interests of EU citizens.

4.4 EU external representation

4.4.1 The EESC welcomes all the proposals on external representation of the euro area. This is a key point of the communication, given the international repercussions of the crisis and the relationship between currencies. At present the euro is like a sheep among wolves. The strategy outlined by the Commission to consolidate the euro area's presence in the IMF consists initially of giving it observer status and only subsequently requesting a single seat. This will take too long, to the detriment of the euro area, which should be given a single voice within the various bodies without delay, as the EESC has been pointing out for some time. Thus, the Commission's proposals may be realistic but they are also hesitant and insufficient in the short-to-medium term. Here, too, everything will hang on what the Council does.

4.5 ECB

4.5.1 The approach taken to the ECB is inadequate. Furthermore, the EESC disagrees with the statement that the Treaty must 'strengthen democratic accountability' of the ECB, as the ECB is a body where decisions are already taken by majority voting (unlike the Council). In addition, the problems and role of the ECB are of a different nature and supervision cannot be taken in isolation as the Commission communication seems to suggest. Issues include the extension of its remit to include growth and jobs, along with stability and inflation.

4.5.2 To this end, care must also be taken to ensure that the mechanisms for conveying the ECB's policies to the real economy work properly. The recent, unconventional measures taken by the ECB to make these mechanisms more effective, consisting of both injecting liquidity into the banking system (the CBPP and LTRO programmes) and buying government bonds on the secondary market (the SMP and OMT programmes), can be seen as an initial step in the right direction, but they do not as yet amount to the ECB acting as lender of last resort, able to take its own decisions autonomously where necessary, which (as all are aware) would require a Treaty change.

4.5.3 The decision-making autonomy of the ECB and the instruments it can use to act in its role of lender of last resort need to be strengthened, not in order to increase Member States' or the EU's indebtedness but to give the euro greater credibility and curb the speculative attacks on the sovereign debt of the most indebted countries. The EESC points out, with particular reference to the impact of ECB interventions on the sustainability of public debt, that the mere announcement of this manoeuvre helped to ease tensions on both the euro area government debt securities market and the financial and credit markets.

4.6 Court of Justice

4.6.1 The EESC agrees that the role of the Court of Justice should be strengthened, but not in the area proposed by the communication (infringement proceedings for Member States). That would perpetuate the belief that the EU's economic problems, including debt, are technical, legal problems rather than political issues that need to be addressed by means of a democratic, transparent EU decision-making process over which the citizens have sovereignty.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on information accompanying transfers of funds’

COM(2013) 44 final — 2013/0024 (COD)

and on the ‘Proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’

COM(2013) 45 final — 2013/0025 (COD)

(2013/C 271/05)

Rapporteur: **Christophe ZEEB**

On 28 and 27 February and on 12 March 2013 respectively, the Council of the European Union and the Parliament decided to consult the European Economic and Social Committee, under Articles 114 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

COM(2013) 45 final – 2013/0025(COD)

and the

Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds

COM(2013) 44 final – 2013/0024 (COD).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 145 votes in favour with 4 abstentions.

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) welcomes the Commission's proposals on adapting the European regulatory framework to reflect changes made to international standards on preventing and combating money laundering and the financing of terrorism. The criminals abusing the financial system and the facilities provided by the internal market threaten the very foundations of our society. In the EESC's view, it is essential to equip the European Union and the Member States with effective means of bolstering the integrity and transparency of financial transactions. The Commission's proposals are certainly a step in the right direction in this respect.

1.2 The EESC welcomes the clarifications that have been made with regard to the customer due diligence requirements of professionals regarding beneficial owners; these will boost transparency when it comes to individuals using legal entities as screens and also in relation to people who are politically

exposed and may be at greater risk of corruption owing to their functions. The EESC also approves of the inclusion of gambling service providers on the list of professionals subject to requirements, as this sector can be exploited for money laundering purposes.

1.3 The EESC welcomes the Commission's ambition for the European Union to lead the way in the global fight against money laundering and terrorism. The EESC considers that one of the ways of ensuring that the new European regulatory framework is effective and thus enables the EU to lead the way in fighting against money laundering is for all stakeholders to join forces. The EESC welcomes the clarifications added throughout the proposal to ensure proportionality with regards to SMEs. The EESC deems it appropriate to provide small entities with more technical and professional assistance via intermediate bodies such as professional chambers, associations and federations, enabling them to meet the obligations set out in the proposal.

1.4 The EESC applauds the Commission for attempting the delicate balancing act of reconciling the apparently conflicting interests of personal data protection and the fight against money laundering. The purpose of having a wide range of professionals collect and analyse information, including data of a personal nature, is solely to detect criminal activities. Professionals must therefore take care to protect the private lives of their customers as far as possible, while making it a priority to assist national authorities in the fight against crime.

1.5 The EESC welcomes the proposal to harmonise the sanctions applicable in the financial sector at European level. Crime prevention must be as effective as possible and professionals be subject to sanctions that are dissuasive and commensurate with the sums of money being laundered. The EESC therefore calls on the Commission and the Member States to ensure the consistent and correct application of the administrative sanctions and penalties.

2. Background

2.1 Money laundering, the financing of terrorist activities and the proliferation of weapons of mass destruction are all threats to global security and the integrity of the financial system. The Financial Action Task Force (FATF) is the body mandated at international level to design measures, known as recommendations, to prevent and combat money laundering, the financing of terrorism and, as of recently, the financing of proliferation of weapons of mass destruction.

2.2 The FATF recommendations were revised over a period of close to three years with a view to strengthening preventive measures and securing the financial system greater protection, by equipping governments with sturdier tools with which to penalise serious offences. The FATF adopted its new recommendations in February 2012 ⁽¹⁾.

2.3 The key changes introduced by the FATF's new recommendations are the following:

2.3.1 The recommendations provide additional detail on the risk-based approach that countries and entities subject to obligations (hereafter referred to as 'professionals') must take in order to mitigate their money-laundering and terrorist financing (hereafter referred to as 'ML/TF') risks and adapt their supervisory systems so as to deploy their resources in an appropriate manner, in accordance with the nature of the risks identified.

2.3.2 The recommendations provide the necessary clarification as to the nature of the obligations to which professionals are subject. They define the scope of obligations with regard to i) transparency regarding beneficial ownership of companies and beneficiaries of wire transfers, and ii) the identification of politically exposed persons who may present a greater risk of corruption relating to their functions.

2.3.3 The recommendations provide for more effective investigative means for criminal investigation authorities and financial intelligence units, and bolster the exchange of information on investigations, monitoring and the prosecution of serious offences.

2.4 The FATF will begin a new round of mutual evaluation of its members from 2014, with a particular focus on how effectively its new recommendations are applied.

3. The Commission proposal

3.1 The proposals for (i) a fourth directive to combat ML/TF and (ii) a second regulation on the information accompanying the transfer of funds tie in with the updating of the European regulatory framework and reflect changes made to the FATF recommendations.

3.2 The main changes made by the proposals to the European regulatory framework are as follows:

3.2.1 The list of professionals has been expanded to include: i) traders in goods conducting cash transactions of EUR 7 500 and above ⁽²⁾, ii) providers of gambling services, and iii) letting agents.

3.2.2 Specific reference is made to tax crime as a predicate offence to money laundering.

3.2.3 The proposed directive specifies that the risk-based approach, to be applied at supranational and national level as well as by each professional, must involve degrees of customer due diligence, based on a minimum list of factors to be taken into consideration and guidelines drawn up by the European supervisory authorities.

3.2.4 The European supervisory authorities (EBA, EIOPA and ESMA) are called upon to take part in analysing ML/TF risk in the European Union and to issue regulatory technical standards for the Member States and financial institutions.

⁽¹⁾ www.fatf-gafi.org

⁽²⁾ The threshold is currently EUR 15 000.

3.2.5 The professionals must obtain information on beneficial owners and treat politically exposed persons, domestically or within international organisations, as belonging to a high risk category.

3.2.6 A list of administrative sanctions is given to be applied in cases where professionals systematically breach the basic requirements of the directive.

3.3 The proposed changes are based in particular on the study ⁽³⁾ on the application of the third anti-money laundering directive conducted by an independent consultancy firm and also on the views collected by the Commission during its public consultation.

3.4 The proposed directive and regulation will replace the existing directive and regulation, which will be repealed.

4. General comments

4.1 The EESC agrees on the need to adapt the existing European regulatory framework with regard to combating ML/TF to reflect the changes at international level. The EESC is aware that the ML/TF phenomenon affects all sectors of the economy and that constant care must be taken to ensure that the regulatory framework is effective in preventing the use of the financial system for criminal ends.

4.2 The EESC welcomes the Commission's ambition for the European Union to lead the way in the fight against money laundering and terrorism. It recalls its position already set out in a previous opinion, welcoming 'the further development of the rules to prevent money laundering and terrorist financing as a symbol of a European Union that is ensuring high standards of probity and conduct in public and private behaviour. The directive is both a practical step in the management of financial affairs and also a means of strengthening the European Union' ⁽⁴⁾.

4.3 The EESC believes that reducing the threshold above which traders in goods must abide by the requirements of the directive from EUR 15 000 to EUR 7 500 represents a further step in the right direction to promote payments other than in cash. The EESC has already pointed out in a previous opinion ⁽⁵⁾

that cash is viewed as a factor that facilitates the underground economy and that payments other than in cash are more transparent in fiscal and financial terms and less costly for society as a whole, as well as being practical, safe and innovative.

4.4 Supporting small entities

4.4.1 The EESC welcomes the fact that letting agents and gambling service providers are to be subject to anti-ML/TF restrictions despite not being covered by the FATF recommendations.

4.4.2 The EESC welcomes the clarifications added throughout the proposal to ensure proportionality with regard to SMEs. To ensure that small entities are able to meet the obligations contained in the proposed directive, the EESC suggests involving intermediate bodies, such as professional chambers, associations or federations that represent small entities at national level, on a formal basis and task them with the provision of guidance, support and mediation services. Small entities must be given support so as to prevent them from becoming a prime target for money launderers.

4.5 Reconciling identification requirements with the digital age

4.5.1 The requirement regarding the identification of persons must involve their being physically present. If not, professionals must apply enhanced due diligence measures owing to the risk associated with transactions conducted at a distance. The EESC doubts whether this level of requirement is commensurate with society's shift towards a totally digital age.

4.5.2 The EESC calls on the Commission to devise measures that can reconcile customer identification requirements with the increasingly common use of electronic payments and communications.

4.6 The balance between personal data protection and the fight against money laundering

4.6.1 The EESC highlights the importance of reconciling the interests of personal data protection with the need to safeguard the integrity of the financial system by combating ML/TF.

⁽³⁾ http://ec.europa.eu/internal_market/company/docs/financial-crime/20110124_study_amld_en.pdf

⁽⁴⁾ OJ C 267, 27.10.2005, pp. 30–35.

⁽⁵⁾ OJ C 351, 15.11.2012, p. 52.

4.6.2 Inasmuch as the fight against ML/TF relies on a wide range of professionals collecting and analysing information, including personal data, the EESC believes that the proposals largely meet the requirements of both Member States and professionals so as to achieve a better balance between what are at the outset conflicting interests.

4.6.3 As regards the obligation set out in Article 39 of the proposed directive to destroy documents and information collected after a period of five or ten years after the end of the business relationship, the EESC urges Member States to ensure that their legislation provides for situations (such as criminal proceedings, bankruptcies or successions) in which this obligation should not apply, so as to prevent it from running counter to the general interest.

4.6.4 The EESC proposes that the directive make express provision for the obligation to keep the identity of people declaring suspicious transactions strictly confidential, unless these people have agreed that their identities may be divulged or it is essential that they be divulged in order to secure fair court proceedings in a criminal case.

4.7 *Anchoring the European supervisory authorities' right to intervene*

4.7.1 The EESC notes that the European supervisory authorities will be involved at European level in ML/TF risk analysis and may issue guidelines and regulatory standards for the Member States and financial establishments. While the EESC would stress the importance of consultation and working together with the European supervisory authorities in the Europe-wide fight against ML/TF, it would nevertheless point out that their mandate in terms of representation and regulation is limited when it comes to the financial sector. However, a high proportion of the professionals subject to the obligations do not belong to the financial sector and are not therefore represented at European level. The EESC would therefore propose that the Commission take responsibility at European level for analysing the risks and providing guidance for non-financial professionals who find themselves subject to anti-ML/TF obligations.

4.7.2 The EESC is convinced of the need for EU-level harmonised interpretative recommendations and standards so as to secure more uniform application of anti-ML/TF rules in the Member States.

4.8 *Administrative sanctions*

4.8.1 The proposals set out a list of administrative sanctions following on from the Commission Communication of

8 December 2010, Reinforcing sanctioning regimes in the financial sector, on which the EESC issued an opinion ⁽⁶⁾ and that can also be found in other recent Commission proposals ⁽⁷⁾.

4.8.2 The EESC is in favour of EU-level harmonisation of the penalties applicable in the financial sector. It cannot be denied that crime is a fact of life regardless of efforts to do away with it. It is therefore essential that crime prevention be as effective as possible and that professionals who do not comply with anti-ML/TF requirements be subject to sanctions that are dissuasive and commensurate with the sums of money being laundered.

4.8.3 The EESC nevertheless has doubts regarding the purely administrative nature of the sanctions proposed and fears that their severity might be brought into question with respect to the hierarchy of legal norms and the proportionality of criminal sanctions. Although the administrative sanctions foreseen are of a dissuasive nature and are designed with European harmonisation in mind, it remains the case that criminal penalties for money-laundering vary from one country to another. The EESC calls on the Commission and the Member States to ensure the consistent and correct application of the administrative sanctions imposed on professionals having failed to meet their obligations in the fight against ML/TF and the penalties applicable in cases of money laundering offences.

4.8.4 The EESC fears that compliance of the administrative sanction regime with Articles 6(1) and 7 of the European Convention on Human Rights might be brought into question, with certain administrative sanctions qualifying as criminal penalties that may only be issued by an independent court following a fair trial – conditions that the competent administrative authorities do not meet. The EESC calls on the Commission to seek appropriate legal solutions so as to ensure that the penalty system is beyond reproach.

4.8.5 The EESC believes that – in the proposal – the introduction of minimum principle-based rules for the application of administrative measures and penalties represents an approach that enhances the response of the EU as a whole.

5. **Specific comments**

5.1 The EESC recommends expanding the definition of terrorist financing given in Article 1(4) of the proposal for a directive to include 'all other acts' other than the offences targeted, in accordance with the wording of the fifth FATF recommendation.

⁽⁶⁾ OJ C 248, 25.8.2011, p. 108.

⁽⁷⁾ COM(2011) 651 final, COM(2011) 656 final, COM(2011) 683 final.

5.2 The EESC points out that the annexes to the proposal for a directive provide a checklist of risk factors and types of evidence to be considered by professionals in connection with anti- ML/TF requirements. The EESC believes that the lists provided in the annexes are not exhaustive and that professionals should also consider, in accordance with the risk-based approach, other factors that are closely linked to the Member States and the differing circumstances of the transactions they complete.

5.3 The EESC believes that the key to solving the piracy problem lies in tracing and clamping down the involved financial flows. A blacklist of financial institutions involved in piracy money laundering should be established in the EU. The World Bank, Interpol and Europol can assist in the fight to chase ransoms, which should be traced and confiscated so that piracy is no longer an attractive business ⁽⁸⁾.

Brussels, 23 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽⁸⁾ OJ C 76, 14.3.2013, p. 15.

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council Directive — Implementing enhanced cooperation in the area of financial transaction tax’

COM(2013) 71 final — 2013/0045 (CNS)

(2013/C 271/06)

Rapporteur: **Mr PALMIERI**

On 28 February 2013, 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 Directive – implementing enhanced cooperation in the area of financial transaction tax

COM(2013) 71 final - 2013/0045 (CNS).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 24 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May 2013), the European Economic and Social Committee adopted the following opinion by 94 votes to 38 with 9 abstentions.

1. Conclusions and recommendations

1.1 In line with the positions expressed by the European Parliament⁽¹⁾, and the Committee of the Regions⁽²⁾ and consistently with its own previous opinions⁽³⁾, the European Economic and Social Committee welcomes the proposal put forward by the Commission to introduce the world's first regional financial transaction tax (FTT).

1.2 While recalling that it had wished to see an FTT applied at global level, the Committee believes that its application at regional level (EU11+ zone) – with the involvement of eleven EU Member States⁽⁴⁾ – could constitute an exceptional opportunity, which could lead to its future application worldwide.

1.3 The Committee reiterates the importance of the enhanced cooperation procedure as a tool that enables Member States to reach the widest possible agreement in certain policy areas laid down in the Treaties⁽⁵⁾, thus neutralising the unanimity lock that has often led the EU into a political and economic gridlock.

1.4 The Committee feels that one of the strong points of the proposed FTT is the fact that it comprises a broad tax base and two low tax rates, which reduces its adverse distorting effects. The Committee believes that the introduction of this tax within the EU11+ will foster the establishment of a single financial market. It thus advocates the FTT coming into effect from 1 January 2014, and advises against phasing-in as inadequate.

1.5 The Committee believes that, in order to maximise the impact of the tax on economic growth, the revenue that it raises should be channelled into a programme of investment at national and EU levels capable of delivering economic recovery and jobs in the short term.

1.6 The Committee is pleased to point out that, in order to neutralise or at least reduce to a minimum the risk of financial activities being relocated, the Commission has – in the new FTT proposal – coupled the residence (or territorial) principle (proposed in the original version) with the issuance principle proposed by the European Parliament and strongly supported by the Committee in its previous opinion⁽⁶⁾. The Committee draws attention to the fact that cumulative application of these principles could mean that, in some cases, financial institutions in non-participating Member States would also be subject to the tax. The Committee therefore considers that, in line with the European Parliament's proposals, further consideration and negotiations with third countries should be initiated with a view to facilitating FTT collection.

⁽¹⁾ (2010/2105(INI)).

⁽²⁾ OJ C 113, 18.4.2012, p. 7-10.

⁽³⁾ OJ C 44, 11.2.2011, p. 81-89, OJ C 248, 25.8.2011, p. 64-67, OJ C 248, 25.8.2011, p. 75-80, OJ C 181, 21.6.2012, p. 55-63.

⁽⁴⁾ Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia.

⁽⁵⁾ The use of enhanced cooperation is governed by Article 20 TEU and Articles 326-334 TFEU.

⁽⁶⁾ OJ C 181, 21.6.2012, p. 55-63.

1.7 In line with the European Parliament, the EESC believes that it would make sense to complement the residence and issuance principles with the 'ownership principle'. This would make FTT avoidance risky and expensive and secure better application.

1.8 The Committee welcomes the anti-avoidance and anti-evasion changes introduced by the Commission to enhance the administration of the tax. The Committee endorses the introduction of an exemption for primary market transactions involving UCITS (units of undertakings for collective investments in transferable securities) and alternative investment funds (AIFs) in order to foster company financing.

1.9 The Committee regrets that a review of the micro- and macroeconomic consequences of the FTT's application is not provided for until three years after the entry in force of the legislation under consideration. It calls for ongoing checks and controls (annual monitoring) to be carried out by the Commission. This would enable the effects of the FTT to be gauged from the outset and timely corrective action as regards its application to be proposed.

1.10 Having previously criticised the insufficient evaluation documentation that accompanied the original FTT proposal, the Committee welcomes the fact that the Commission acted to partially remedy this shortcoming. The Committee points out that, when it comes to assessing the effects of this proposal in quantitative terms, the Commission needs to improve the models currently available, by adapting them to evaluation of policy alternatives. In particular, the Committee calls on the Commission services to produce estimates, where possible, correlated to the actual characteristics of the specific proposals made.

1.11 The Committee regrets that the fact that the FTT cannot be applied to all 27 EU Member States deprives the EU budget of a fundamental pillar for its system of own resources. This system was to restore to the EU the financial autonomy it needs, as originally set out in Article 201 of the Treaty of Rome.

1.12 The Committee emphasises that in applying the FTT, the relevant administrative bodies should minimise the risk of evasion and avoidance and reduce the administrative costs involved, by means of the requisite coordination between the Member States.

1.13 While reiterating the need for careful monitoring of the effects of this tax on pension funds and future pensioners, the

Committee does not advocate their exclusion from the scope of the FTT.

1.14 In discharging its role as an advisory body to the Commission, the Parliament and the Council, the Committee reaffirms its commitment to the ongoing monitoring of the process by which the Commission's proposal is converted into legislation.

2. The Commission's Proposal for a Council Directive implementing enhanced cooperation in the area of a common system of financial transaction tax (FTT)

2.1 The proposed directive ⁽⁷⁾ mirrors the previous proposal drawn up in September 2011 ⁽⁸⁾. While not receiving unanimous support in the Council, this proposal did, however, spur 11 EU Member States to make an official request to the Commission on 28 September 2012 that the enhanced cooperation procedure be used to establish an FTT.

2.2 After assessing the feasibility of this request, and establishing that enhanced cooperation on FTT would not have an adverse effect on the internal market or on the competences, rights and obligations of non-participating Member States, the Commission drew up a decision in October 2012 authorising the enhanced cooperation, which was forwarded to the European Parliament in December 2012 and received the authorisation of the Ecofin Council in January 2013.

2.3 While this proposed directive essentially mirrors the Commission's original proposal, a number of changes have been included with the aim of: i) ensuring greater legal clarity; and ii) reinforcing anti-abuse and anti-avoidance provisions as requested by the 11 Member States.

2.3.1 The three original objectives are reaffirmed and bolstered: i) strengthening the single market by neutralising the divergent national approaches to financial transaction taxation; ii) ensuring that the financial sector makes a fair contribution to public finances on a par with other sectors; and iii) promoting investment by the financial system in the real economy.

2.3.2 As in the original proposal, the tax base is broad and the minimum rates are low: 0,1 % for financial transactions regarding shares, bonds, units in collective investment undertakings, money-market instruments, repurchase agreements and borrowing agreements; and 0,01 % for financial transactions involving derivative contracts.

⁽⁷⁾ COM(2013) 71 final.

⁽⁸⁾ COM(2011) 594 final.

2.3.3 In order not to hinder the normal course of the real economy, the FTT will not apply to: i) the day-to-day financial activities of citizens and businesses (loans, payments, insurance, deposits, etc.); ii) traditional investment banking activities in the context of the raising of capital, or financial transactions carried out as part of restructuring operations; iii) refinancing activities, monetary policies or public debt management; or iv) primary market transactions involving UCITS and AIFs. Therefore, transactions with the European Central Bank, the Member States' central banks, the European Financial Stability Facility, the European Stability Mechanism, and the EU are to be excluded from the scope of the directive.

2.3.4 The proposal retains the residence or territorial principle, under which if the financial institution involved in the transaction is established in the area of application of the FTT, or is acting for a body based in that area, the transaction is subject to the tax regardless of where it took place geographically.

2.3.5 To deter relocation outside the area of application of the FTT the issuance principle has been added, as requested by the European Parliament and supported by the Committee. Under this principle, a transaction is subject to the FTT if the financial product concerned is issued by one of the 11 Member States participating in the enhanced cooperation, even if the parties to the transaction are established outside the FTT's area of application or the place where the transaction took place.

2.3.6 The combined effect of the two principles (the residence principle and the issuance principle) will neutralise or at least significantly reduce the inclination to relocate outside the FTT area in order to avoid the tax. Indeed, in order to avoid the tax, a financial institution would have to abandon its clients based in the FTT area and cease trading in any financial products issued in that area. Moreover, it is worth bearing in mind that this zone accounts for no less than two-thirds of EU GDP and 90 % of euro-area GDP. This renders imprudent any strategy of non-engagement with this market, in which the uniformity of the taxation of the financial markets is set to contribute greatly to completing the single market.

2.3.7 According to the Commission's calculations, the revenue raised by the tax could amount to some EUR 30-35 billion per annum. This is about 60,0 % of the revenue that was previously estimated (EUR 57 billion) when it was planned that

the scope of the tax would extend to all EU Member States. This revenue would break down as follows: EUR 13 billion from shares and securities and EUR 21 billion from derivatives.

3. General comments

3.1 Over the last few years, a number of EU Member States have approved the application of divergent forms of FTT, thus increasing the risk of diversified taxation harming the internal market (narrow tax bases, different forms of exemption). The introduction of a regional FTT would foster a truly unified financial market, free from the distortion of competition that ensues from inefficient tax systems.

3.1.1 For this reason, the Committee believes that the FTT should come into force in line with the Commission's time-frame, i.e. on 1 January 2014, without phasing-in, which, given the existing domestic legislation within the EU11+ Member States, could give rise to delays and technical problems.

3.2 As the introduction of an FTT across the 27 EU Member States, while desirable, has not proved possible, the application of such a tax through enhanced cooperation – without detrimental effects on the non-participating Member States – is the route that needs to be taken to ensure its future application EU-wide and globally.

3.3 The non-application of the tax in the EU Member States could, in some cases, lead to double taxation within non-participating countries. This would affect only a small proportion of transactions and could, in any case, be addressed by bilateral netting agreements.

4. Specific comments

4.1 The Committee highlights the fact that the initial estimate of the long-term macroeconomic effects (over 40 years) of the FTT on Europe's economy has been substantially revised by the Commission, rising from a negative figure of around – 1,76 % to a positive figure of around + 1,0 %.

4.1.1 The estimate that accompanied the initial proposal was modified, with the effects deriving from the effective rates proposed and the 'mitigating' effects incorporated into the assessment. This enabled the figure to rise from – 1,76 % to – 0,53 % of GDP ⁽⁹⁾.

⁽⁹⁾ SEC(2011) 1102 final, Volume 1, p. 52.

4.1.2 The Commission subsequently further modified this assessment, considering that it did not take account of the specific features of the proposal and that it was based on unrealistic assumptions (for instance, that all new company investment was financed with instruments subject to the FTT). Following this correction, the effective long-term negative impact on GDP decreased further to an estimated $-0,28\%$. As part of this analysis, the Commission carried out a further impact assessment focusing on the effects of using the FTT revenue as an alternative to other forms of taxation, and as a possible tool for public investment. Under this assessment, assuming revenue of $0,16\%$ of GDP, the FTT would now have a positive impact on GDP of between $0,2\%$ and $0,4\%$ ⁽¹⁰⁾.

4.1.3 This last hypothesis should, however, still be considered limiting in that, in terms of the total revenue, no account is taken of the element deriving from the tax on derivatives; this element is included in the Commission's proposal and would bring total revenue up from $0,16\%$ to $0,4\%$ of GDP, so the FTT would have a positive effect on GDP in the order of 1% ⁽¹¹⁾.

4.2 The Commission's analysis shows that the introduction of an FTT can have the most effective impact on the EU's economy where the revenue raised is used – be it at EU or national levels – for funding public investment that can bolster economic growth and employment.

4.3 Over the past five years, which have coincided with the crisis, the Committee has drawn up a series of opinions in which it has advocated the need to rebalance the EU's macro-economic policies in favour of investment policies to support growth and jobs ⁽¹²⁾. If the route suggested by the Committee is taken, the revenue deriving from the application of an FTT could thus be most effective if it were indeed used to fund a major programme of investment at national and EU levels.

4.4 The Committee feels that one of the strong points of the FTT is the fact that it comprises a broad tax base and two low tax rates. These features can minimise the adverse effects of taxes whose narrower area of taxation and higher rates would

cause severe market distortions. The Committee therefore stresses the need, on the one hand, to minimise exclusions from the tax base and exclusions of taxable persons and, on the other, to encourage the 11 participating Member States to adopt an approach which, by applying the rates of taxation proposed, will create a genuine single market.

4.5 The EESC is in favour of introducing the 'ownership principle', according to which a financial transaction in relation to which no FTT has been levied is not legally enforceable and does not result in a transfer of legal title of the financial instrument in question.

4.6 The Committee supports the idea of excluding from the tax base transactions involving UCITS and AIFs, as instruments directly linked to the financing of companies and in order to comply with Directive 2008/7/EC. It should be pointed out that the projected reduction in revenue arising from this exclusion would amount to EUR 4 billion.

4.7 While taking account of the need to keep under control any pressures on interest rates on public debt, the Committee endorses the proposal to maintain the exemption for public securities issued on the primary market, while taxing secondary trading in public securities; it would advocate an exemption on the secondary market only for institutions delegated by public authorities to engage in transactions related to the management of public debt.

4.8 As regards pension funds, the Committee has previously stressed the need for the effects of the FTT on such funds to be specifically monitored. The exclusion from the tax base of UCITS and AIFs, as well as of government securities in the primary market, is definitely a good thing for pension funds given the structure of their portfolios.

4.9 While reiterating the need for careful monitoring of the effects of this tax on pension funds and future pensioners, the Committee does not advocate their exclusion from the scope of the FTT.

⁽¹⁰⁾ EC, 2012, Technical fiche: Macroeconomic Impacts.

⁽¹¹⁾ Assessment based on the analysis in the European Commission's *Quarterly Report on the Euro Area*, Vol. 11, No 3 (2012).

⁽¹²⁾ To mention but a few: OJ C 133, 9.5.2013, p. 44, OJ C 299, 4.10.2012, p. 60-71, OJ C 181, 21.6.2012, p. 45-51, OJ C 248, 25.8.2011, p. 8-15, OJ C 143, 22.5.2012, p. 10-16.

4.10 The introduction of an FTT, without harming the system's liquidity, would steer pension funds towards long-term investment strategies, and reduce de-stabilising elements such as high frequency financial transactions ⁽¹³⁾.

4.11 In applying the new tax, there should be a particular focus on the administrative procedures involved, with a view to minimising both the risks of evasion and avoidance and the administrative costs for Member States and taxable persons. To this end, both the Member States and the Commission, when drawing up the implementing acts regarding the procedures for paying the tax and for checking compliance, should ensure that administrative costs are kept to a minimum and keep a close eye on their evolution. In view of the effects of the proposal, the Committee also urges the Commission to propose measures for ensuring cooperation between financial institutions in non-participating Member States and the Member States to whom the tax is due.

4.12 Having previously criticised the insufficient evaluation documentation that accompanied the original FTT proposal, the

Committee welcomes the fact that the Commission acted to partially remedy this shortcoming by means of the seven explanatory notes that it provided to go with the impact assessment, in relation to the previous proposal ⁽¹⁴⁾ – to which must be added the impact assessment accompanying the present proposal ⁽¹⁵⁾. Nevertheless, the Committee points out that there is still a lack of analytical and illustrative documentation on the current state of play in financial market taxation and the revenue raised in the various countries, especially in the EU11+. In particular, there should be a broader assessment of the possible impact on savers and future pensioners, taking account of the various ways in which the tax could be passed on.

4.13 The Committee points out that, when it comes to assessing the effects of this proposal in quantitative terms, the Commission needs to improve the models currently available, adapting them to evaluation of policy alternatives. The Committee thus calls on the Commission to produce estimates, where possible, correlated to the actual characteristics of the specific proposals made.

Brussels, 23 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽¹³⁾ Network for Sustainable Financial Markets, 2012, *No exemption – the financial transaction tax and pension funds*. December. DIW, 2012, *Financial transaction tax contributes to more sustainability in financial markets*. Discussion Papers 1198.

⁽¹⁴⁾ Published on 4 May 2012 on the dedicated website.

⁽¹⁵⁾ SWD(2013) 28 final.

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendment, which received at least a quarter of the votes cast, was rejected in the course of the debate (Rule 54(3) of Rules of Procedure):

New point 4.7

Add after point 4.6:

4.7 Given the mixed findings of studies into the effects of introducing an FTT, the EESC recommends: carefully monitoring the impact in countries that have already taken this step; taking account of the impact of reduced liquidity on market volatility in relation to costs for specific products used in securing insurance provision and pensions savings; and realistically assessing whether the right balance is struck between actual tax revenues collected and the increased costs of financial services for both businesses and savers at a time of crisis. In the view of the EESC, the results of this monitoring must be carefully analysed and future steps must be quickly adjusted, if necessary, in line with any new findings.

Voting

For: 64

Against: 94

Abstentions: 25

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA'

COM(2013) 42 final — 2013/0023 (COD)

(2013/C 271/07)

Rapporteur-general: **Mr DE LAMAZE**

On 20 February 2013 and 12 March 2013, respectively, the Council and the Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA

COM(2013) 42 final - 2013/0023 (COD).

On 19 March 2013, 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 Mr DE LAMAZE as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), and adopted the following opinion by 130 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC does not agree with the arguments put forward by the Commission to justify this proposal. In the absence of scientific data to back up the assertion that disparities in sanctions for currency counterfeiting encourage 'forum shopping' on the part of counterfeiters, the Committee believes that revision of the 2000 framework decision to set a minimum penalty within the EU is not entirely justified, and feels that the expected 'deterrent effect' of such a measure is debatable.

1.2 The EESC would point out that the proposal for a directive actually establishes a comprehensive arsenal for enforcing legislation against counterfeiting, in the guise of minimum rules; this would appear to go beyond that which is authorised under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), particularly given that it also relates to jurisdiction and procedure.

1.3 The EESC questions the need for such an approach to law enforcement, which, by definition, runs the risk of prejudicing people's fundamental rights and freedoms; it also doubts that it would be effective inasmuch as, even if a minimum penalty were set, sentencing would still be subject to differences of interpretation depending on the legal traditions of Member States and judges' discretion.

1.4 In general, the EESC finds it regrettable that the proposal for a directive does not take sufficient account – as required under Article 82(2) TFEU – of the differences between legal

traditions and systems, not least in terms of its impact on individual rights and freedoms.

1.5 The EESC, as the institutional representative of European civil society, would highlight the fact that offenders may be essentially law-abiding individuals who find themselves in the position of needing to get rid of counterfeit currency that they have unknowingly received. Given the risk of imposing disproportionate sanctions on such people who have turned from victims into unwilling 'criminals', the EESC feels that the intent behind the action is a key consideration that the proposal for a directive does not properly highlight in its recitals.

1.6 The EESC is concerned that, with regard to procedure, the draft directive does not provide for any graduation in the tools used by the investigating services according to the severity of the offence, as it does in the penalties imposed. The Committee therefore feels that the draft directive needs to specify that the investigative tools used for organised crime should be used only for the most serious offences.

2. Content of the proposal

2.1 The proposal for a directive strengthens the current framework for criminal prosecution for counterfeiting of the euro or other currencies. It supplements the provisions of the 1929 Geneva Convention – which it requires the Member States to be party to – within the EU, and replaces Council Framework Decision 2000/383/JHA, as amended by Council Framework Decision 2001/888/JHA, to which it adds certain key provisions.

2.2 It aims, among other things, to combat the phenomenon of forum shopping, which, according to the impact assessment, criminal gangs use to find the most lenient legislation. To this end, and on the basis of Article 83(1) TFEU, it establishes a common minimum penalty of six months of imprisonment for the production and distribution of counterfeit currency (with a value of at least EUR 10 000). In parallel, the maximum penalty of at least eight years of imprisonment already laid down for production is also extended to distribution (for a value of at least EUR 5 000).

2.3 Legal persons may be held liable for offences committed for their benefit, with penalties ranging from exclusion from entitlement to public benefits or aid to a winding-up order.

2.4 The proposal is also more severe than the current framework in terms of procedural law. Investigation and prosecution services may make use of investigative tools used in fighting organised crime or other forms of serious crime. The judicial authorities will also be required, in the course of proceedings, to send samples of counterfeit currency for technical analysis to aid the detection of counterfeits in circulation.

2.5 Finally, the proposal requires each Member State whose currency is the euro to exercise universal jurisdiction for offences related to the euro committed outside the European Union, if either the offender is on its territory or counterfeit euros related to the offence are detected there.

3. General comments

3.1 While the EESC acknowledges that counterfeiting of the euro, which is becoming increasingly complex and sophisticated, is a worrying phenomenon that needs to be combated effectively, it has serious concerns regarding the substance and even the basic premise of this initiative.

3.2 Given the lack of scientific data in the impact assessment, the EESC is unconvinced by the claim of 'forum shopping' that the Commission uses as an argument for drafting this proposal for a directive. In the Committee's view, it is not certain that disparities in levels of sanctions within the EU in any way explain the rise in counterfeiting, or that counterfeiters focus on national legislation regarding criminal enforcement when choosing where to operate. Other physical or logistical factors need to be taken into account to explain the location of illegal print shops.

3.3 Moreover, given the lack of a detailed analysis to substantiate the claim that disparities in enforcement within the EU are detrimental to judicial and law enforcement cooperation and to the effectiveness of efforts to combat counterfeiting in non-EU countries, the EESC even questions the grounds for this proposal for a directive.

3.4 The EESC is also keen to stress that the provisions laid down on the basis of these arguments result in a particularly onerous law enforcement tool. As well as defining all counterfeiting offences and setting minimum penalties – and also maximum penalties for distribution – the proposal for a directive also relates to aspects of jurisdiction and procedure.

3.5 The EESC has particular doubts about the inclusion of these provisions on jurisdiction and procedure, which go further than is claimed in the explanatory memorandum or permitted under Article 83(1) TFEU, i.e. establishing 'minimum rules concerning the definition of criminal offences and sanctions'. This is especially worrying given that these provisions allowing for exceptional measures are very wide in scope with regard to enforcement, as they result in the establishment of universal jurisdiction – which by definition overrides general solutions – for counterfeiting offences involving the euro, and in the use of investigative tools applicable to organised crime.

3.6 In the EESC's view, it is the latter issue that is the most problematic: the proposal makes no distinction according to the severity of the offences defined in the proposal that would justify the use of investigative tools applicable to organised crime. The Committee feels that such provisions are liable to constitute a serious breach of the proportionality principle and of fundamental rights⁽¹⁾.

3.7 In the interests of avoiding certain abuses, the EESC would, indeed, remind the European legislator of the need to take account of all the Member States and their democratic traditions (whether long established or of more recent vintage) and sensitivity to respect for individual freedoms.

3.8 In more general terms, the EESC would point out that the creation of a European criminal law-enforcement area needs to go hand in hand with a strengthening of rights of defence, not least with respect to Eurojust and Europol, in order to satisfy the Treaty requirement that fundamental rights be upheld (Articles 67(1) and 83(3) TFEU).

⁽¹⁾ This was also true of the European arrest warrant (in this regard, cf. D. Rebut, *Droit pénal international* [International Criminal Law], Dalloz, coll. 'Précis', 2012, No 516, p. 311).

3.9 The EESC, as the institutional representative of European civil society, would highlight the fact that offenders may be essentially law-abiding individuals who find themselves in the position of needing to get rid of counterfeit currency that they have unknowingly received. Given the risk of imposing disproportionate sanctions on such people who have turned from victims into unwilling 'criminals', the EESC feels that the intent behind the action is a key consideration that the proposal for a directive does not properly highlight in its recitals.

3.10 The EESC acknowledges that the sliding scale of penalties laid down in the proposal depending on the amount of money involved (cf. in particular Article 5(2)) allows for such cases to be taken into account in part. Nonetheless, the fact remains, in its view, that the proposal for a directive runs the risk of seriously jeopardising individual freedoms, as it does not appear to take account of the diversity of legal traditions and systems within the EU or, in particular, of the nature of inquisitorial systems in which the accused may be held by the police for a not insignificant length of time before appearing before a judge, even for minor offences.

4. Specific comments

4.1 With regard to the establishment of a minimum penalty of six months of imprisonment (Article 5(4) of the proposal),

which is the proposal's key measure in response to the claim of 'forum shopping', the EESC questions how useful it will be given that a directive – which is, by definition, addressed to the legislator, not to the judge – cannot require this penalty to be imposed in practice. In this connection, the EESC is pleased to note that the explanatory memorandum refers to the principles that sentences must be tailored to individual circumstances – a principle enshrined by the Court of Justice of the European Union – and that the judge has full discretion.

4.2 The EESC would also add that setting a minimum penalty, even a voluntary one, is contrary to the legal traditions of certain Member States that do not set minimum sentences unless they are mandatory.

4.3 The wording of Article 9 of the proposal should be amended as follows: 'For the most serious counterfeiting offences referred to in Articles 3 and 4, Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases, are available to persons, units or services responsible for investigating or prosecuting offences'.

Brussels, 23 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament and the Council — Towards a Deep and Genuine Economic and Monetary Union — The introduction of a Convergence and Competitiveness Instrument’

COM(2013) 165 final

and on the ‘Communication from the Commission to the European Parliament and the Council — Towards a Deep and Genuine Economic and Monetary Union — Ex-ante coordination of plans for major economic policy reforms’

COM(2013) 166 final

(2013/C 271/08)

Rapporteur-General: **Mr CROUGHAN**

On 14 May 2013 the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament and the Council - Towards a Deep and Genuine Economic and Monetary Union - The introduction of a Convergence and Competitiveness Instrument

COM(2013) 165 final

and the

Communication from the Commission to the European Parliament and the Council - Towards a Deep and Genuine Economic and Monetary Union - Ex ante coordination of plans for major economic policy reforms

COM(2013) 166 final.

On 16 April 2013 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 Mr CROUGHAN as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May 2013) and adopted the following opinion by 152 votes to 8 with 12 abstentions.

1. Conclusions and recommendations

1.1 The Committee gives a guarded welcome to the two Communications from the Commission: *Towards a Deep and Genuine Economic and Monetary Union*, namely, *The introduction of a Convergence and Competitiveness Instrument (CCI)*⁽¹⁾ and *Ex ante coordination of plans for major economic policy reforms*⁽²⁾. They continue the debate around two issues raised in *A Blueprint for a deep and genuine economic and monetary union: Launching a European Debate*⁽³⁾, namely, to complete the governance framework for economic policy coordination.

1.2 The Committee is disappointed that they provide little additional detail to the concepts already outlined in the blueprint, which therefore renders assessment difficult.

1.3 The Committee is concerned that a further complexity has been added to an already crowded agenda of economic

governance instruments which include the Stability and Growth Pact (SGP), the fiscal compact, the six-pack, the two-pack, Europe 2020, the European Semester, the Annual Growth Survey (AGS), the Alert Mechanism Reports (AMRs), the National Reform Programmes (NRPs), the Stability and Convergence Programmes (SCPs), the Country Specific Recommendations (CSRs), the Excessive Deficit Procedure (EDP), the Macroeconomic Imbalance Procedure (MIP), etc., with relatively little added value.

1.4 While recognising that these two proposals could be a help to Member States in difficulty, the Committee has a concern that their impact on restoring growth and capacity to the most needy areas may be hampered or delayed because the focus of concern is that the measures taken must **also** be to the benefit of the euro area as a whole.

1.5 The Committee is sceptical that Member States would agree to introducing a new financial instrument to fund the CCI and is unclear what added value it brings over existing structural funds.

⁽¹⁾ COM(2013) 165 final.

⁽²⁾ COM(2013) 166 final.

⁽³⁾ COM(2012) 777 final.

1.6 The Committee questions how much substance the proposed ex ante coordination will add to the European Semester and what additional burden of bureaucracy it will entail.

1.7 The Committee is concerned that the filters used for ex ante coordination could interfere with a Member State taking reform measures because they change relative competitiveness in another Member State.

1.8 The Committee believes that spillovers through financial markets have no place in ex ante coordination; every effort should be directed instead at establishing a Banking Union.

1.9 The Committee believes proposals aimed at deepening EMU are crucially important to the future of the European Union; the Committee, therefore wishes to continue the debate and make proposals at a future date as developments evolve.

2. Introduction of a Convergence and Competitiveness instrument (CCI)

2.1 *Context:* In this Communication, the Commission proposes that a mutually agreed contractual arrangement and solidarity mechanism would be available for euro area Member States under stress that require national structural reforms for competitiveness and growth but whose lack of implementation would have an adverse spill over effect on other Member State of the euro area. It would be a dedicated system of financial support, which would initially be funded by the Multiannual Financial Framework (MFF) and eventually through a new fund/financial instrument based on Gross National Income (GNI), which would build up fiscal capacity.

2.2 The Committee finds it hard to judge the merits of the proposed CCI without any quantification of the proposed size or any assessment of the acceptability of such a fund to the Member States. The proposal that the fund would come, in the first instance, from the MFF, suggests it would be small and have little impact.

2.3 Given the great difficulty in negotiating the MFF 2014-2020, the Committee is sceptical that Member States would agree to the aim of introducing a new financial instrument to move towards greater fiscal capacity based on GNI in order to fund the CCI.

2.4 The Committee agrees there is merit in a mutually beneficial and accelerating convergence mechanism, but questions the necessity of introducing a new instrument, the

CCI, when it is not clear how it adds value to the already existing structural fund supports such as the Cohesion Fund or European Social Fund (ESF).

2.5 The contractual nature of the proposed instrument seems little different from the contractual nature that already exists in the disbursement of structural funds. Some concrete examples of what kind of projects with spill-over effects would qualify and how they might differ from projects funded already under other funds are needed. The EESC is concerned that a failure to deliver on selected projects under the CCI may have other consequences on the funding of projects agreed in the NRP. It is important that this proposed instrument would add demonstrable value and not result in an added layer of bureaucracy.

2.6 The CCI is envisaged as an instrument for the euro area, where greater economic convergence is essential for the functioning of the euro area. Given the likely small size of the fund, the Committee suggests that it would have to be aimed specifically at those Member States in the euro area in difficulty, without excluding the possibility of supporting projects with a particularly positive cross-border impact. It would especially need to be targeted at those countries whose economic imbalances are judged to be a particular danger to the functioning of the euro area. It is not clear why Member States in an adjustment programme would be excluded from this form of support, as they are, demonstrably, the ones most in need of financial assistance.

2.7 If the European Semester functions as envisaged and the Country Specific Recommendations become the subject of national parliamentary debate, measures will need to be taken to ensure that a national government that signs a contractual agreement under this proposed CCI first debates it in parliament according to the practice in that Member State, just as any structural fund programme may be debated. The Commission might be invited to debate or address national/local bodies. Civil society, including the social partners, should also be involved in the discussions, as in other joint EU/national government projects. Enough time must be allowed for parliaments and civil society, including the social partners, to take part in the process.

3. Ex ante coordination of plans for major economic policy reforms

3.1 *Context:* In this communication, the Commission informs us that the concept of **ex ante coordination** of plans for major economic policy reforms was introduced in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The current EU economic surveillance framework includes a process for economic policy coordination, it **does not provide a structured ex ante discussion and coordination** of major economic reform plans. This Communication is a contribution to the debate between stakeholders, especially the European Parliament, Member States, and the national parliaments on ways of implementing ex ante coordination.

3.2 The Committee is of the opinion that any meaningful improvement in the coordination of economic policy is desirable and in the euro area it is a necessity. As such the Committee welcomes the communication, while recognising coordination of individual Member State policies is a far distance from genuine economic governance. A problem in assessing the proposals is that the Communication does not provide sufficient detail on what constitutes 'major economic policy reform'. What is considered major, what is minor. The key reforms enumerated for consideration include almost every aspect of the Single Market, including financial and fiscal sustainability.

3.3 The Committee questions how this new initiative on coordinating major economic reforms will differ **in substance** from the European Semester components of National Reform Programmes (NRPs) and Country Specific Recommendations (CSRs). It must have demonstrable added value in what is an already crowded European Semester timetable. It would also be important from a transparency and simplicity perspective not to add another layer of oversight etc. The Committee believes this process must be incorporated into the European Semester and the NRPs, which need to be given more teeth; ex ante coordination could be a tangible way to achieve this.

3.4 The Committee accepts it may be beneficial under this new proposal, that following agreement with a Member State on its CSR, the Commission and Council could suggest modifications to the Member State's reform plans if it was expected that such implementation would impact adversely on Economic and Monetary Union or other Member States. However, **for democratic legitimacy**, the process respects national decision making powers and **the decision on the reform plan remains with the Member State itself**. The option – and the necessary time – should be provided for national parliaments and civil society, including the social partners, to be involved in the consultations. It must also be ensured that the final decision on implementing the reforms is adopted by the national parliament. The Committee is concerned that this nod to democratic legitimacy is more apparent than real as elsewhere in the Excessive Imbalance Procedure, sanctions can be applied where the Council concludes that a Member State has not taken the corrective action recommended.

3.5 The purpose of the ex ante coordination is to maximise positive spillovers of major economic reform plans of one Member State to other Member States and minimise negative ones. It proposes a system of three filters based on the main channels through which spillovers are transmitted. They give rise to some concerns for the Committee.

3.6 The first filter is trade and competitiveness. If a Member State takes successful reform measures to improve its own competitive position, then it is not excluded that this improvement will be to the detriment of other Member States. The Communication must spell out in detail under what conditions the Commission would intervene to dissuade a Member State from pursuing such measures. Also, is this only a one-sided approach? Would the Commission make recommendations to a Member State which in the past had taken measures to improve its competitiveness which now result in strong surpluses that are detrimental to the euro area?

3.7 The second filter concerning spillovers through financial markets, the Committee doubts has any place here. The Committee believes it would be far more effective if all available resources were directed to proceeding on schedule with implementing the establishment of a functioning Banking Union.

3.8 The third filter, that of political economy considerations and 'domestic opposition to reform', requires explanation. The anticipated 'mutual learning' and 'exchange of best practice' – although valuable in themselves – are in danger of being as ineffective as the Lisbon Agenda.

3.9 The Committee believes it requires stronger argumentation that reforms covered in ex ante coordination should include areas where the EU does not have a competence. The defence offered for this, that the decision remains fully with the Member State, is shallow in the light of the MIP procedures mentioned above.

3.10 Within the framework of ex ante coordination, there should be a social dimension, especially directed towards the impacts of major economic reforms on the level of unemployment.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Towards a comprehensive European framework for online gambling’

COM(2012) 596 final

(2013/C 271/09)

Rapporteur: **Ms RONDINELLI**

On 19 December 2012, 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 – Towards a comprehensive European framework for online gambling

COM(2012) 596 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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 122 votes, with 4 abstentions.

1. Conclusions and recommendations

1.1 The Committee confirms and reiterates the points it made previously in its opinion ⁽¹⁾ on the Green Paper on online gambling in the internal market ⁽²⁾ and regrets that the Commission has taken only some of its conclusions on board. In particular, it points out that stamping out illegal gambling, which is the primary threat in terms of consumer protection, is not the priority of the communication.

1.2 Among the priorities that the communication is seeking to address, the Committee calls on the Commission to give consideration to the creation of new jobs and the preservation of existing ones in the sector, their quality and the potential loss of jobs in the land based gambling sector to online gambling.

1.3 The gambling sector boosts Member States' tax revenue. The funding of good causes, through national lotteries and casinos, supports charitable, social and sporting activities, promotes tourism and safeguards cultural, artistic and archaeological heritage. The Committee believes that all action on gambling at EU level should aspire towards a European social model that enables people to enjoy themselves in a healthy and balanced way.

1.4 The Committee has major concerns regarding the considerable risks to public health posed by gambling. In this respect, it reiterates its request that the Commission conduct a research and monitoring exercise throughout the EU on online gambling-related addiction and illness, and recommends that

Member States use some of the tax revenue generated to finance awareness-raising campaigns, preventive measures and treatments for gambling-related disorders.

1.5 The Committee welcomes the Commission's decision to improve administrative cooperation and the pooling of information, experience and best practice among Member States and regulators.

1.6 The Committee welcomes the Commission's objective that each Member State have its own regulatory authority with specific competences, to cooperate closely with their counterparts in other Member States.

1.7 The EESC considers it essential to strike a balance between the highly technological, and consequently cross-border, nature of the sector and the risks it poses in terms of public and social order, legality, transparency and public health by means of initiatives that are more binding than the recommendations proposed by the Commission.

1.8 The Committee notes that EU legislation specific to the online gambling sector is not currently an option. While supporting the initiatives proposed by the Commission for effective cooperation between Member States, the Committee would like to see more effective legislative instruments – preferably directives – being used in certain areas, where there is

⁽¹⁾ OJ C 24, 28.1.2012, p. 85.

⁽²⁾ COM(2011) 128 final.

concurrent competence, to protect consumers and the most vulnerable groups, and to combat illegal operators and money laundering.

This would establish a minimum set of consumer protection standards. Member States must retain the right to choose whether to establish higher standards of consumer protection for their national markets, or continue to apply the more favourable standards that are already in place ⁽³⁾.

The Committee therefore calls on the Commission, the European Parliament and the Council to intervene, with due regard to the principle of subsidiarity, in the following areas:

- consumer protection and public health and safety, in particular regarding minors and vulnerable groups;
- responsible advertising;
- measures to combat sport-related betting fraud;
- guarantees relating to the legality and transparency of online gambling, combined with a commitment by the Member States to introduce adequate sanctions that provide for the blocking, closing, seizure and taking-down of illegal sites in the event of infringement.

1.9 The Committee welcomes the fact that the Commission heeded its request to extend the scope of the money laundering directive to all forms of gambling ⁽⁴⁾.

1.10 The Committee welcomes the Commission's plan to look into the opportunities supplied by the IMI Regulation ⁽⁵⁾ and hopes that it will serve to improve administrative cooperation between national regulators and the exchange of data between the relevant national and European bodies.

1.11 The Committee welcomes the Commission's plan to explore possibilities for the Member States to exchange personal data, as sharing the vast quantity of data recorded by operators will enable cross-referencing, assisting the relevant authorities in their controls.

⁽³⁾ OJ C 24, 28.1.2012, p. 85 (conclusions: points 1.3 and 1.6).

⁽⁴⁾ COM(2013) 45 final.

⁽⁵⁾ The Internal Market Information System.

1.12 The Committee deems it essential that the Member States, working with the regulators, launch awareness-raising and information campaigns for consumers, so as to steer demand towards online gambling that is legal. This action should be complemented by measures to combat illegal operators such as the publication of black and/or white lists drawn up by national regulatory authorities to enable consumers to distinguish more easily between authorised and illegal sites, by displaying the logo of the national regulatory authority on the homepage of betting sites.

1.13 To protect consumers, the Committee calls for minimum EU-wide certification for online gambling software to be carried out by specialised external bodies, applying uniform parameters and standards. It also invites the Commission and the Member States to adopt a minimum European standard for gambling-related computer platforms and calls on the Member States to implement measures to protect players' data and to authorise only those payment methods that offer the best guarantees in terms of the security and traceability of online-gambling-related transactions.

1.14 The Committee warmly welcomes the experiment launched by the Commission in establishing an expert group on online gambling, to exchange experience and good practice on cybercrime. Although still at an embryonic stage, this constitutes a useful tool for initiating effective cooperation between the Member States. The Committee would like to see this group go beyond its current informal format and develop into a body with clearly defined powers and tasks.

1.15 The Committee agrees with the Commission on the need for Member States to promote proper training for the judiciary regarding the issues inherent in fraud and money laundering through gambling.

1.16 The Committee calls on the Commission to update and review the rules it has set out in the areas of action identified in the communication in the light of developments as regards implementation of the rules by the Member States, which measures they have implemented and how, and the results achieved at national level.

1.17 The EESC calls on the Member States to give the Commission a mandate to negotiate and actively support the proposed international convention on protecting and promoting integrity in sport, on which negotiations are due to be launched under the auspices of the Council of Europe.

2. Introduction

2.1 The communication addresses both the need to uphold European legislation on free service provision and the need to protect certain population groups.

2.2 The use of online technology with direct network access has enabled a massive increase in online gambling, which is in rapid expansion. In 2011, total revenues from online gambling in the EU-27 amounted to EUR 9,3 billion, 10,9 % of the overall EU gambling market, and it is estimated that this annual revenue will grow to EUR 13 billion by 2015.

2.3 The internet means effectively that European citizens are exposed to, and can access, from their own country of residence, illegal services provided by one or more licensed operators in another country, whether that country belongs to the EU or not. The extraterritorial and international factors mean that this situation cannot be addressed by individual Member States but requires a joined-up approach and greater cooperation. With a view to protecting citizens and consumers, it is vital to adopt a common definition of illegal gambling. It should be noted that the provision of gambling that is unauthorised in a player's country of residence, or the provision of gambling without the necessary national licence, is illegal, whether the service is provided by an operator based or licensed in an EU country, or by an operator from a third country⁽⁶⁾. Operators that side-step all controls and are unregulated are also operating illegally.

2.4 As regards the distinction between non-authorised and illegal operators, reference should be made to Footnote 15 in the communication.

2.5 The Committee welcomes the fact that the Commission has set up a gambling expert group to enable Member States to pool experience and good practice, conduct research into the problems arising from illicit and illegal gambling, organise specific, up-to-date training for the judiciary, improve information for consumers and increase the availability of legal outlets.

2.6 These measures constitute a useful first step in tackling illegal operators involved in fraud, crime and money laundering.

⁽⁶⁾ The conclusions of the Spanish presidency of 11 May 2010 – 9495/10 state that illegal on-gambling is gambling provided without a licence or without abiding by the laws of the country in question and that therefore on-line gambling operators must comply with the laws in force in the countries in which they operate.

3. Gist of the Commission document

3.1 The communication highlights the diversity of national laws and sets priorities for national and EU intervention and cooperation and collaboration between Member States, outlining possible measures and making recommendations, not least regarding administrative coordination and cooperation among Member States.

3.2 The primary objective is to ensure that European legislation is upheld and applied under national law, by means of direct actions and recommendations to the Member States. To this end, the Commission will:

- facilitate administrative cooperation and the exchange of information between Member States' gambling regulators;
- look into possible procedures for blocking illegal sites;
- promote the legal gambling market, in part through dialogue with third countries;
- protect consumers, and especially minors and vulnerable groups, not least by checking internet access control mechanisms;
- study the effects of gambling addiction at European level;
- assess the market performance of online gambling services;
- adopt recommendations on good practice in the prevention of and fight against illegal gambling.

3.3 The Commission argues that it is in the Member States' interests to establish an effective anti-fraud and money-laundering policy and to protect the integrity of sport from match-, event- and competition-fixing, in part by pooling experience in the area of cybercrime.

4. Comments

4.1 *Bringing national legislation into line with EU law*

4.1.1 The Committee would firstly stress that it is extremely concerned about the accelerating spread of online gambling and the exponential increase in the amount of gambling available, which is seeing the participation of ever wider sections of society with serious consequences for household income. Effective curbs thus need to be placed on the various forms of gambling advertising, especially on television, online and on public transport.

4.1.2 The supply and use of transnational gambling services are economic activities that are covered by the free movement provisions of the internal market (Article 56 TFEU). However, Article 52(1) TFEU allows for restrictions to the free provision of services guaranteed by Article 56 on grounds of public policy, public security or public health.

4.1.3 The Committee points out that the Member States have primary responsibility for organising and regulating gambling in their countries. Gambling is potentially very dangerous for consumers and is equally susceptible to being used for criminal purposes, such as money laundering, if it is not properly regulated or if the rules are not rigorously enforced. Against this background, although gambling falls within the scope of free service provision, under Article 49 EC⁽⁷⁾, EU legislation on online gambling cannot currently be envisaged given the divergences between national laws. While supporting the initiatives proposed by the Commission, especially as regards effective cooperation between Member States, the Committee would like to see more effective instruments – preferably directives – being used in certain areas (see point 1.8) to protect consumers and the most vulnerable groups, and to combat illegal operators and money laundering.

4.1.4 In line with the abundance of established case-law from the Court of Justice of the EU, restrictions on gambling activities may be justified by overriding requirements in the public interest, such as consumer protection and the prevention of both fraud and incitement to squander money on gambling⁽⁸⁾. Member States may restrict or limit the crossborder provision of all or certain types of online gambling services by reason of public interest objectives designed to provide protection in relation to gambling⁽⁹⁾.

⁽⁷⁾ Judgments of 19 July 2012, Case C-470/11, SIA Garkalns, unpublished, point 24, and of 8 September 2010, Case C-316/07, from C-358/07 to C-360/07, C-409/07 and C-410/07, Stoß and others.

⁽⁸⁾ Judgments of 19 July 2012, Case C-470/11, Garkalns SIA, point 39, and of 8 September 2010, Case C-46/08 Carmen Media Group, point 55.

⁽⁹⁾ Cases C-42/07 Liga Portuguesa de Futebol Profissional and others and C-6/01 (the Anomar case).

4.1.5 Gambling services are not subject to uniform rules in the EU and national laws vary significantly for cultural, social and historical reasons specific to each country. Some Member States have outlawed online gambling, whereas others allow only certain games, and yet others have a monopolistic system managed exclusively by a public or private operator. In the absence of up-to-date data on the divergent situations at national level⁽¹⁰⁾, the Committee calls on the Commission to undertake a mapping exercise with the Member States.

4.1.6 As clarified by CJEU case-law, Member States that opt for controlled liberalisation of the market may legitimately establish a permit scheme – subject to administrative authorisation – based on objective criteria that are non-discriminatory on grounds of nationality⁽¹¹⁾.

4.1.7 The fact that with online gambling there is no direct link between the consumer and the operator increases the danger of operator fraud at the consumer's expense⁽¹²⁾. The availability of gambling that is illegal and thus uncontrolled poses a serious threat to consumers. Therefore, the rigorous implementation by Member States of the measures aimed at tackling illegal operators provides the primary guarantees and the best tool for the protection of consumers.

4.1.8 The Member States are free to set the objectives of their gambling policies and to define the level of protection. The restrictions they impose must, however, meet the conditions set out in CJEU case-law and must be proportionate, non-discriminatory and form part of a policy that is applied in a consistent and systematic manner.

4.1.9 Since legislation in individual Member States varies, and given that EU regulation of online gambling is as yet impossible, approximation of national laws is needed and Member States must be helped to enforce existing laws, in order to secure greater legal certainty in the areas of the protection of consumers, minors and vulnerable groups, advertising and the fight against money-laundering. The Member States should be encouraged to exchange best practice on combating illegal operators.

⁽¹⁰⁾ Study on gambling in the EU internal market by the Swiss Institute of Comparative Law (2006) http://ec.europa.eu/internal_market/services/docs/gambling/study1_en.pdf

⁽¹¹⁾ Judgment of 24 January 2013, Joined cases C-186/11 and C-209/11 Stanleybet International LTD and others, point 47.

⁽¹²⁾ Judgment of 8 September 2009, Case C-42/07 Liga Portuguesa de Futebol Profissional and others.

4.1.10 In line with the principle of subsidiarity, the EU should intervene where its action enhances the situation and adds value to the Member States' regulatory systems. In view of the specific features of this sector and the changes involved with internet use, the Committee believes that action by the EU should take the form of sustained cooperation between the Member States and the promotion of best practices in combating illegal operators, which requires transnational action.

4.2 *Administrative cooperation and the effective application of the law*

4.2.1 The EU must bolster controls, administrative cooperation and the actual application of laws on online gambling and the Member States must work together to achieve this outcome.

4.2.2 It is important that the personal data registered by operators be made available and exchanged, so as to assist with controls, all the while ensuring data is protected. Administrative cooperation between Member States, with the exchange of general information and the use of best practice should be encouraged, so as to boost the sharing of know-how and experience and generate a sense of mutual trust and interest.

4.2.3 The certification at national level of remote internet gambling platforms would serve to secure oversight of the gambling market. It is important to establish better cooperation between the Member States and to set up a regulatory authority for online gambling in every Member State, with precise competences, to ensure close coordination at EU level.

4.2.4 There is a need to assess the degree to which national policies are coherent with EU legislation and case-law and ensure that their licensing systems are transparent and non-discriminatory. Cases of non-compliance should be subject to infringement procedures.

4.2.5 The Committee believes that the preventive and repressive measures adopted so far by the Member States to combat online gambling services provided by operators without a licence, i.e. illegal operators, are not sufficient to tackle the problem. It would therefore recommend that national regulatory frameworks of principles be designed that would guarantee the legality and transparency of sites, and would provide for: the identification and blacklisting of illegal sites; the identification and whitelisting of sites that are authorised under the domestic law of a Member State; the blocking,

closing, seizure and taking-down of illegal sites⁽¹³⁾; the blocking of financial flows to and from such sites; and the banning of commercial communications and advertising regarding illegal gambling.

4.3 *Consumers*

4.3.1 The Committee regrets that its request to the Commission and the Member States for incisive measures to effectively combat illegal operators, which are the greatest threat to consumers, was not addressed in the Commission communication. It thus repeats its call for effective measures to be adopted as soon as possible in order to establish best practices in preventing and countering illegal gambling.

4.3.2 The Commission plans to adopt a recommendation on consumer protection and the responsible advertising of gambling in 2013 and pinpoints four areas of intervention: drawing consumers away from unregulated and potentially harmful services, preventing minors from accessing gambling facilities, safeguarding other vulnerable groups, and preventing the development of gambling-related disorders. As regard this recommendation, the Committee calls on the Commission to include best practices in combating and preventing illegal gambling, after carrying out an assessment in each Member State of the most harmful forms of gambling for consumers.

4.3.3 The Committee appreciates the attention given by the communication to consumer protection and to vulnerable groups, not least in connection with advertising and gambling addiction. It stresses the need to adopt measures here that ensure a high level of protection; it points out that the instruments envisaged are too feeble and thus suggests that more binding ones be adopted. Indeed, the provision of illegal gambling, which is inherently uncontrollable and dangerous, constitutes the greatest threat to consumers. Hence the need for robust measures to be pinpointed in each Member State to stamp out illegal operators that are in breach of national legislation, which is the primary and best guarantee for the protection of consumers.

4.3.4 The fundamental objectives of the Commission's action should be to ensure that the Member States exercise their full powers and responsibilities and to establish an EU-wide legislative framework for all operators authorised to provide this kind of service, so as to avoid problematic forms of gambling, introduce minimum age requirements for all games and outlaw gambling on credit – for the most dangerous forms of gambling and betting (online casinos, spread betting, betting exchanges) – and advertising geared towards minors and the most vulnerable groups.

⁽¹³⁾ COM(2010) 673 final of 22 November 2010 – Communication from the Commission to the European Parliament and the Council – The EU internal security strategy in action: Five steps towards a more secure Europe.

4.3.5 The Committee calls on the Commission and the Member States to take effective and robust action within their respective remits to counter illegal gambling. It calls for the Member States to adopt measures such as blacklisting and blocking illegal sites, establishing secure and traceable payment methods, blocking financial transactions and placing an absolute ban on illegal advertising. It should be pointed out here that the effectiveness of these measures is largely dependent on their being part of a joint approach, which will strengthen their impact on illegal operators.

4.3.6 Ideally, a regulatory authority should be established in every Member State with specific responsibility for monitoring the situation and ensuring that European and national laws on consumer protection and combating illegal gambling are implemented. The existence of national regulators is a pre-requisite to implementing effective coordination and administrative cooperation. The Member States should see to it that their regulatory systems, designed in the light of their national specificities and legal framework, are capable of implementing this. The Committee would like to see each Member State task its regulator with establishing the criteria for the awarding of licences in its own market.

4.3.7 European consumers in every Member State should be enabled to distinguish between legal and illegal sites, not least so that they can make complaints. In this regard, the Committee recommends that the Member States require all operators authorised to provide online gambling services to display prominently and permanently on its website its authorisation number and a label from the national regulatory authority indicating that it is licensed in that Member State.

4.3.8 The Committee calls for the broadest possible legislative guarantees to protect minors, providing for appropriate tools for age checks and ensuring operators apply effective controls in this regard. Parents should be made aware of the risks of internet use and of how to set up filters at home. Appropriate guarantees should be adopted to protect vulnerable people who spend a lot of time at home: pensioners, housewives and the unemployed.

4.3.9 The current crisis is pushing ever more people to gamble online, unrealistically hoping to solve their financial problems with easy winnings. This carries major risks, however, in terms of psychological well-being as it leads to addiction and obsessive-compulsive behaviour. In order to address these disorders, the Committee recommends that part of the tax earnings from gambling be directed towards awareness raising campaigns and treatment to prevent and provide care for gambling addiction.

4.3.10 The Committee welcomes the Commission's plan to issue a recommendation – although it would prefer a more effective and binding instrument – on the responsible advertising of gambling to complement the Unfair Commercial Practices Directive, in order to ensure that consumers are provided with accurate information. The Committee stresses that action in this area should include measures to counter illegal operators such as banning advertising by operators that are providing services without a license from the national regulatory authority of the country where the consumer resides.

4.3.11 It is necessary to strike a balance between the requirement for controlled growth of authorised gambling, to make gambling services available through legal channels attractive to the public, and the need to minimise gambling addiction.

4.3.12 Advertising needs to be more responsible and better regulated, in particular to protect minors. This is not only because of the high risk to health, especially mental health, but also because of the distorted and misleading view of reality it encourages, leading the public to believe that online gambling is 'normal' and thus endorsing unhealthy social behaviour.

4.3.13 Despite the Alice Rap⁽¹⁴⁾ project, the Committee notes that there are still no reliable data available on the extent and variety of gambling-related disorders. The Committee would highlight the need for on-going, constant monitoring of addiction and the related disorders in order to acquire satisfactory data that will enable national and EU legislators to adopt effective, targeted measures to combat and prevent this problem.

4.4 Preventing fraud and money laundering

4.4.1 The problems associated with identifying individuals active in remote gambling who are either strongly winning or losing heavily and who could thus be masking money laundering activities should be addressed through the prior identification of individuals and the opening of specific gambling accounts for individual players.

4.4.2 Identity theft is a widespread problem, linked not only to online gambling but also to the entire data processing and exchange system associated with the internet and online technologies.

⁽¹⁴⁾ Addiction and Lifestyles in Contemporary Europe - Reframing Addictions Project.

4.4.3 Random Number Generators must be heavily certified to ensure that they respond to the non-predictability principle while also offering certainty that the event being checked is the only one possible, and that interference is impossible. This would protect players and uphold the standards set by Member States in terms of winnings.

4.4.4 In order to make the software used for online gambling more secure, the Committee proposes that EU-wide minimum certification be carried out by specialised external bodies, adopting the same parameters and standards, not least to identify and prevent illegal off-shore gambling.

4.4.5 One way to protect access to gambling could be to identify Internet Protocol Addresses. In fact, it is technically possible for individuals accessing gambling systems using IP systems from other countries to be blocked from playing.

4.4.6 As online gambling is vulnerable to the problems of money laundering and fraud, the enormous volume of data and information registered by operators ought to be made available to public law enforcement authorities so that they can cross-reference it with other data, facilitating checks.

4.5 Sport and competition fixing

4.5.1 Betting on fixed matches, events and competitions is a specific form of fraud that runs counter to the interests of sports clubs, fans, consumers and legal gambling operators.

4.5.2 The Commission agrees with the suggestion made by the Committee, which has highlighted the need to define a

framework to coordinate the efforts of all interested parties in order to address the problem comprehensively and avoid overlaps in resources. It highlights the need for greater cooperation between betting operators, sports bodies and the competent authorities, including national and international gambling regulators.

4.5.3 The Committee would reiterate its suggestion that a system be established not just to collect statements that report suspicions regarding a given sporting event, but also to take preventive and educational measures and impose sanctions that can effectively tackle the problem.

4.5.4 The Committee welcomes the Commission's plan to adopt by 2014 a recommendation on good practice in the prevention of and fight against betting on fixed matches, although it considers the chosen legislative instrument to be insufficient. Competition fixing violates the principle of fair sporting competition and constitutes a criminal offence in all the Member States. Nevertheless, there has been an increase in illegal or suspected illegal activities in this area. More incisive action is therefore needed to combat competition fixing, with the help of the instruments, skills and resources of the Member States, pooled together and used in synergy together with the EU.

4.5.5 The Committee calls on Member States that have not already done so to consider sport-related corruption, competition fixing and the manipulation of sports results as offences, and as such punishable, and asks the Commission to agree on a common definition of these criminal offences with the Member States.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

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 — A new European approach to business failure and insolvency’

COM(2012) 742 final

and on the ‘Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1346/2000 on insolvency proceedings’

COM(2012) 744 final — 2012/0360 (COD)

(2013/C 271/10)

Rapporteur: **Mr ALMEIDA FREIRE**

On 12 December 2012, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – A new European approach to business failure and insolvency

COM(2012) 742 final.

On 15 January and 5 February 2013 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council regulation (EC) No 1346/2000 on insolvency proceedings

COM(2012) 744 final – 2012/0360 (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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May 2013), the European Economic and Social Committee adopted the following opinion by 130 votes to 1 with 4 abstentions.

1. Conclusions and recommendations

1.1 General conclusions

1.1.1 Europe is currently experiencing a major economic and social crisis, which is affecting all parts of society.

1.1.2 Prioritising the survival of businesses is one of the measures that the European Union has identified as a means of getting back on track. Bankruptcies certainly have repercussions that go beyond damaging consequences for the companies concerned; they affect the entire economy of the Member States, especially the general public, in their capacity as taxpayers, employees and employers.

1.1.3 The EESC agrees with the goals set out in the Commission communication, while considering that the ‘second chance’ it refers to should benefit business operators who have learned from their previous failures and who can make a fresh start on the basis of a rethought business plan.

1.1.4 The Committee also supports the proposal for a regulation, but is disappointed that this is not more ambitious.

1.1.5 Indeed, much discussion and many practical measures are still needed in order to uphold creditors’ rights, while seeking to ensure balance between the interests of entrepreneurs and employees, promote corporate restructuring, prevent forum shopping and improve the coordination of insolvency proceedings for groups of undertakings.

1.2 Recommendations on the communication

1.2.1 The EESC believes that the discussion of a substantial harmonisation of business insolvency law is interesting, but is disappointed that no effective response is provided to the economic and social crisis currently affecting European businesses and individuals.

1.2.2 The EESC prefers the notion of a ‘fresh start’ (a key concept in American insolvency law) to that of a ‘second chance’ advocated by the Commission. It also calls for discussion of the real contribution of this concept to European insolvency law.

1.2.3 The Committee also considers that employees should be better protected and should be treated as preferential creditors.

1.2.4 The issue of unfair assistance for failing companies should also be addressed. The EESC stresses in this respect that people other than banks can also be responsible for providing such assistance and therefore calls on the Commission to provide adequately for these parameters.

1.2.5 The EESC considers that making insolvency legislation part of criminal law is not desirable, as this would increase the judicialisation of insolvency proceedings and prolong investigation times.

1.2.6 The Committee does not believe that systematic recourse to a judge is the best solution and calls on the Commission to consider setting up new bodies, linked for example to the economic sector, with a multidisciplinary approach (economic, financial and legal) which makes them better equipped to understand and act quickly to help businesses to solve their financial problems.

1.2.7 Lastly, the EESC urges the Commission to consider the proposals on harmonising the status of liquidators, such as those put forward in the European Parliament resolution of 11 October 2011 ⁽¹⁾.

1.3 Recommendations on the proposal for a regulation

1.3.1 The EESC supports the proposal for a regulation, even though it only addresses procedural rules and does not seek to harmonise national business insolvency legislation.

1.3.2 The Committee welcomes the obligation for Member States to improve publicity rules, making relevant decisions in cross-border insolvency cases publicly accessible in an electronic register, and the interconnection of national insolvency registers.

1.3.3 The Committee nevertheless calls on the Commission to ensure that the obligations, costs and deadlines of translations do not slow down insolvency proceedings, because speediness is a gauge of their success.

1.3.4 The EESC supports the integration of civil over-indebtedness procedures but this integration should not be unfavourable to individual debtors. A law drawn up for companies, intended to meet the requirements of commerce, is by its nature less protective than consumer law. The Committee would therefore urge the Commission to be particularly mindful of this.

1.3.5 Lastly, the Committee calls on the Commission to ensure that making use of the delegation procedure to amend

the annexes to the regulation takes account of Article 290 TFEU and the case-law on the notion of 'essential measures'.

2. Introduction

2.1 The aim of the Insolvency Package

2.1.1 The initiatives contained in this legislative package form part of the EU's response to the economic and social crisis currently affecting European businesses and individuals. The stated aim is to help businesses survive and to offer a second chance to entrepreneurs facing insolvency.

2.1.2 The European Commission's approach consists of amending Council Regulation (EC) No 1346/2000 ⁽²⁾ of 29 May 2000, known as the 'Regulation on insolvency proceedings', which essentially concerns the rules of private international law applicable to cross-border insolvency proceedings, and of holding a consultation on the basis of a communication entitled 'A new European approach to business failure and insolvency'.

2.1.3 The EESC has decided to express its views on both documents in one opinion.

2.2 The proposal for a regulation ⁽³⁾

2.2.1 Considering the Regulation on insolvency proceedings of 29 March 2000 to be obsolete and identifying its five major shortcomings ⁽⁴⁾, the Commission proposes to revise it.

2.3 The communication

2.3.1 The document rightly states that the proposal for a regulation of 12 December 2012 confines itself to updating the Insolvency Regulation of 29 May 2000 and therefore simply acknowledges and coordinates the procedural rules applicable to national insolvency proceedings, without harmonising national business insolvency legislation.

2.3.2 It attempts to remedy this shortcoming by proposing avenues for discussion with a view to securing a substantial harmonisation of business insolvency law, on the understanding that only cross-border insolvency cases are covered.

⁽²⁾ OJ L 160, 30.6.2000, p. 1 and OJ C 75, 15.3.2000, p. 1.

⁽³⁾ COM(2012) 744 final, 12.12.2012.

⁽⁴⁾ — its limited scope;

— the persistence of 'forum shopping' due to the inconsistent application of the concept of the 'centre of a debtor's main interests';

— the lack of coordination between main and secondary insolvency proceedings;

— inadequate publication of insolvency proceedings; and

— the legal vacuum regarding the insolvency of multinational groups,

— The Commission has made use of the 134 responses to a public consultation launched on 29 March 2012, the conclusions of a comparative law study carried out by the universities of Heidelberg and Vienna, and an impact assessment of the different scenarios for reform options to suggest remedying the five shortcomings referred to above, in a proposal for a Council Regulation on insolvency proceedings.

⁽¹⁾ European Parliament resolution of 15.11.2011 – 2011/2006 (INI).

3. General comments on the communication

3.1 *The philosophy underpinning the new approach*

3.1.1 This new approach is based on the need to offer entrepreneurs a second chance and to safeguard jobs.

3.1.2 The EESC believes that company bankruptcies, like the creation of companies, form part of the cycle of economic life and the dynamic of the market. It would therefore be wrong to view them as an evil to be prevented at all costs.

3.1.3 In line with this thinking, the EESC believes that the 'second chance' mentioned by the Commission should be enjoyed by entrepreneurs who have learnt from their previous failure and are able to start again on the basis of a revised business approach.

3.1.4 The EESC would also point out that while company bankruptcies may have internal causes, such as bad management, they may also have external causes resulting from excessive or inappropriate rules. The State is therefore to a certain degree responsible for bankruptcies, in its capacity as legislator, but also as contracting authority in public procurement ⁽⁵⁾.

3.1.5 The EESC prefers the notion of a 'fresh start' (a key concept in American insolvency law ⁽⁶⁾) to that of a 'second chance' advocated by the Commission. Under the fresh start approach, a largely cultural rather than legal concept, debtors are relieved of their personal responsibility for their debts on certain conditions. The judicial decision stage declaring the company bankrupt is thereby avoided and the debtor can begin a new project, without being identified as bankrupt.

3.1.6 The communication gives the impression, however, that the second chance means a continuation of activity. The EESC believes that it would be counter-productive to keep businesses within the economic fabric artificially by giving them a second chance if the model chosen had proven not to be viable.

3.1.7 It would have a negative impact on the confidence of creditors and suppliers, and ultimately it would harm healthy competition between economic operators.

3.2 The EESC supports the American approach in insolvency law, and believes that the fresh start should be assessed before the matter has been referred to the judge.

⁽⁵⁾ For example, rules on safety, the environment or payment terms, though legitimate in spirit, can harm the operation of companies. Payment delays by public buyers in the public procurement process also add to problems faced by businesses.

⁽⁶⁾ Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 Harv. L. Rev. 1393 (1985); Charles Jordan Tabb, *The Scope of the Fresh Start in Bankruptcy: Collateral Conversions and the Dischargeability Debate*, 59 Geo.Wash.L. Rev. 56 (1990).

4. Specific comments on the communication

4.1 *To ensure effective harmonisation*

4.1.1 The differences in national insolvency legislation are a source of competitive disadvantage, especially for businesses operating across borders, which could hamper economic recovery.

4.1.2 These differences result in 'forum shopping' and consequently in a weaker internal market.

4.1.3 The EESC therefore agrees with the European Parliament ⁽⁷⁾, which expressed its hope for certain aspects of insolvency law to be harmonised.

4.1.4 Parliament also calls on the Commission to submit, on the basis of Article 50, Article 81(2) or Article 114 TFEU, one or more proposals for a genuine EU corporate insolvency framework, going beyond simply procedural rules under private international law.

4.1.5 The effects of insolvency cases go further than the negative consequences for the companies in question. They affect the economies of the Member States as a whole, particularly the citizens, as taxpayers, employees and employers.

4.2 *Upholding creditors' rights*

4.2.1 Originally designed solely to meet the requirements of creditors, collective proceedings have gradually come to be aimed at ensuring the continuation of the business, maintaining employment and the payment of debts. More recently, the legislative tendency in Europe has been to prevent companies' problems before the suspension of payments.

4.2.2 Creditors are fearful of opening collective proceedings against the debtor since they do not know whether the amounts due will be paid. The first frustration is that the opening of collective proceedings often prohibits the debtor from being pursued for any claim arising before the decision to open proceedings and suspends any ongoing claims. Each creditor must therefore declare their claim within the legal time period ⁽⁸⁾.

4.2.3 The second frustration for the creditor is in the event of a shortfall in assets. In practice, it is often proposed to creditors during collective proceedings that they choose between an immediate payment but abandoning a considerable proportion of the claim, or spreading the debt over a given period of time.

⁽⁷⁾ European Parliament resolution of 15.11.2011 – 2011/2006 (INI).

⁽⁸⁾ The claims to be declared are not just those claims due or to become due that arise before the opening of the proceedings, but also certain claims arising subsequently when they correspond to services provided before the date of the decision to open proceedings or are judged to be unnecessary for the proceedings.

4.2.4 For the creditor, therefore, any situation of insolvency should ideally be prevented, for example by securing certain operations on conclusion of the contract, demanding security from a third party⁽⁹⁾ or demanding collateral, pledges or mortgages on the company's assets⁽¹⁰⁾.

4.3 *Better treatment of employees during insolvency proceedings*

4.3.1 Employees are the first victims in the event of their company's bankruptcy. Their salaries are not always paid before the liquidation and their personal financial situations are difficult during this period of uncertainty.

4.3.2 Opening collective proceedings often involves the election of an employees' representative, whose task is to check on information regarding salaries owed. As well as the usual bodies representing employees within a company, this involves relaying information between staff, the tribunal and the parties involved in the proceedings.

4.3.3 Sums owed to employees before the opening of the collective proceedings must be included in the company's liabilities. However, this general measure is in reality very unclear, because of the differences between national legislations and practices. The lack of harmonisation with regard to the ranking of creditors therefore makes the issue of collective proceedings very uncertain for employees.

4.3.4 The EESC believes that employees should be better protected and be treated as preferential creditors and that harmonisation of their protection would be useful.

4.4 *Preventing unfair assistance for failing companies*

4.4.1 The commercial practices of certain financial institutions can lead to assistance being provided to a company when its situation is irreversibly compromised. Such practices create the impression that the company is solvent, which harms healthy competition and tarnishes the image of the banking sector.

4.4.2 The EESC highlights the fact that people other than banks, including States, can be responsible for the unfair assistance. Furthermore, national judges sometimes consider that certain suppliers or clients of the company can also be held responsible when, through their attitude, they provide unfair support for the activity of a company which they know to be irreversibly compromised.

4.4.3 These parameters should also be adequately provided for with a view to harmonising the law on company insolvency.

4.5 *The particular case of fraudulent bankruptcies*

4.5.1 The majority of company bankruptcies happen for objective reasons, with no fraudulent behaviour on the part of directors.

4.5.2 However, the phenomenon of fraudulent bankruptcies should not be ignored. The Commission refers to it in its

communication⁽¹¹⁾, and suggests that a distinction should be made between honest and dishonest bankruptcies. It states that wilful or irresponsible non-compliance with legal obligations by a debtor should be subject to civil penalties and, where appropriate, criminal liability. It also believes that 'fast-track' liquidation proceedings should be applied for honest bankruptcy.

4.5.3 The EESC is convinced that harmonising the discharge time and making it reasonably short would be appropriate, particularly in the interests of employees, but still has reservations regarding the differentiation between bankruptcy proceedings on the basis of the honesty of directors, since this would increase the judicialisation of insolvency proceedings, making them criminal in nature and prolonging investigation times.

4.5.4 This criminalisation of insolvency law is not desirable. The EESC takes the view that the fraudulent nature of the bankruptcy should be determined in proceedings other than insolvency proceedings.

5. **General comments on the proposal for a regulation**

5.1 The EESC welcomes the extension of the scope of the Regulation to include hybrid proceedings, pre-insolvency proceedings, debt discharge proceedings and other insolvency proceedings for natural persons.

5.2 It also welcomes the clarification of the circumstances in which the presumption that the centre of main interest is located at the place of its registered office can be rebutted.

5.3 Improving the procedures by stipulating jurisdiction for actions which derive directly from insolvency proceedings or are closely linked with them, such as avoidance actions, is also a positive step.

5.4 The fact that secondary procedures need not necessarily be winding-up proceedings and that their opening may be refused if it is not necessary to protect the interests of local creditors also helps to improve the regulation, as does the extension of the interaction between main and secondary proceedings.

5.5 The obligation for Member States to improve publicity rules, making relevant decisions in cross-border insolvency cases publicly accessible in an electronic register, and the interconnection of national insolvency registers, are also ideas to be welcomed.

5.6 However, the EESC has reservations regarding the burden, cost and timescales for translations, and points out that speed is a crucial measure of the success of the procedure.

5.7 Finally, the Committee welcomes the obligation for courts and liquidators to cooperate in insolvency proceedings concerning different members of the same group of companies, since this gives liquidators the means to act more efficiently.

⁽⁹⁾ A bank or the director.

⁽¹⁰⁾ Moveable assets, business assets, marks etc.

⁽¹¹⁾ Point 3.1: Second chance for entrepreneurs in honest bankruptcies. COM(2012) 742 final.

6. Specific comments on the proposal for a regulation

6.1 The EESC questions the coordination with Regulation (EC) No 1215/2012 of 12 December 2012⁽¹²⁾, intended to replace Regulation (EC) No 44/2001 on the jurisdiction of national courts and the effects of judgements in the European Union, known as the Brussels I Regulation. The Committee questions whether Recital 6 in the proposed insolvency regulation sufficiently clarifies the criterion for the distribution of powers pursuant to the Gourdain case-law⁽¹³⁾. This case-law appears to offer a rather restrictive interpretation, when certain actions covered by the Brussels I Regulation are decisive in terms of insolvency proceedings. For example, whether or not a retention of title clause is used is decisive in establishing the scale of the debtor's assets. This is important in terms of the stated objective of saving companies in difficulty, since re-establishing assets is key to the successful recovery of companies in difficulty.

6.2 With regard to cooperation between liquidators, the Commission could have proposed to amend the wording of Article 31 to further encourage the adoption of agreement protocols between liquidators. The differing status of liquidators amongst the Member States forms a barrier to their professional cooperation.

6.3 Exchanges between liquidators and courts should as a priority relate to the inventory, the debtor's estate, the declaration and verification of claims, and the coordinated collective settlement for creditors appearing in negotiated plans.

6.4 Finally, the EESC would stress that the Commission proposes making use of the delegation procedure to amend the annexes to the regulation, although these seem to involve essential measures, such as the notion of collective proceedings or the list of persons acting as liquidators.

7. Specific comments on substantive insolvency law

7.1 Insolvency criteria need to be harmonised. In some Member States, insolvency proceedings can only be considered when the debtor is proven to be insolvent, whereas in other States, insolvency that is 'probable within the near future' constitutes sufficient grounds.

7.2 This disparity encourages forum shopping, and should therefore be eliminated.

7.3 Since legal certainty is essential, the rules on the lodging of claims should also be harmonised.

8. Integrating civil procedures on over-indebtedness

8.1 The EESC supports the Commission's proposed new recital 9⁽¹⁴⁾.

⁽¹²⁾ The application of the regulation has been delayed until 10 January 2015 to enable Member States to adapt their procedural rules in response to the abolition of exequatur.

⁽¹³⁾ ECJ Gourdain c/Nadler, 22 February 1979.

⁽¹⁴⁾ Recital 9: 'This Regulation should apply to insolvency proceedings, [...] whether the debtor is a natural person or a legal person, a trader or an individual.'

8.2 Recitals 9 and 10 of the Insolvency Regulation of 29 May 2000 are appropriate⁽¹⁵⁾.

8.3 This integration should not, however, be unfavourable to individual debtors. A law drawn up for companies, intended to meet the requirements of commerce, is by its nature less protective than consumer law. The Committee would therefore urge the Commission to be particularly mindful of this.

8.4 The EESC also calls on the Commission to consider harmonisation of the insolvency law for individuals, taking into account the interests of consumers.

9. Harmonising the status and powers of liquidators

9.1 The differences in national rules governing the status and powers of liquidators affect the smooth operation of the internal market by complicating cross-border insolvency proceedings⁽¹⁶⁾.

9.2 The Committee considers that it would benefit businesses and economic recovery for harmonisation of the general aspects of the requirements for the qualification and work of liquidators to take place quickly. The EESC would therefore join with the European Parliament⁽¹⁷⁾ in making the following recommendations:

- the liquidator must be approved by a competent authority of a Member State or appointed by a court of competent jurisdiction of a Member State, must be of good repute and must have the educational background needed for the performance of his/her duties;
- s/he must be competent and qualified to assess the situation of the debtor's entity and to take over management duties for the company;
- s/he must be empowered to use appropriate priority procedures to recover monies owing to companies, in advance of settlement with creditors and as an alternative to transfers of claims;
- s/he liquidator must be independent of the creditors and other stakeholders in the insolvency proceedings;
- in the event of a conflict of interest, the liquidator must resign from his/her office.

⁽¹⁵⁾ Furthermore, the law of certain Member States already provides for it. In Belgium, the procedure for the collective settlement of debts also involves procedures applicable to consumers (Law of 5 July 1988). Germany does not draw a distinction between procedures applicable to traders and those applicable to individuals (Law of 5 October 1994).

⁽¹⁶⁾ The liquidator may be a civil servant, or a private individual approved by the State, appointed by the judge, but paid by creditors.

⁽¹⁷⁾ Report of 11 October 2011 with recommendations to the Commission on insolvency proceedings in the context of EU company law (2011/2006(INI)).

9.3 The Commission should therefore go further than it proposes in Article 31 of the proposal for a regulation, which does no more than explain practices and address cooperation between the administrators of the main and secondary proceedings.

10. Developing out-of-court rules to support businesses and provide them with a useful framework

10.1 Promoting negotiated procedures would make it possible to increase the speed and effectiveness of company restructuring plans.

10.2 The average time for such procedures and the success rate seen in the European Union make a good case for adopting this approach.

10.3 Furthermore, the EESC does not consider that systematic recourse to the courts is necessarily the best solution.

It therefore supports the idea of setting up new bodies, linked for example to the economic sector, with a multidisciplinary approach (economic, financial and legal) which makes them better equipped to act quickly to help businesses to solve their financial problems.

10.4 This system already exists in a number of countries and could be extended to other Member States.

10.5 Finally, it would be useful for the Commission to publish regular statistics on insolvency cases under the insolvency regulation so that the effectiveness of the system established can be assessed.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

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 — Protecting businesses against misleading marketing practices and ensuring effective enforcement — Review of Directive 2006/114/EC concerning misleading and comparative advertising’

COM(2012) 702 final

(2013/C 271/11)

Rapporteur: **Jorge PEGADO LIZ**

On 19 February 2013 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 - Protecting businesses against misleading marketing practices and ensuring effective enforcement - Review of Directive 2006/114/EC concerning misleading and comparative advertising

COM(2012) 702 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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 129 votes with 8 abstentions.

1. Conclusions and recommendations

1.1 The EESC considers this Communication and its proposals to warrant particular attention and discussion.

1.2 The EESC supports the Commission's view that stricter regulation is required to effectively ban, and enforce exemplary and dissuasive sanctions against, certain aggressive directory company sales practices.

1.3 In view of the apparent urgency to take an immediate position on this issue and the estimated magnitude and seriousness of these practices in economic terms at the European level, the EESC accepts that the Commission should immediately present a specific legislative proposal on this issue, based on an impact assessment.

1.4 The EESC believes that to this end a framework regulation should be adopted, possibly developed through delegated acts, in order to ensure more uniform and effective enforcement across the Member States.

1.5 Given its nature, the EESC believes that the appropriate legal basis should include, but cannot be limited to, the Treaty's provisions on the internal market and its scope of application should not be restricted to cross-border transactions.

1.6 Furthermore, the EESC warns of the need to give attention to the trans-European nature of many of these practices, which requires coordinated international action.

1.7 However, the EESC believes that the best way to achieve coherent and consistent rules prohibiting misleading marketing practices would be a joint review of Directive 2006/114/EC and Directive 2005/29/EC to address business-to-business and business-to-consumer relations at the same time, preserving the specificities of each within a common framework, for which reason it urges the Commission to start action in the short term.

1.8 The EESC urges the Commission to develop and enforce complementary measures to improve information and dissemination; cooperation between administrative authorities, public-private platforms and stakeholder representative organisations; and rapid reaction mechanisms in order to put a stop to these practices and ensure damage compensation, namely through the immediate creation of a European judicial system for group action, which was announced over thirty years ago and then successively delayed.

1.9 The EESC expresses its willingness to involve its members in future work in this field, believing that it can contribute the experience of its members, who are particularly well-qualified civil society representatives of the three interest groups represented within the EESC.

2. Background and socio-economic aspects of the proposal

2.1 In the area of business-to-business marketing communication there are basic rules that it is imperative to respect in order to ensure undistorted competition and a functioning market. And if they are not respected voluntarily, then they have to be made compulsory and enforced.

2.2 In this Communication, the Commission puts forward a set of measures to combat certain misleading marketing practices carried out by advertising companies, especially those arising from misleading directory company schemes.

2.3 The purpose is to provide better business protection, especially where SMEs are concerned, namely in relation to practices that consist in directory companies sending unwelcome and unsolicited requests inviting businesses to register or update their details in a business directory, seemingly for free, but in fact subject to subsequent annual charges, which had not been negotiated or previously accepted.

2.4 Having carried out a public consultation, the Commission has announced its intention to strengthen Directive 2006/114/EC concerning misleading and comparative advertising by explicitly banning practices such as concealing the commercial intent of an advertising communication and, at the same time, strengthening cross-border enforcement.

2.5 The Communication further mentions:

- a) the non-existence of adequate information campaigns on these practices;
- b) lack of awareness about the appropriate dispute resolution mechanisms, which are inefficient, lengthy, and costly, and offer no guarantee of adequate and timely compensation for the damage incurred;
- c) the absence of a centralised network to facilitate cooperation between the authorities responsible for monitoring complaints from traders.

2.6 The Commission estimates the financial damage caused by this type of activity at between EUR 1 000 and 5 000 per year for each company concerned.

3. Comments on the content of the Communication

3.1 Substantive aspects

3.1.1 As it has already stated in a previous opinion, the EESC acknowledges that marketing communications in general and

advertising in particular, in all its forms, play a major social and economic role, which has been well summarised by the International Advertising Association (IAA), whose viewpoint highlights in particular its role in disseminating innovation, encouraging creativity and entertainment, providing incentives for competition, and extending choice ⁽¹⁾.

3.1.1.1 It is clear that some advertising companies act improperly in the way they publicise their products and try to attract their customers. Nevertheless, it is important that the Commission to stress the fact that, although many complaints about misleading practices involve companies carrying out this type of activity, this does not mean that, even in the particular case of directory companies, it is not a legitimate activity which is essential to the economic life of the companies that use them to advertise their activities.

3.1.2 The EESC recognises the relevance and timeliness of this Communication even though it focuses mainly on problems arising from the way directory companies attract customers.

3.1.3 The EESC observes that the Commission is right to emphasise the cross-border nature of this problem and to want to guarantee not only adequate but also efficiently implemented rules and practices that can be monitored, supervised and subject to penalties.

3.1.4 The EESC regrets that the Communication was not preceded by a proper impact assessment. This would have provided more forceful arguments for the options proposed since its cost and benefits have not in fact been clearly identified or evaluated.

3.1.4.1 Furthermore, the impact assessment already announced by the Commission at its stakeholder meeting on 1 March 2013 is belated and, even if at this stage its reach and overall content are unknown, not sufficiently decisive to allow an informed choice.

3.1.5 Furthermore, not only from the pure perspective of legal interpretation but also in terms of more efficient and effective business protection, the EESC is uncertain that the issue at the heart of the Commission's concerns can in fact be framed in the directive the Commission proposes to review.

3.1.5.1 In fact, the practice under consideration is commercial communication in the wider sense; it is not advertising but an aggressive and fraudulent sales tactic, which has to be situated in the much wider context of unfair or abusive trading practices, and even of criminal law.

⁽¹⁾ OJ C 351, 15.11.2012, p. 6.

3.1.5.2 The concept of advertising effectively excludes from its scope any type of communication where the promotion of specific goods or services is not intended or inferred, including communications occurring in commercial relations that do not seek to supply new goods or services.

3.1.5.3 According to Directive 2005/29/EC, a commercial practice is to be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause them to take a transactional decision that they would not have taken otherwise. In other words, the definition of misleading practices is not restricted to the promotion of products, and can be extended to situations where the promotion of a product is not inferred and to communications occurring in commercial relations.

3.1.6 Furthermore, in its *Green Paper on unfair Trading Practices in the Business-To-Business Food and Non-Food Supply Chain in Europe* ⁽²⁾, the Commission rightly warns against the risk of conflict and overlap between multiple EU actions targeting the same groups and similar uncoordinated arrangements, generating further confusion during the transposition of legal acts by the Member States ⁽³⁾.

3.1.7 The EESC regrets that the European Commission has not yet held a discussion on the various options, and neither did it raise them during the public consultation, preferring instead to choose an option that could turn out to have fewer advantages for companies, especially SMEs. Since the Commission appears to have already decided which option it intends to adopt next October, as announced, it seems fairly pointless to present an impact assessment featuring five options, when the choice was a foregone conclusion from the start.

3.1.8 In view of the apparent urgency to take an immediate position on the central issue of directory companies, already displayed in earlier EP studies and resolutions, and the estimated magnitude and seriousness of these practices in economic terms at the European level ⁽⁴⁾, the EESC accepts that the Commission should immediately present a specific legislative proposal on this issue, in order to prevent situations where companies are besieged by constant threats of legal action

in foreign jurisdictions, with growing 'administrative costs' and constant quasi-threatening telephone calls from debt recovery companies.

3.1.8.1 Furthermore, it is not just SMEs but also professionals, NGOs, libraries, private educational establishments and even some public authority departments who have been the targets of these practices. This is why they must, where appropriate, be included in its scope by extending the concept of 'trader' to cover all those who could be targeted by these practices and who are not protected by other legislative instruments.

3.1.9 However, the EESC believes that a more coherent approach would have extended the concept of unfair commercial practices, in the form of misleading and aggressive practices, together with the black list annexed to Directive 2005/29/EC, to business-to-business relations.

3.1.10 Broadening the scope of this directive would have the added advantage of securing better harmonisation since Member States would not have to create new legal or legislative acts to transpose the directive, but only to extend the scope of pre-existing domestic laws on unfair commercial practices. This would have ensured that EU legislation was applied correctly ⁽⁵⁾.

3.1.11 Furthermore, a mere amendment to Directive 2006/114/EC, along the ambiguous lines suggested by the Commission, will not ensure protection for SMEs in the situations mentioned in the Communication. Apart from the fact that these practices are aggressive and not misleading actions, within the meaning of Directive 2005/29/EC, they stem from previously established commercial relations, and therefore cannot be included in the framework for advertising.

3.1.12 This is why, without prejudice to the point raised in 3.1.8, the EESC argues that the Commission will have to take steps in the near future to adopt a horizontal approach, promoting more consistency in the rules relating to competition law and intellectual and industrial property and ensuring more uniform protection for all commercial practices in the retail market and in all contractual relations between traders, in line with the EP resolution on a more efficient and fairer retail market.

⁽²⁾ COM(2013) 37 final.

⁽³⁾ We should also remember the problems that arose in relation to the transposition of Directive 2005/29/EC, which were recognised by the European Parliament (Cf. State of play of the Implementation of the provisions on advertising in the unfair commercial practices legislation, IP/A/IMCO/ST/2010-04, PE 440.288).

⁽⁴⁾ See data provided by the Netherlands Fraudehulpdesk.nl.

⁽⁵⁾ Moreover, in its resolution on unfair commercial practices and misleading advertising the European Parliament had already raised concerns that several Member States had created greater confusion for consumers and businesses by disaggregating the 'black list' contained in Annex I to Directive 2005/29/EC in transposing and implementing it in their legal systems.

3.1.13 The EESC therefore stresses the need for greater coordination between DG JUST, DG COMP, DG MARKT and DG ENTR with regard to the actions that need to be taken in this area and in future policy and legislative proposals in the follow up to the policy priorities set out in the Small Business Act.

3.1.14 Notwithstanding the foregoing and were the Commission to choose another option, the EESC highlights the need for the concept of 'most harmful' misleading marketing practices to be defined in concrete terms and to be specific in its content so that it is clear which commercial practices are deemed to warrant more protection than the rest.

3.1.15 The EESC would equally like the Commission to give a clearer indication of the situations to be added to the 'black list', the existence of which it fully endorses, since the list of categorically banned practices should be as precise and as exhaustive as possible. The Commission may already find enough material to prepare the black list in the replies to its investigation and the input of various stakeholders at the meeting held on 1 March 2013 ⁽⁶⁾.

3.1.16 In this case, the EESC would also like the Commission to consider whether it would be good idea to draw up a grey list of practices that might be illegal under specific circumstances to be assessed in court on a case-by-case basis.

3.1.17 Similarly, the EESC believes that in addition to mere listings, it will also be necessary to strengthen and clarify the meaning of misleading advertising or illegal comparative

advertising in a systematic approach in a broad legal framework that ensures that new unfair practices are covered by the revised legislation.

3.1.18 Notwithstanding the point made in 3.1.8, the EESC believes that the legal framework of Directive 2005/29/EC will have to be broadened in good time, mainly to ensure that current protection for consumers is extended and applied equally to some small and micro enterprises, under precise and rigorously defined conditions, when they are in comparable situations, as already happens in the legal systems of some Member States, and as associations and organisations representing these businesses quite rightly demand ⁽⁷⁾.

3.1.19 In fact, the EESC believes that these are two different aspects of a common situation and that we have every interest in revising Directive 2005/29/EC, in light of the recent assessment of this directive ⁽⁸⁾, simultaneously and in parallel with Directive 2006/114/EC since they are interconnected and complementary ⁽⁹⁾.

3.1.20 The nature of these practices and the dealings of offending companies demonstrate the need for a judicial instrument for collective group action, which guarantees efficient reactions and better protection for traders in the settlement of any disputes that could arise, not only to put a stop to these practices ⁽¹⁰⁾, but also to ensure adequate damage compensation.

⁽⁶⁾ Examples include:

- a) Online transaction practices whereby information about the transaction is not provided in the same manner to all concerned, resulting in discrimination against some of the parties.
- b) Online auctions and sales practices (eBay). It has become clear that in such situations it sometimes pays to register as a consumer because this offers a better set of guarantees.
- c) Practices involving the presentation of supposedly certified products that have no accreditation whatsoever.
- d) Practices whereby companies claiming to belong to a public authority make traders subscribe to a service or buy a product by misleading them into believing that they are complying with tax or safety regulations.
- e) Practices involving the transnational sale of goods without prior notice to buyers that after-sales services are not guaranteed outside the country of origin of the product.
- f) Practices involving the establishment of comparative websites mainly designed to convince traders to buy a product by presenting it as the most suited to their business profile. In reality, some of these comparative tools, especially in the financial sector, provide no information on the nature of the website or its financing model.
- g) 'Hidden' digital advertising practices which mainly involve consumers/businesses (usually in the pay of the company) posting answers on social networks encouraging traders to use that company.
- h) Practices involving the use of outdated or even non-existent comparative tests.
- i) Practices that presuppose a trader's implied consent to buy a product or subscribe to a service.

3.2 Formal aspects

3.2.1 The EESC believes that the Commission should clarify the legal basis for these measures at this stage and, more specifically, whether they are solely intended to support the completion of the internal market or for other purposes.

3.2.2 The EESC equally believes that the most appropriate legal instrument for achieving this would be a regulation, in order to ensure more legal certainty and effective harmonisation.

⁽⁷⁾ This corresponds to option 5 in the impact assessment under preparation.

⁽⁸⁾ COM(2013) 138 final, 14.3.2013.

⁽⁹⁾ Austria is one example of alignment between Directive 2006/114/EC and Directive 2005/29/EC since during transposition, the word 'consumer' was replaced with 'the target of commercial practices', thereby leaving no doubt that the provisions of Directive 2005/29/EC also applied to relations between traders (Cf. IP/A/IMCO/ST/2010-04, PE 440.288 referred to in footnote 3 above).

⁽¹⁰⁾ It is therefore essential to add the future legislative instrument to the list in Annex I to Directive 2005/29/EC.

4. Analysis of methodology

4.1 With regard to the proposed calendar, the EESC welcomes the steps set out by the Commission, namely the immediate establishment of a network of authorities to step up enforcement of the misleading and comparative advertising directive, and to share information.

4.2 The EESC also welcomes the establishment of an enforcement cooperation procedure, similar to the one foreseen in Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, thereby introducing both mutual assistance obligations between Member States in this area and measures to identify the enforcement authorities, without prejudice to options involving public-private platforms, such as occurs in the Netherlands, and the extension of cooperation to include stakeholder representative organisations.

4.3 As a result, the EESC suggests following practices in the area of consumer protection⁽¹¹⁾ and dispute settlement and setting up a European network to assist SMEs in the settlement of cross-border disputes by directing defrauded companies to the most appropriate legal mechanisms.

4.4 The EESC also believes that training, information and good practice sharing activities need to be established for all businesses to alert them to the inherent dangers.

4.5 Furthermore, and mindful of the fact that most misleading practices occur in a digital environment, the EESC

believes that it is necessary to promote a more assertive and appropriate approach to the protection of SMEs, bearing in mind the practices of intermediary internet providers and contractual relations arising from platforms such as eBay or platforms designed specifically for commercial transactions between traders.

4.6 The EESC would also add that the Commission will have to take the international dimension of these practices into consideration in the context of its representation to the OECD⁽¹²⁾. The EU and its Member States are encouraged to discuss with the OECD the extension of its *Guidelines for Protecting Consumers from Fraudulent Commercial Practices Across Borders* to include B2B.

The EESC suggests that EUROPOL sets up a research project concerning mass-marketing fraud in the EU: the dimension of the financial damages and the number of victims; the role of the biggest cross-border players and the possible investment of profits in other non-legal activities or ventures.

4.7 Lastly, the EESC draws attention to the need for the Commission to come forward with the financial package that is vital if the proposed measures are to be put into practice.

4.8 With regard to future work, the EESC would like to specifically mention its willingness to participate in this work through its representatives, believing that it can contribute the experience of its members, who are particularly well-qualified civil society representatives of the three interest groups represented within the EESC.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽¹¹⁾ http://ec.europa.eu/consumers/ecc/contact_en.htm

⁽¹²⁾ The international dimension is shown by the International Mass-Marketing Fraud Working Group (IMMFWG), an independent network consisting of law enforcement, regulatory, and consumer protection agencies from seven countries (Australia, Belgium, Canada, the Netherlands, Nigeria, the United Kingdom and the United States), as well as Europol. It seeks to facilitate the multi-national exchange of information and intelligence, the coordination of cross-border operations to detect, disrupt, and apprehend mass-marketing fraud, and the enhancement of public-awareness and public-education measures concerning international mass-marketing fraud schemes Cf. *Mass-marketing fraud: a threat assessment*, June 2010

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 the state of the customs union’

COM(2012) 791 final

(2013/C 271/12)

Rapporteur: **Mr SIMONS**

On 21 December 2012, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union (TFEU), on the

Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the state of the customs union

COM(2012) 791 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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 139 votes with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee concurs with the broad thrust of the Commission communication. The EESC supports a solid customs union that can make a useful contribution to competitiveness and the smooth operation of the internal market in the European Union.

1.2 The Committee calls on the Commission, when drawing up an action plan, to take full account of the research and the internal and external assessments of the workings of the customs union that have been carried out in the last three years.

1.3 The Committee attaches great value to a customs policy that is implemented on the basis of uniform, transparent, effective, efficient and simplified procedures, enabling the European Union to take on its global competitors and ensuring that the rights and security of industry and European consumers, as well as intellectual property, can be protected. This should not result in Member States’ hands being tied when it comes to implementing customs legislation, to ensure that they can continue to take into account the volume of their trade flows.

1.4 Given the considerable importance that the Commission communication attaches to facilitating trade, it is essential that customs services’ operating capacities can be tailored to national trade flows in particular with a view to improving efficiency in order to simplify business as much as possible; what would

therefore be beneficial for the future are a form of harmonisation based on ‘best practices’ and a systems-based approach to controls.

1.5 The Committee would have liked the communication to provide greater detail on practical short- and medium-term measures. It only sets out the priorities for 2013 and, for the following years, appropriately refers to the blueprint that is currently being prepared and is due to be published in 2014.

1.6 The Committee urges that particular attention be paid to the fact that investment is needed to enable customs services to tackle fraud and crime in a more cost-effective manner and also to reduce delays in trade flows.

2. Introduction

2.1 Part Three of the Treaty on the Functioning of the European Union (one of the Lisbon treaties, abbreviated to TFEU) on Union policies and internal actions, contains two relatively short articles drafted in very general terms (Articles 26 and 27 TFEU) on the internal market, which is defined as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties’.

2.2 Only in 1986, with the Single European Act, was this area included in the European treaties (Article 8A of the Treaty establishing the European Economic Community (EEC Treaty)), in which the single market was due to be completed by 1 January 1993. This is - regrettably - yet to happen.

2.3 Fortunately, matters have moved much more quickly and quite differently with the customs union, which is a necessary precursor and essential component of an internal market: following on from the successful example of Benelux cooperation, this was included in the original 1958 EEC Treaty (Treaty of Rome).

2.4 In some twenty very detailed articles, the Treaty set out the course of action and the required timescale for the introduction within fifteen years - the maximum duration laid down for the transitional period (Article 8(5)) - of a 'prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect' applicable to 'all trade in goods' and 'the adoption of a common customs tariff in their relations with third countries'.

2.5 These provisions are stated not only in the Treaty of Rome (Article 9 EEC Treaty) but also, more than fifty years later, in the Lisbon Treaty (Article 28, TFEU). All these provisions had been implemented already - abolition of customs duties at national borders in 1968 and then a range of customs rules and rules on origin, culminating in the Community Customs Code of 1992 and the Common Customs Tariff of 1987. And so, instead of building on the twenty detailed articles contained in the Rome Treaty, the Lisbon Treaty made do with three short articles on customs union (Articles 30-32 TFEU).

2.6 In addition to the legal bases referred to above, legal instruments in specific areas, including regulations on the enforcement of intellectual property rights, drug precursors, cultural assets, cash controls, market surveillance, and legislation protecting individuals and the environment, enable customs services in the European Union to enforce these rules.

2.7 As stated in Article 3 TFEU, customs union falls within the exclusive competence of the European Union, as defined in Article 2(1) TFEU. Responsibility for implementing customs legislation falls to the Member States (N.B. the single market is a competence shared between the European Union and its Member States, as stated in Article 2(2) TFEU).

2.8 The added value of customs union is illustrated in particular by the following figures from the European Commission: 17 % of world trade is handled by the European customs services, with a value of EUR 3 300 billion annually.

3. The Commission communication

3.1 On 21 December 2012, the Commission published its communication on the state of the customs union because, half-way through its term of office, the Commission wishes to

evaluate the current situation, which of its objectives have been achieved and what are the challenges for the future.

More specifically, the Commission states that the aim of issuing this communication is to:

- highlight the value added and fundamental importance of the services that the customs union provides as a foundation for growth, competitiveness and security of the Single Market and the European Union;
- acknowledge that the customs union is facing challenges that require a European response; and
- outline a course of action to counter these challenges and provide a more performing, robust and unified customs union by 2020.

3.2 Within these objectives, the Commission regards the communication as a starting point for a discussion on three important points:

- completing the modernisation started in 2003 by finalising and adopting the new Community customs code and the relevant delegated and implementing measures and by ensuring the targeted implementation thereof by the Member States;
- completing the gap analyses and identifying the priorities to be tackled. The Commission carried out an internal self-assessment in this area a few years ago and an external assessment will soon be published on the workings of the customs union;
- making changes to the governance structure, with a view to making the customs union more efficient and effective. The Commission plans to publish a blueprint for reform in this area by 2014.

3.3 The Commission calls on the Council and the European Parliament to:

- complete the modernisation of the customs union without delay;
- engage in dialogue with relevant stakeholders, taking account of the results of recent internal and external evaluations and gap analyses, to establish the priorities for the customs union;

— governance; reform the roles and responsibilities of Member States and the Commission regarding the overall operational management of the customs union. The next steps should involve a blueprint for the reform by 2014.

3.4 In its communication, the Commission observes that Member States are on their own no longer able to effectively address the challenges of increasing globalisation. It considers that globalisation calls for more European unity, which makes more integration essential.

4. General comments

4.1 The Committee welcomes the Commission's mid-term publication of this communication on the current state of the customs union. The Committee also stresses the great importance of this customs union for the EU, in particular for growth, competitiveness and the security of the internal market.

4.2 The EESC notes that the European Union faces both external and internal challenges, which it must address.

4.2.1 The external challenges include increasing trade flows, new and complex supply chains, changes in competitive pressure, a rise in crime, including fraud and terrorism, and the expectations of other enforcement agencies for which the customs services carry out tasks.

4.2.2 As regards internal challenges, the Committee notes the inefficiencies and shortcomings arising from differences in implementation by the 27 Member States, with each Member State for example developing its own IT systems, using different working methods and the considerable differences in levels of training, which prevents Member States from applying European legislation in a uniform manner. This situation is made worse by the ongoing economic crisis.

4.3 The Committee deems it essential that customs policy be implemented on the basis of uniform, transparent, effective, efficient and streamlined procedures, enabling the European Union to take on its global competitors and ensuring that the rights and security of European businesses and consumers and intellectual property can be protected.

4.4 The EESC has in a recent opinion⁽¹⁾ already made a recommendation on this matter and, given its importance, repeats this forcefully above.

4.5 The Committee also points out, just as emphatically, that this should not result in Member States' hands being tied when it comes to implementing customs policy, so that they can continue to take into account the volume of the relevant trade flows. In this connection, the Committee underlines that the Member States have stepped up measures to facilitate trade, moving to paperless formalities, simplifying procedures and implementing authorised operator status.

4.6 Harmonisation should therefore be based on 'best practices' and not on an average European level.

4.7 The Committee also deems it desirable, if the aim is to work in a cost-efficient, results-oriented manner (in financial terms too, with regard to revenues) and to make genuine progress, for controls to be carried out not on a transaction-by-transaction basis but under a systems-based approach underpinned by risk assessment.

4.8 Furthermore, in its conclusions, the Competitiveness Council of 10 and 11 December 2012 stressed the need 'to further promote uniform application of customs legislation and modern and harmonised approaches to customs controls while allowing, where appropriate and bearing in mind the implications for the operators and for Member States, flexibility for national solutions' ⁽²⁾.

4.9 The Council also stresses the need 'to enhance cooperation with other agencies both at the national and EU level in the areas of security, health, safety and the environment, as well as with international partners whilst respecting the division of competence between the EU and Member States in this area' ⁽³⁾.

4.10 The Committee also shares the Commission's view that the customs union can only progress if a mechanism is put in place to measure and assess its performance.

4.11 The Committee points out, however, that in addition to the stringent customs procedures, there may be other barriers, such as inadequate infrastructure at the EU's external borders, which prevents the smooth flow of goods. Because this issue also involves third countries, joint solutions should be sought initially.

⁽²⁾ Conclusions on the Progress on the Strategy for the Evolution of the Customs Union, 3208th Competitiveness Council meeting, Brussels, 10 and 11 December 2012.

⁽³⁾ Idem.

⁽¹⁾ OJ C 229, 31.7.2012, pp. 68-71.

5. Specific comments

5.1 The Committee is concerned to note the growing disparity between the constantly increasing workload and the continuous fall in the number of customs staff. Despite the fact that many tasks are now automated, the workload for customs officials is greater than ever. Much greater attention should be paid to this issue, in which basic and ongoing training also has an important role to play.

5.2 Ultimately, the Committee would envisage the creation of a European customs training college, to bring customs officers from the Member States up to the necessary and desired level.

5.3 The EESC considers supply chain security and risk management to be of key importance to the customs union. A Committee opinion will also soon be available on the relevant Commission communication, which was published recently (COM(2012) 793 final; INT/681, rapporteur: Mr Pezzini).

5.4 Similarly, the Committee looks forward to seeing the Commission's proposals for tackling the problems arising from the different approaches to infringement of EU customs legislation and the application of sanctions, even if only on the grounds of equal treatment. It should be borne in mind that for Member States, amending national sanction arrangements within their own customs and criminal law is a sensitive matter.

5.5 As a first step, the Committee suggests the closer approximation of types of offences, as already applies to road transport ⁽⁴⁾.

5.6 The Committee welcomes the Commission proposal for a set of standard procedures to be included in future laws to facilitate the enforcement by customs of laws imposing prohibitions and restrictions on imported and exported goods.

5.7 The Committee would have liked the Commission communication to be more specific about the impact of its proposals in terms of the regulatory and administrative burden.

5.8 Better performance of customs tasks is crucial. Cooperation between customs administrations should therefore be stepped up, staff given greater powers and genuine European strategies designed to combat fraud. Some situations can be envisaged in which it might also be desirable for certain tasks and activities to shift from each individual Member State to common institutions, either linked to the Commission or run by the Member States jointly, if, for example, major financial savings can thereby be made and/or if customs tasks can be made easier to carry out.

5.9 The Committee would also have expected to see more background information in the communication. Regrettably no such information is provided, which makes it difficult to evaluate the communication properly. Fortunately, as stated explicitly by the Commission representatives, the upcoming legislative proposals will be accompanied by an impact assessment.

5.10 The Committee shares the Commission's concern that the limits of efficiency and effectiveness have been reached with the current governance of the customs union, specifically the common processes. It believes that customs services must have a modern and efficient governance system if their work is to remain effective and cost-efficient.

5.11 The Committee notes, furthermore, that even in the current economic crisis, customs services must be provided with sufficient financial resources, to upgrade IT systems, for example, to enable them to combat fraud and crime effectively.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽⁴⁾ Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC.

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 — Action Plan: European company law and corporate governance — A modern legal framework for more engaged shareholders and sustainable companies’

COM(2012) 740 final

(2013/C 271/13)

Rapporteur: **Mr DE LAMAZE**

On 19 February 2013, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies

COM(2012) 740 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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May 2013), the European Economic and Social Committee adopted the following opinion by 135 votes to 1 with 11 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the main points of this action plan on corporate governance.

1.2 The EESC would warn against the risk of increasing the legislative burden of conformity for companies listed on stock exchanges and would point out that an open financial market is crucial to companies. A just balance between legislative measures and a ‘soft law’ approach – recommendations and governance codes – will depend on the detail of the implementation of each initiative presented.

1.3 In particular, with regard to the innovative measure of requiring companies to be transparent regarding their remuneration policy, the EESC hopes that the Commission will establish reasonable requirements in order not to jeopardise companies’ development through an increase in their operating costs. It would draw attention to the fact that these new rules should take account of the need to preserve ‘business confidentiality’.

1.4 On the crucial issue of a shareholders’ vote on remuneration policy, the EESC believes that, in the quest for European harmonisation, anything more than an advisory vote would call into question the very foundation of company law.

1.5 In the context of the planned impact assessment, the EESC would urge the Commission to examine rigorously the justification for each initiative in the specific case of SMEs.

1.6 Alongside the initiatives proposed, the EESC believes that, with a view to effective company operations, particularly during a crisis, the need for increased involvement by employees should have been stressed.

1.7 The EESC also calls for the training of administrators to be strengthened and believes that the exchange of good practices in the field should be promoted.

1.8 In relation to company law, the EESC considers that priority should be given to the European Private Company and to measures to facilitate transfers of seats of companies within the EU. In both cases, the involvement of employees should be guaranteed and strengthened, especially via the specific consultation of the social partners provided for in the EU treaties.

1.9 The EESC is not in favour of recognising the concept of ‘group interest’, which would ultimately jeopardise the principle of the independence of legal persons within a group of companies, particularly when those persons are not European. It is also worried by an approach which might see a subsidiary’s interests sacrificed in favour of the interests of the group.

2. Gist of the Communication

2.1 Following on from its communication on 'Europe 2020', in which the Commission called for an improvement in the business environment in Europe, this action plan proposes initiatives aimed at consolidating the EU's corporate governance framework, involving two lines of action:

- through enhanced transparency both for shareholders and society at large and for the company: disclosure of policy on the diversity of management and supervisory boards and on the management of non-financial risk (strategic, operational and conformity risks etc.); improving the quality of explanations to be provided by companies that depart from the recommendations of governance codes; disclosure of voting policies of institutional investors, shareholder identification;
- through better engagement of shareholders: oversight of remuneration policy; better shareholder oversight of related party transactions; regulating proxy advisors; clarification of the concept of 'acting in concert'; encouraging employee share ownership.

2.2 In parallel, various initiatives are proposed in the field of company law, which by definition concern, as well as companies listed on a stock exchange, all public limited liability companies: facilitating cross-border operations (cross-border mergers and divisions and, possibly, transfers of seat), examining the follow-up to the proposed statute for the European Private Company (SPE), information campaign on the statutes for the European Company (SE) and European Cooperative Society (SCE), targeted measures for groups of companies (recognition of the concept of 'group interest'), codification of EU company law. All of these initiatives will be subject to ex ante impact assessments and may be modified as a result.

3. General comments

3.1 Generally speaking, the EESC welcomes the measures proposed in this action plan which, in terms of corporate governance, consolidates the current framework rather than thoroughly over-hauling it, with some exceptions (see below).

3.2 The action plan appears to seek a certain balance between legislative measures and a 'soft law' approach - recommendations and governance codes. The EESC notes that any additional obligation in terms of transparency, particularly in

relation to remuneration policy, will have an impact on companies' operating costs.

3.3 The EESC regrets that, while the action plan seeks to increase the involvement of shareholders, it does not seek to equally enhance that of employees, the importance of which the Committee had stressed in its response to the 2011 green paper⁽¹⁾. The EESC would point out that it is acknowledged in EU law that employee participation in decision-making processes contributes to sustainable development and company performance.

3.4 Beyond this action plan, it recognises that the precise nature and content of this notion of employee participation should be stipulated with reference to the bases of company law, which might be modified⁽²⁾. The EESC favours a multi-stakeholder approach, since this is consistent with the challenges facing companies seeking long-term development and with a commitment to their workers and environment. This kind of approach entails effective social dialogue and a climate of trust founded on clear rules on information, consultation and participation where these exist. In this connection, the EESC would like to encourage the exploration of new pathways, such as the sustainable company concept⁽³⁾.

3.5 Consistent with its response to the 2011 green paper, the EESC would also point out that good corporate governance also depends on the competences – legal and financial – of the members of the management board. It would stress the need to adapt the latter's training to the type of company and, especially, its size and would encourage all initiatives aimed at promoting the exchange of good practice in this area. The EESC believes it would be useful if the Commission were to draft a recommendation on this aspect. For the sake of transparency and legal certainty, especially for SMEs and their employees, measures to complete European company law must avoid any 'régime shopping' that enables the registration of European companies from scratch or the separation of a company's central administration and its registered office.

3.6 Corporate governance

3.6.1 The EESC has pointed out previously that the main objective of corporate governance is to ensure that the company survives and thrives⁽⁴⁾ by establishing the conditions for trust between the various actors⁽⁵⁾. As in the case of European company law, initiatives on governance should help to facilitate the lives and operation of companies and contribute to their competitiveness.

⁽¹⁾ OJ C 24, 28.1.2012, p. 91.

⁽²⁾ Company law is based, in fact, solely on relations between shareholders, management board and executives.

⁽³⁾ OJ C 161, 6.6.2013, p. 35.

⁽⁴⁾ See EESC Opinion, OJ C 84, 17.3.2011, p. 13.

⁽⁵⁾ Management, worker representatives, investors and local authorities.

3.6.2 In view of the fall noted in the number of listings on stock exchanges and the growing number of companies delisting, the EESC would point out that it is crucial for companies, and SMEs in particular, to have access to the financial market. The current funding difficulties faced by many of them are slowing their development considerably. In order to ensure an open financial market, the EESC considers it crucial to not increase the already very significant constraints relating to corporate governance for companies listed on stock exchanges, particularly SMEs, otherwise access to listing will be discouraged even further. It would also highlight the risk of an increasingly unlevel playing field between listed companies and non-listed companies, since the latter are not subject to the same transparency obligations as the former, but are the main beneficiaries of the information disclosed by those listed companies.

3.6.3 The EESC regrets that the concern expressed by the Commission to take account of the special characteristics of SMEs – in terms of both size and shareholder structure – is only reflected in very general terms and is not broken down and specified for each of the initiatives proposed.

3.6.4 In this regard, the EESC would stress the need to amend the European definition of the SME to take better account of the characteristics of ‘small’ and ‘medium’ enterprises.

3.6.5 Rather than taking a regulatory approach, the EESC would recommend, where possible, an approach laying down principles which the Member States can then adapt in the best way possible according to their national circumstances. Back in 2003 ⁽⁶⁾, the Commission pointed out that national corporate governance codes showed a remarkable degree of convergence. The EESC is pleased to note that the Commission appears to have adopted just such an approach in relation to the essential points of this action plan, in particular improving the explanations to be provided by companies departing from codes.

3.6.6 With regard to the general objective of transparency, the EESC supports the Commission's initiatives aimed at laying down rules at EU level which are currently in place in certain Member States, in particular those that promote companies' long-term performance. The difficulty appears to lie in finding a balance between legitimate transparency requirements and the need to not hinder their growth by imposing an excessive administrative burden and through the disclosure of information which is sensitive in terms of competition.

3.6.7 Believing that the ‘comply or explain’ requirement is the cornerstone of the principles of governance, the EESC agrees that a more rigorous implementation is needed. It welcomes the Commission's initiative in this regard.

3.6.8 The EESC notes the Commission's desire to enhance the role of shareholders, with a view to striking a satisfactory balance between the different stakeholders. It is conscious of the fact that, along with the rights proposed to increase the engagement of shareholders, there are also obligations for those shareholders.

3.6.9 Since it is therefore necessary to promote dialogue between shareholders and issuers, the EESC attaches particular importance to the initiative aimed at encouraging companies to get to know their shareholders, which is an essential prerequisite. The future European instrument in this field should take account of the differences in legislation on personal data protection.

3.6.10 The EESC also supports the proposal to oblige institutional investors to disclose their voting and engagement policies, and in particular their investment plans at companies in which they acquire a share.

3.6.11 On the crucial issue of a shareholders' vote on remuneration policy and the report on remunerations, the EESC believes that the quest for European harmonisation should not involve anything more than an advisory vote.

3.7 *Company law*

3.7.1 The EESC would prioritise the various initiatives in the action plan in a different order to that proposed by the Commission.

3.7.2 Unlike the Commission, the EESC believes it is important to pursue work on the SPE and to seek a solution that meets consensus.

3.7.3 The EESC also considers it a priority to facilitate transfers of seats of companies within the EU and that the initiative that it is calling for should also continue to guarantee and strengthen the conditions needed to actively involve employees.

⁽⁶⁾ See Communication Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward, COM(2003) 284 final.

4. Specific comments

4.1 Corporate governance

4.1.1 The EESC agrees that companies need to improve the quality of the explanations they are required to provide when they depart from governance codes. These explanations sometimes appear to be a purely rhetorical exercise, when in fact they should be properly justified and should mention, where relevant, any alternative solution applied.

4.1.2 The EESC welcomes the fact that the Commission is leaving responsibility for stipulating the methods for improving governance practice statements to Member States and national codes.

4.1.3 As the EESC has previously pointed out ⁽⁷⁾, the quality of explanations to be provided by the company above all protects that company's interests, and it is penalised by the market if explanations are insufficient.

4.1.4 Should the Commission wish the quality of information on governance communicated to the market to be controlled – or certified – the EESC would point out that it is not in favour of a binding approach in this area. Furthermore, it would point to the technical difficulties facing such a project, which, like the directive on statutory audits establishing an audit committee, would mean setting uniform criteria at EU level applicable to all companies.

4.1.5 The measure that could add most significantly to the administrative burden for companies is the measure on transparency requirements for remuneration policies and on the details of individual remuneration of directors, currently based on various recommendations and national governance codes, and for which the Commission's action plan proposes a binding instrument at EU level. The EESC could accept such a measure provided that its implementation does not significantly increase the legislative burden for companies, which should be rigorously examined in the prior impact assessment. The EESC also warns of the risk that divulging criteria governing variable components of remuneration for executives could endanger 'business confidentiality'. As well as the actual amounts paid, the EESC would stress the importance of providing shareholders with clear and complete information on how those amounts are calculated and the criteria used to determine them.

4.1.6 One of the points which raises the most difficulties in the EESC's view is the idea of granting shareholders the right to vote on the remuneration policy and the remuneration report, and it would call for particular care to be taken regarding the arrangements for such votes. The EESC would point out that the Commission is somewhat vague regarding this issue and does not stipulate whether this vote would be of an advisory or a binding nature.

4.1.7 As well as the legal and technical difficulties of implementation, a binding vote would mean a transfer of powers from the board to the shareholders. The EESC cannot support such an approach, which would profoundly alter company law, although each Member State should, it believes, be able to decide whether the vote is advisory or binding.

4.1.8 The EESC has given its opinion on this issue previously, in favour of a vote but stating that the motion on remuneration policy proposed to shareholders at their general meeting must be discussed and approved beforehand by the whole board, as is already the case in Germany ⁽⁸⁾.

4.1.9 Regarding the variable portion of remuneration for executive directors, the EESC would point out that the approval by shareholders at the general meeting must relate to the system and rules applied (predetermined and measurable performance criteria), as well as the amount itself, as paid in accordance with those rules ⁽⁹⁾.

4.1.10 With regard to the activity of proxy advisors, the EESC acknowledges that stricter rules are needed. In particular, it recommends that they be subject to the following obligations: to disclose their voting policy (with reasons for their recommendations); to present their draft analysis report to the company before communicating it to investors (so that the company can put forward its observations); to declare any conflicts of interest liable to affect their activities, in particular any links they may have with the company and shareholders, and to state the measures they take to prevent such conflicts.

⁽⁷⁾ See EESC Opinion, OJ C 24, 28.1.2012, p. 91.

⁽⁸⁾ See EESC Opinion, OJ C 24, 28.1.2012, p. 91.

⁽⁹⁾ In accordance with the Commission's recommendation of 2004.

4.2 Company law

4.2.1 The EESC thinks it important to make progress on the SPE project, the final form of which must be compliant with the Treaty and with company law in force. Beyond the harmonisation of national legislations, a uniform instrument such as the SPE would, it believes, have a substantial leverage effect in boosting crossborder operations by SMEs. The active involvement of employees in the SPE, following the same rules as those for SEs and SCEs, is a requirement which the EESC believes cannot be called into question without undermining the project and is an essential condition for the agreement which the EESC would like to see.

4.2.2 Similarly, on the issue of EU rules to facilitate the transfer of seats of companies between Member States, the EESC would have liked to see more conviction on the part of the Commission, which itself acknowledges that there is a real need in this area. The initiative in this field that it is calling for should continue to guarantee and strengthen the conditions needed to involve employees. Employees must be informed about and consulted on the proposed transfer, in line with Article 4 of Directive 2002/14/EC and the directive on European works councils.

4.2.3 On the other hand, the EESC is very wary of any EU initiative moving towards the recognition of the concept of

'group interest', which is bound eventually to jeopardise the principle of the independence of legal persons within a group of companies, particularly when those persons are not European. Notwithstanding the Commission's cautious and reasonable position, it is also worried by an approach which might see a subsidiary's interests sacrificed in favour of the interests of the group. In any event, if the Commission is to maintain this approach, work first needs to be done on a common EU-level legal definition of the concept of 'group of companies', which is a particularly delicate and arduous task given the diversity of definitions amongst the Member States.

4.2.4 Given the breadth of the action plan, the EESC does not consider it a priority to codify EU company law by the end of the year, since that is something which, by definition, is a very time-consuming process.

4.2.5 Furthermore, the EESC doubts whether this could be done on the basis of established law, particularly as the Commission calls for the unintended legal gaps and overlaps of directives to be remedied.

4.2.6 The EESC would point out finally that this would be a difficult task, since the directives in question, which contain a variety of options, have for the most part already been transposed into national legislations.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

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 — Entrepreneurship “2020 Action Plan” — Reigniting the entrepreneurial spirit in Europe’

COM(2012) 795 final

(2013/C 271/14)

Rapporteur: **Gonçalo LOBO XAVIER**

Co-rapporteur: **Ronny LANNOO**

On 18 March 2013 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 - Entrepreneurship 2020 Action Plan

Reigniting the entrepreneurial spirit in Europe

COM(2012) 795 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 29 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 61 votes to 8 with 13 abstentions.

1. Conclusions and recommendations

1.1 Europe is facing huge challenges and all the Member States must use their critical abilities to contribute to solving the problems which the economic and financial crisis has brought to light. One of the most serious problems, unemployment, whatever the type and irrespective of the groups in society affected, requires the joint and concerted effort of all Member States, which must be organised into a common strategy, to be applied differently according to each country's characteristics and capabilities.

1.2 This is the context in which the Commission is putting forward the Entrepreneurship 2020 Action Plan as a way to promote an entrepreneurial and innovation culture that will enable its economies to recover and create a truly 'entrepreneurial spirit in Europe', with the capacity to inspire society to achieve objectives that concern everyone.

1.3 This opinion analyses the added value of developing the 'action plan' as a realistic undertaking in order to unleash entrepreneurship and enterprise as a truly European solution to help overcome the crisis, focused on investment in specific actions and structured short-, medium- and long-term policies that are effective enough to change the current situation by strengthening and promoting an entrepreneurial attitude which will serve society as a spur to innovation and economic growth. This entrepreneurial policy must stimulate the creation of all forms of enterprise. The emergence of freelance and craft businesses, the professions, family businesses

and cooperatives or social enterprises should also be encouraged.

1.4 The EESC believes that society should not look upon entrepreneurship as a cure-all, but rather as an aid to the behaviour change required to develop a culture of innovation, to the search for knowledge and business opportunities, with a view to achieving sustainable economic growth and social well-being in all forms of enterprise.

1.5 The EESC is concerned that the Multiannual Financial Framework (MFF) approved by the European Council will undermine the implementation of the Entrepreneurship 2020 Action Plan, which will end up as little more than a financially unsustainable set of good intentions.

1.6 The EESC warns and urges the European Parliament to reflect on the need to allocate the necessary resources to ensure the substantial and sustainable implementation of the plan and recalls the important role that the Structural Funds can play in this context.

1.7 The EESC reiterates the need to give the various stakeholders on the ground the means to disseminate and promote best practices in entrepreneurship, irrespective of their origin (public or private) or area of activity.

1.8 The EESC calls for the Commission and Member States to implement the action plan in close cooperation with the various SME representative organisations, given their range and importance in Europe.

1.9 The EESC agrees that policies promoting entrepreneurship have to be coordinated with education policies by involving teachers and starting to expose children to the concept from their first years at school. The EESC also calls for these actions to be coordinated at both national and European levels, in order to ensure the harmonious implementation of the proposed actions.

1.10 The EESC believes that the Commission should declare one of the two coming years to be the 'European Year of Entrepreneurship', along the lines of other similar campaigns, promoting joint initiatives and thus giving a boost to the notion of 'European entrepreneurship'. This suggestion is without prejudice to holding an EU Entrepreneurship Day, as mentioned in the proposal.

1.11 The EESC calls on the Commission to establish a fourth area for intervention to strengthen the mentoring, coaching and support activities provided for enterprises, especially the smallest businesses, through intermediary organisations.

1.12 The EESC urges the Commission, the European Parliament and the Council to tap into the experience of many Member States to develop and establish support systems for older people who want to begin self-employed work during their retirement and to simplify the framework for their activities.

2. The Commission proposal

2.1 The EESC believes that the three areas for immediate intervention, which are designed to contribute to the sustained development of an entrepreneurial spirit and entrepreneurship in Europe, are appropriate but need to be supported by specific measures, applied locally in a 'European' outlook, and oriented towards global markets. Notwithstanding their conceptual appropriateness, the EESC urges the Commission to ensure the financial sustainability of the actions to be developed.

The areas for immediate intervention are well-defined:

- (a) developing entrepreneurial education and training to support growth and business creation;
- (b) strengthening framework conditions for entrepreneurs by removing existing structural barriers and supporting them in crucial phases of the business lifecycle, without forgetting the importance of funding in the process;
- (c) promoting a culture of entrepreneurship in Europe and nurturing a new generation of entrepreneurs.

In other words, taking action to prepare and train people, creating the right conditions for entrepreneurship and promoting the concept on the basis of conditions created in the meantime.

The EESC reiterates that the concept is well-defined and therefore requires the Member States' joint commitment and clarification regarding the plan's financial sustainability.

3. General comments

3.1 Entrepreneurship in itself is a concept that has already been identified and acknowledged as a factor that sets developed societies apart and that should be a positive feature of an organised society ⁽¹⁾.

3.2 European society's approach to entrepreneurship can be changed by disseminating existing good practices and successful examples, together with basic concepts associated with the culture of entrepreneurship, while keeping in mind the fact that the investment to be made must focus on making the most of Europe's great wealth of human capital. The resources of the MFF must reflect this need to promote and disseminate existing best practices among SME representative organisations in the Member States.

3.3 The required behaviour change includes important ideas that are not given the prominence they deserve in the document. Examples of this include intellectual property and copyright. The EESC therefore calls on the Commission to include these concepts, which are crucial for achieving the document's overall aims ⁽²⁾, in the design of the programmed actions to be developed. The EESC calls for the Commission and Member States to take a firm line on this in the world trade bodies governing these areas.

3.4 Despite the document's good intentions, it is rather vague as regards the method of implementing and monitoring the policies that the Member States are to promote. The EESC believes that account must be taken of the fact that many of these policies will only be effective if the Member States play an active part in the process of cultural change, something it considers difficult in the current economic climate without recourse to funds from European programmes. The EESC therefore emphasises that the action plan's implementation will be all the more efficient if the various representatives of SMEs are involved, which will secure the participation of the parties concerned in addressing the issues in question and bringing about the required behaviour change.

⁽¹⁾ OJ C 48, 15.2.2011, p. 45.

⁽²⁾ OJ C 68, 6.3.2012, p. 28. 'Intellectual Property Rights (IPR) must persevere in their traditional role of driving innovation and growth.'

3.5 The EESC is therefore concerned about the absence of a specific budget for implementing the action plan and wonders how effective it can be without a workable budget that matches up to the proposals outlined. The EESC reiterates that the Structural Funds can play a key role in the system and therefore urges the Commission and Member States to make appropriate use of these funds in order to promote entrepreneurship in the next EU reference framework. The monitoring and assessment of the actions should be taken into consideration in the application of the Structural Funds.

3.6 The EESC believes that the Commission should declare one of the two coming years to be the 'European Year of Entrepreneurship', along the lines of other similar campaigns, promoting relevant joint initiatives and thus giving a boost to the concept of 'European entrepreneurship'.

3.7 The EESC welcomes the Commission's efforts to encourage the elimination of the red tape involved in creating and developing businesses, and calls on the Member States to adopt common measures to protect the European market against unfair competition from other countries or areas of the world.

3.8 The EESC points out that the Member States should, as part of their entrepreneurship promotion programmes, put in place specific arrangements under their social security systems that give entrepreneurs the same type of protection as other workers, thus increasing the protection of those for whom 'risk' is the key to the success of their projects.

3.9 The EESC calls for the establishment of a virtual, but readily available, team of 'entrepreneurship ambassadors', using real success stories to help improve the image of entrepreneurs and businesspeople and, as a consequence, society's perceptions in these areas. These teams would be used to disseminate the values of entrepreneurship and promote common initiatives. The Commission has already taken an initial step in this direction by publishing the *Secret of Success* brochure each year during European SME Week, which features entrepreneur ambassadors in Member States. The *Start-up Europe* initiative in the context of the Digital Agenda has the same aim.

4. Specific comments

4.1 *Promoting entrepreneurship and entrepreneurship education*

4.1.1 The EESC agrees and emphasises that it is vital to invest in entrepreneurship promotion and education in order to achieve the proposed culture change objectives needed in society. The EESC believes that this promotion must begin during early schooling.

The EESC nevertheless points out that the concept of entrepreneurship is present in various sectors of society and at different stages in people's lives. It is this overarching concept of entrepreneurship which should be promoted. Civil society is normally an incubator for social entrepreneurship, which is crucial to the development of the general concept of entrepreneurship. The EESC calls for this concept to be recognised and supported.

4.1.2 There is a substantial body of good practices in all Member States, which could and should be disseminated and applied according to the characteristics and needs of each country. If these initiatives are promoted and disseminated in the right way, it could help to create an environment that boosts perceptions of the importance of entrepreneurship and business enterprise. It will be important for the MFF to have enough funds to enable the authorities and SME representatives to disseminate and promote these good practices.

4.1.3 The EESC welcomes the idea of promoting good practices in these areas but draws attention to the need never to lose sight of the specific characteristics of each Member State, adapting measures to the specific features of each country.

4.1.4 The EESC points out that the Enterprise Europe Network (EEN) already has capabilities which it could channel into holding promotion and information activities on the action plan for Member States. In order to carry out this work, the EEN would have to collaborate with organisations involved in promoting entrepreneurialism, especially those that have ties with SMEs. It should be remembered that the EEN is not equally active in all countries.

4.2 *Promoting a culture of entrepreneurship*

4.2.1 The EESC endorses policies to encourage society to embrace entrepreneurship by using models and case studies of proven success. Society tends to emulate good examples and this is an effective way to give certain target groups a positive image of entrepreneurship and greater self-confidence.

4.2.2 As already mentioned, it is, however, absolutely necessary to foster a culture of entrepreneurship in young people at a very early age. There is a cause-effect relationship within target groups that fosters entrepreneurship and innovation. Young people are motivated to respond well to encouragement from the promotion of a culture and environment that enables them to take responsibility for 'creating something' themselves and are enthusiastic about achievements that are truly their own. The earlier young people get involved in projects in which they can learn to be entrepreneurs in a

practical way and act as good examples of the culture of entrepreneurship and of cooperation between individuals who share common goals and values, the better future results will be. This is why teachers play a key role in behaviour change and why the EESC supports initiatives that help them to promote the concept. F1 in Schools ⁽³⁾ is a good example of a programme that encourages entrepreneurship and involves teachers. The EESC also recalls the conclusions of the report on Entrepreneurship Education at School in Europe, which gives an overview of the different strategies used in Europe to promote entrepreneurship education ⁽⁴⁾.

4.2.3 The EESC emphasises that there is no standard culture of entrepreneurship, only a range of cultures that vary according to the size, nature and sector of activity. Promotion activities should concern all types of enterprise and avoid adopting a one-size-fits-all model. They should also target the partners of enterprise, namely banks, public authorities and the media, in order to ensure that these cultural differences are taken into account in the information they provide and the policies they choose.

4.2.4 The EESC would like to stress and recommend to the EU institutions and Member States the need to protect and preserve the diversity of the various forms of enterprise currently in existence so that the Single Market and the European social model might achieve their full potential value. For all forms of enterprise reflect an aspect of European history and each is a bearer of our collective memory and of our various enterprise cultures ⁽⁵⁾. In addition, for the purposes of providing comprehensive training and promoting European entrepreneurship, the diversity and plurality of business set-ups needs to be clarified and assessed within a European Action Plan.

4.3 Promoting a business-friendly environment

4.3.1 The need for all quarters of society to realise that business creation is the outcome of the efforts of a community that recognises, appreciates and is receptive to the added value generated by entrepreneurs and business people would seem obvious. In the current economic situation, it is all the more essential for everyone to see their role in a positive light.

4.3.2 In addition to the appropriate promotion of a business culture, genuinely sustainable and stable conditions, especially in terms of legislation, also need to be created for those who wish to invest in and take the risk of developing an idea, concept or business.

4.3.3 The EESC would again make it clear that while it is indeed essential to promote the creation of new enterprises or to facilitate the transfer of those under threat of closure or bankruptcy, it is just as essential to support existing businesses. Between start-up and closure there is the entire life-cycle of an enterprise, requiring specific policies combining better regulation in order to generate sustainable jobs and economic activity, innovation and competitiveness within the single market and as part of the globalised economy.

4.3.4 Member States must at last complete the positive harmonisation of conditions in order to create ideal conditions for developing businesses and business and social activities, taking the wide variety of business structures into account. Once again, successful examples, such as the various types of collective ownership of the shares of businesses, or the setting-up of cooperatives, could act as a guide to the changes that the Member States should encourage ⁽⁶⁾.

4.3.5 The EESC advocates clearer and harmonised information in all Member States on the conditions for starting businesses since level playing fields encourage entrepreneurialism. Access should also be given to support services taking account of the different types of enterprise.

4.3.6 The EESC agrees that funding is a European issue, which all Member States must approach with care. Liquidity is in short supply, and it is small-scale entrepreneurs hoping to start a project who suffer most in this situation. This is why it is imperative to strengthen financial support tools for this type of initiative, such as mutual guarantee or subsidised credit lines. Such schemes are essential for small-scale entrepreneurs, who do not get loans from so-called traditional markets ⁽⁷⁾.

4.3.7 The EESC therefore endorses enhanced support instruments for innovative projects and projects where the degree of risk is directly proportionate to the degree of innovation involved. The decision to step up financial support for testing, demonstrating and piloting new technologies thus also seems appropriate, given its multiplier effect.

4.3.8 In these particularly complex times for businesses, the EESC endorses the policy to make business transfers easier since these operations should be seen as opportunities to support the recovery of economic sectors liable to boost the labour market.

⁽³⁾ <http://www.f1inschools.com>

⁽⁴⁾ http://eacea.ec.europa.eu/education/Eurydice/documents/thematic_reports/135EN.pdf

⁽⁵⁾ OJ C 318, 23.12.2009, p. 22.

⁽⁶⁾ OJ C 191, 29.6.2012, p. 24.

⁽⁷⁾ OJ C 181, 21.6.2012, p. 125 and OJ C 351, 15.11.2012, p. 45.

4.3.9 In this respect, the quality of legislation applied in the context of the internal market is also important. Member States have a lot of work ahead of them but there can be no turning back.

4.4 The stigma surrounding 'failure' must be eradicated. Failure must not be the 'end of the road'. If lessons are learnt, it can and should be seen as a growth phase.

4.4.1 Much is said about 'American' and 'Anglo-Saxon' attitudes to 'failure' and 'second chances'. The EESC agrees that society at large must make an effort to see entrepreneurs in a different light with respect to their resilience to initial failure. The EESC therefore draws attention to the need to develop mechanisms to help enterprising people who wish to develop something innovative to persevere in their choices. Failing at the first attempt should be viewed, particularly by the financial system, as an opportunity to improve and gain skills for future entrepreneurial projects, not as the 'end of the road'. The EESC also believes that it can be counter-productive to take the promotion of one particular culture too far and that good sense and balance should prevail.

4.5 *Stepping up support for SMEs and other representatives*

4.5.1 The EESC agrees that rules for businesses must be simple and clear to anyone wishing to play an active part in their creation and development. The EESC supports the Commission's and the Member States' efforts to reduce the red tape involved in starting and modernising businesses. Setting up a business, whether in the industrial, service or technological sector, should be straightforward and quick, but adequately supported to avoid exaggerations or misunderstandings for entrepreneurs as well as for the regulatory authorities.

4.5.2 The EESC supports the Commission's suggestion to set up a working group to assess the specific needs of entrepreneurs from the liberal professions in relation to issues such as cutting red tape, internationalisation or access to finance. The EESC recalls that the subsidiarity principle and the specific role of the liberal professions in many Member States should be taken into account in order to encourage the development of a 'European Charter for the liberal professions' similar to the 'European Charter for Small Enterprises'.

4.5.3 The EESC agrees that business advisory and support services are required, but draws attention to the need to create multi-disciplinary teams with an understanding of the market and its specific features. It therefore points to the possi-

bility of tapping into the experience of retired and experienced entrepreneurs who are willing to help by passing on their expertise to 'new' entrepreneurs, making meaningful inter-generational dialogue possible. To that end, the EESC considers it important that such activities should not be simply voluntary, but supported by incentives making it possible for mentors and entrepreneurs to share the benefits of creating generated value. This is also a good way to integrate people who can still contribute to society but who are no longer fully active in the labour market.

4.5.4 Cooperation networks between SMEs should be encouraged as they give a significant boost to SME viability thanks to economies of scale (sharing costs for marketing, collective purchasing or other joint services, cooperation between businesses producing complementary goods or services, opportunities to innovate and globalise).

4.5.5 In addition to efforts to remove red tape and support new entrepreneurs, the EESC stresses the vital role that business organisations play in coaching and mentoring. Without these activities, SMEs, and microenterprises in particular, cannot single-handedly access EU funding, innovate, develop their competitiveness and apply priority measures under the Europe 2020 Strategy, even though they are directly concerned. The EESC regrets that the action plan does not mention the need to strengthen the coaching and mentoring activities of business organisations. The EESC calls for the establishment of a fourth area for intervention to strengthen these actions through support for intermediary organisations. These actions should target the smallest enterprises in particular.

4.6 *Support for specific groups*

4.6.1 The EESC supports efforts specifically geared to encouraging sectors of society that are playing an increasingly important part in joint efforts to accomplish objectives of this type.

4.6.2 The EESC supports policies to encourage the groups mentioned in the action plan (jobseekers, women, older people, young people, people with disabilities and migrants) to take an interest in business issues, creating businesses and value for society. If these groups promoted and disseminated existing good practices, it could facilitate a more comprehensive approach and the implementation of appropriate policies. The EESC shares the view that these groups have the potential to mobilise society in these areas and supports policies to nurture their entrepreneurial values and innovation capacity so as to encourage them to take part in this European challenge.

4.6.3 In particular, the EESC draws the attention of the EU institutions to a growing tendency for people in retirement to start or return to self-employment. This trend is mainly due to increased life expectancy, improved health and the need to supplement pensions affected by the crisis. The EESC calls on the Commission, the European Parliament and the Council to tap into the experience of many Member States to develop and establish support systems for older people who want to take this route and to simplify the framework for their activities.

Brussels, 23 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on Consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC’

COM(2013) 78 final — 2013/0049 (COD)

(2013/C 271/15)

Rapporteur-general: **Bernardo HERNÁNDEZ BATALLER**

On 25 February 2013 the Council and on 12 March 2013 the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on Consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC

COM(2013) 78 final - 2013/0049 (COD).

On 12 February 2013 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr HERNÁNDEZ BATALLER as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 120 votes to 1 with 3 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports the Commission's proposal to establish a legal framework providing a high level of consumer protection and requiring consumer products to be safe.

1.2 The Committee considers a regulation to be the appropriate instrument for this consolidation of existing legal texts, bringing them into line with the new legislative framework for the marketing of products. The regulation will enable the same level of safety to be established in all EU countries, with common criteria.

1.3 As the regulation is the only instrument that allows adoption of the same measures with the same support for the same levels of risk in all the countries of the EU, it is important that it uses terms that can be interpreted in the same vein in all the countries of the EU.

1.4 The EESC feels that, given the importance of standardisation in securing product safety, the Commission should increase support for consumer involvement in the European Committee for Standardisation (CEN) and other similar bodies.

1.5 With regard to full implementation of the internal market, the Committee believes that the proposal is a very important protection measure for consumers in that it reduces the risks of injury or death, restoring confidence; at the same time, the Committee sees the need for transparency

and a level playing field in commercial transactions so that those seeking to produce and sell dangerous products do not have an unfair advantage over competitors who shoulder the costs involved in making their products safe.

2. Introduction

2.1 Consumer protection requires that the goods and services made available to consumers do not, when used in normal or foreseeable circumstances, endanger the health of consumers, and, where they do, that they be withdrawn from the market by means of fast, simple procedures. This has been one of the main principles of European consumer protection policy since the 1975 preliminary programme ⁽¹⁾. The Council Resolution of 23 June 1986 ⁽²⁾ on the protection and promotion of consumer interests sparked the ‘new approach’ to technical harmonisation and standardisation ⁽³⁾.

2.2 The first directive on general product safety, adopted in 1992 ⁽⁴⁾, was superseded by European Parliament and Council Directive 2001/95/EC of 3 December 2001 ⁽⁵⁾, which entered into force on 15 January 2002 with a deadline for transposition into national law by the Member States of 15 January 2004. The EESC commented on this matter at the time ⁽⁶⁾, endorsing the Commission's approach but expressing reservations on certain points.

⁽¹⁾ Council Resolution of 14.4.1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy. OJ C 92, 25.4.1975, p. 1.

⁽²⁾ OJ C 167, 5.7.1986, p. 1.

⁽³⁾ Based on the Council Resolution of 7.5.1985, OJ C 136, 4.6.1985, p. 1.

⁽⁴⁾ OJ L 228, 11.8.1992, p. 24.

⁽⁵⁾ OJ L 11, 15.1.2002, p. 4.

⁽⁶⁾ OJ C 367, 20.12.2000, p. 34.

2.3 With the creation of the Rapid Alert System for non-food products (RAPEX) a system was established for the circulation of information among the Commission and Member States' authorities on measures taken by these authorities and economic operators in relation to products posing a serious risk to the health and safety of consumers, in order to deal with 'emergency situations'. In 2004 ⁽⁷⁾, the Commission adopted specific guidelines to ensure that RAPEX worked properly.

2.4 Although the 27 Member States have transposed the directive into their respective legislation, the methods of implementation have not been the same in all Member States, with discrepancies in some transposition acts, including the following:

- the safety assessment aspects provided for in Article 3 of the directive;
- as far as traceability is concerned, some Member States have made it obligatory to indicate on the product or packaging the identity and details of the producer (or importer), while other Member States have left this optional;
- moreover, in some Member States, notification by producers is required only in the case of a known risk, and there is no obligation to notify when the producer 'ought to know' the risk based on available information.

3. The Commission proposal

3.1 The proposal is part of the 'Product Safety and Market Surveillance Package', which also includes a proposal for a single market surveillance regulation and a multi-annual action plan for market surveillance covering the period 2013-2015.

3.2 The proposal aims to complement the legislative framework for consumer product safety and the marketing of these products, adopted in recent years in the area of non-food manufactured products but excluding certain products such as antiques. It requires that consumer products be 'safe', sets certain obligations on economic operators and contains provisions for the development of standards in support of the general safety requirement. The Commission takes as a legal basis Article 114 of the TFEU, which is the legal basis for the establishment and functioning of the internal market, underpinning the exercising of shared powers between the EU and the Member States.

3.3 The Commission opts for a different legislative instrument, issuing a proposal for a regulation instead of a directive, with the aim of establishing the same level of safety

in all EU countries and harmonising regulations in this field, setting out a set of common criteria on the matter without prejudice to sector-specific legislation. The proposal sets out clear, detailed rules which will become applicable in a uniform manner and at the same time throughout the EU.

3.4 The Commission aims to maintain a high level of protection of consumer health and safety, streamlining and simplifying the operation of the safety system and its interface with other EU legislation.

3.5 The proposal repeals Directives 87/357/EC and 2011/95/EC, sharing their content between the two proposals for regulations being drawn up. Thus, the provisions regarding market surveillance and RAPEX that are currently contained in the General Product Safety Directive have been transferred to the proposal for a new single Market Surveillance Regulation, which will bring all market surveillance rules together in a single instrument and in which RAPEX will be the single alert system regarding products presenting a risk.

3.6 Moreover, the proposal lays down the elementary obligations of affected economic operators (manufacturers, importers, distributors) involved in the supply chain of consumer products insofar as they are not subject to corresponding requirements under sector-specific EU harmonisation legislation. Its scope is therefore limited to situations that are not regulated or only partially regulated by sector-specific legislation.

3.7 It takes as a starting point the general principle that all non-food consumer products must be safe when made available or placed on the EU market. The more detailed obligations on economic operators only apply to those operators that are not subject to corresponding obligations laid down in harmonising legislation covering a specific product sector.

3.8 The proposal has been simplified thanks to the introduction of a clear link with sector-specific legislation and simplification of standards. Consumer products that comply with sector-specific EU harmonisation legislation that aims at ensuring the health and safety of persons shall also be presumed to be safe under this proposed regulation.

3.9 In addition, the definitions section has been updated and aligned with the New Legislative Framework for the Marketing of Products. Moreover, the process for identifying existing European standards or asking for the development of European standards that would enable product to be presumed safe has been significantly simplified and aligned with the new overarching framework for standardisation.

⁽⁷⁾ Commission Decision 2004/418/EC (OJ L 151, 30.4.2004, p. 84).

3.10 The obligations of economic operators address, among other things, issues related to labelling, product identification, corrective actions to be taken in case of unsafe products and provision of information to the competent authorities.

3.10.1 The proposal requires economic operators to be able to identify the operators who supplied them with the product and their clients. The Commission is empowered to adopt measures requiring economic operators to establish or adhere to an electronic traceability system.

4. General comments

4.1 The EESC endorses the existence of legislation providing a high level of protection of consumer health and safety and, in particular, product safety, and believes that the Commission proposal may contribute to this; however, it calls for the comments made in this opinion to be taken into account in order to clarify the proposal.

4.2 The EESC points out that the comprehensive information given in the proposal's Explanatory Memorandum is not then included in the text of the regulation. Thus, its recitals include statements to the effect that the new proposal applies to all selling techniques, including distance selling, but these are then omitted from the text of the regulation. Given that the legal instrument proposed – which requires the criteria to be standardised in advance so that they can be interpreted in the same way in all the countries of the EU – it would be advisable to include at least a summary reference to these points in the text of the regulation.

4.2.1 The EESC feels that the regulation is relevant and appropriate, as it is the only instrument that allows adoption of the same measures with the same support for the same levels of risk in all the countries of the EU. It is the right instrument for repealing Directives 87/357/EEC and 2001/95/EC, provided that the level of protection established in the two directives is preserved as regards the level of safety required.

4.2.2 This helps provide legal certainty for the market and consumers, which, along with the simplified measures, will reduce the economic cost of adopting the regulation. Its terms should therefore be interpreted in the same vein in all the countries of the EU.

4.2.3 It should be pointed out that the proposal delimits its scope in relation to EU sector-specific legislation. Its general and cross-cutting nature relative to the rest of the sector-specific

consumer product safety legislation should therefore be highlighted in Article 1.

4.3 Like the directive, the proposed regulation requires that consumer products be 'safe' and sets certain obligations on economic operators and contains provisions for the development of standards in support of the general safety requirement. However, its provisions do not refer to the 'precautionary principle' which should govern product safety, which should be included explicitly in the main body of the text.

4.4 Definitions used in the proposal

4.4.1 With regard to the definitions used in the proposal, the EESC believes that some of them need to be revised as, whether for reasons of terminology, translation or differing legal traditions in the Member States, they could cause problems in the future when the regulation is implemented.

4.4.2 The concept of 'safe' products is appropriate and includes various aspects that enable products' safety to be assessed in terms of circumstances of which the consumer ought to be aware, such as product life, nature and composition. However, the word 'product' should be preceded by the word 'manufactured'.

4.4.3 Similarly, the terms 'normal' and 'reasonably foreseeable' could lead to some confusion, as the 'reasonableness' criterion could suggest that any product can be included, even if it is not safe, provided that it is used properly.

4.4.4 It may be that the word 'normal' should be replaced with the word 'usual', or, possibly, that this ambiguous description be transferred to the consumer for whom the product is intended. To this end, we recommend replacing the term in question with 'unsafe product', as this would align the concept with that contained in the Directive concerning civil liability for defective products⁽⁸⁾ – in relation to which it would be advisable to standardise Member States' legal frameworks, although in this field the concept of product is broader.

4.4.5 With regard to the term 'authorised representative', it should be pointed out that the use of the word 'mandate' could give rise to disputes in the future in those countries which require a pre-mandate agreement to be signed, and so it would be appropriate to replace it with 'written mandate', which leaves countries free to choose the contractual formula that is most in line with their domestic law and, at that same time, prevents possible future problems of a contractual nature.

⁽⁸⁾ OJ L 210, 7.8.1985, p. 29.

4.4.6 With regard to the definition 'serious risk', it would be more advisable to extend it to any 'exposure to risk, emergency or danger', which would be easier for consumers to interpret; in other words, the 'serious risk' should be linked to the need to take immediate action and adopt measures as soon as the risk becomes known.

5. Specific comments

5.1 The proposal attaches particular importance to the need to unify and simplify the requirements for economic operators, and the EESC fully endorses this, given the confusion affecting both economic operators and national authorities.

5.2 In Article 4 the following text should be added: 'under the conditions established later in this regulation', as the concept of safety may not tally with the provisions laid down in other sector-specific rules.

5.3 The extent to which services are included in the scope of the regulation needs to be clarified in the text of the proposal. However, the EESC hopes that the Commission will present a complete proposal on the safety of services in the EU.

5.4 With regard to the reference to 'vulnerable' consumers in Article 6 d), it should be made clear whether the concept of vulnerable consumer is based on a general factor (age, health, etc.) or depends on the product characteristics (insufficient awareness). The EESC believes that in order to make EU law more consistent, self-standing concepts that apply across all EU law should be used and separate concepts should not be established for each and every legislative proposal.

5.5 Article 6(2)(h) refers to reasonable consumer expectations concerning safety. The term 'reasonable' should be qualified with phrases such as 'in terms of its nature, composition and intended use'. This would give the article greater legal certainty.

5.6 The EESC believes that consumers have the right to clear and precise information on the origin of products, which should in all cases bear an indication of their specific provenance in line with the provisions of EU law.

5.7 Furthermore, the wording of this provision should be revised to the effect that manufacturers and importers must 'ensure' compliance with the requirements laid down therein.

5.8 Obligations of manufacturers and other operators

5.8.1 The proposal lays down rules on the drafting of documentation by manufacturers and the steps they have to take to maintain consumer safety. The EESC sees these as important.

5.8.2 These specific obligations consist of sample testing of products made available on the market, investigating complaints and keeping a register of complaints, non-conforming products and product recalls, and keeping distributors informed of any such monitoring.

5.8.3 However, the proposal does not specify implementing procedures, leaving it up to each Member State to manage the measures they have to take as if they were merely setting up a special register. It would be preferable to harmonise these measures with a view to securing a warning system that allows the market to be informed early enough to be able to take effective measures before damage is done.

5.9 Technical documentation

5.9.1 The consumer information requirement should refer solely to matters related to the use and nature of products and not be extended to 'technical documentation', which can contain information on trade secrets and other confidential manufacturer information which should be available to the authorities, with clear rules to this end that the proposal fails to include.

5.9.2 As the text appears to make the manufacturer responsible for any damage an unsafe product may cause, it would be more appropriate to state that the content of the technical documentation should be valid for ten years. To make things clearer, in Article 8(6) the words 'manufacturers shall ensure' should be replaced with 'manufacturers shall be responsible for ensuring', which would be more in line with the obligation incumbent upon them. The same should apply, with the necessary modifications, to importers and their responsibility, along with the requirement to keep the technical documentation for 10 years, as other economic operators have to.

5.9.3 In order to enable consumers to exercise their right to information on a specific product without any kind of hindrance, it would be advisable for the possibility laid down in Article 8(7) – which requires the manufacturer to indicate a single address at which they can be contacted – not to be burdensome for the consumer, to avoid giving the impression that using it would mean being penalised.

5.10 With regard to products appearing to be other than they are, the EESC calls for maximum protection, particularly for products which look like toys, which should be subject to the provisions of the Toy Safety Directive, to ensure a higher level of protection for minors.

5.11 The EESC endorses the need for traceability of products throughout the entire supply chain, as this helps to identify economic operators and to take effective corrective measures against unsafe products, whether recalls or, where necessary, withdrawal from the market.

5.12 With regard to the European standards providing presumption of conformity, the EESC considers that the proposal improves the way that the system currently works. However, the transitional provisions and presumption of conformity need to be made clearer in order to provide greater legal certainty.

5.12.1 Given the importance of standardisation, the EESC considers that European standardisation bodies should have the necessary resources to increase their productivity and ensure high quality; more effective representation of consumers is also needed.

5.13 In principle, the rules on delegated acts seem reasonable, although it does not make sense for the power to adopt them to be granted indefinitely. Moreover, delegated acts should not be adopted on key issues and should keep within the boundaries of the original act. They should be used first and

foremost before dangerous products are made available on the market. It therefore seems sensible for delegated acts to be adopted in the cases referred to in Article 15(3)(a) of the proposal, whereas the cases envisaged in subparagraph (b) are more dubious.

5.14 As regards penalties, it should be stressed that the EESC is in favour of harmonising the types of infringement and the corresponding penalties⁽⁹⁾, as simply making an across-the-board call for these penalties to be effective, dissuasive and proportionate could lead to distortion in the operation of the market.

5.14.1 Lastly, the EESC believes that in order to implement the provisions of the regulation benefiting consumers the Member States should have access to proper, effective means of redress from the relevant courts.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽⁹⁾ In the same way as Regulation (EC) 1071/2009, for instance (OJ L 300, 14.11.2009, p. 51).

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on market surveillance of products amending Council Directives 89/686/EEC and 93/15/EEC, Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC and 2011/65/EU, and Regulations (EU) No 305/2011, (EC) No 764/2008 and (EC) No 765/2008 of the European Parliament and of the Council’

COM(2013) 75 final – 2013/0048 (COD)

(2013/C 271/16)

Rapporteur-general: **Mr LEMERCIER**

On 8 and 12 March 2013 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union (TFEU), on the

Proposal for a Regulation of the European Parliament and of the Council on market surveillance of products amending Council Directives 89/686/EEC and 93/15/EEC, and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 1999/5/EC, 2000/9/EC, 2000/14/EC, 2001/95/EC, 2004/108/EC, 2006/42/EC, 2006/95/EC, 2007/23/EC, 2008/57/EC, 2009/48/EC, 2009/105/EC, 2009/142/EC and 2011/65/EU, Regulation (EU) No 305/2011, Regulation (EC) No 764/2008 and Regulation (EC) No 765/2008 of the European Parliament and of the Council

COM(2013) 75 final – 2013/0048 (COD).

On 12 February 2013, the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr LEMERCIER as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 116 votes, with 2 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the provisions of the proposed regulation. The current provisions on market surveillance and the checking of products are spread too widely across a number of texts with differing content, which unduly complicates the task of the monitoring authorities, manufacturers, consumer associations and workers’ organisations. The Committee is pleased to note that the previous sector-specific provisions will be amended and brought together in a single, strengthened, cross-cutting regulation.

1.2 The Committee concurs with the legal basis but believes that reference should also be made to Article 12 of the Treaty on the Functioning of the European Union (TFEU), which states that consumer protection is a cross-cutting policy whose ‘requirements shall be taken into account in defining and implementing other Union policies and activities’.

1.3 The proposed instrument is a regulation, which the Committee considers to be the most appropriate form for facilitating cooperation and exchanges between Member States and between individual Member States and the EU. It feels that the package proposed by the Commission meets the proportionality and subsidiarity requirements established by the treaties. The

Member States remain fully responsible for national market surveillance and external EU border controls and their financing.

1.4 The EESC supports the Commission’s affirmation that products moving within the European Union must meet requirements that guarantee a high level of protection for public interests such as health and safety in general, health and safety at the workplace, consumer protection, environmental protection and public safety.

1.5 The Committee considers that respect for manufacturing and trade secrets should not prevent warnings from being issued when user health or safety might be affected by one of the components of the product in question. Surveillance and control bodies should therefore continue to apply the consistent practice under the RAPEX system of putting public interests before private ones.

1.6 Members or employees of surveillance and customs authorities should provide guarantees of their honesty and independence and be protected from possible pressure or attempts to corrupt them in the exercise of their duties. People notifying faults or risks in relation to a product must be given protection, in particular against legal action, and their identity should remain confidential.

1.7 The Committee calls for including in the proposed Regulation a legal basis for a pan-European Injuries Database (IDB), which should be considered as a third pillar of the EU-market surveillance information exchange system complementary to RAPEX and ICSMS.

1.8 Lastly, the Committee would very much like to receive the reports that the Commission will be issuing every five years in order to monitor implementation of the regulation.

2. Introduction: Commission proposals

2.1 Even the best legislation governing product safety and harmonising rules in the internal market is not enough to provide full safety guarantees for consumers, as regards consumer products, or for workers, as regards products intended for professional use.

2.2 As recent scandals have shown, fraud perpetrated to increase profits or reduce production costs is still on the agenda in Europe. Moreover, imported products do not always comply with European standards and may compete unfairly with products of European origin.

2.3 Market surveillance and product compliance checks are essential and call for expert services and staff (customs, technical services, inspections, etc.) to be operating in every Member State.

2.4 Directive 2001/95/EC on general product safety (GPSD), whose transposition was supposed to be completed in 2004, and Regulation (EC) No 765/2008 on accreditation and market surveillance, which came into force in 2010, together with the directives and decisions on sectoral harmonisation, have resulted in visible progress. Nevertheless, the provisions on market surveillance are both fragmented and in places overlapping, and this can lead to confusion between the surveillance rules themselves and the obligations applying to operators, which complicates their task and that of national legislators and civil servants.

2.5 The Commission is proposing to clarify the regulatory framework for market surveillance by uniting all the relevant provisions within a single legal instrument to apply across all sectors. The new regulation on market surveillance would be accompanied by a multi-annual market surveillance plan covering the period 2013-2015.

2.6 This is a major component of the European Consumer Agenda and of the Single Market Acts I and II and also meets the requirements of the New Legislative Framework.

2.7 Using the same methods in each country, it is necessary to ascertain whether the products marketed, including those from third countries, are safe and whether they can be placed on the single market, and withdraw and ban them if they are dangerous or non-compliant.

2.8 However, market surveillance and compliance checks are not sufficiently effective and a large number of non-compliant products enter the market, owing mainly to a lack of coordination between national surveillance authorities and to the poor quality and reliability of the information exchanged.

2.9 It is therefore up to the EU to take steps to secure better coordination of measures and to make cross-border market surveillance more effective so as to protect the public. The Commission maintains that this right to take action derives from Article 114 (proper functioning of the internal market) and Articles 168(1) (health protection) and 169(1) (consumer protection) of the Treaty on the Functioning of the European Union (TFEU). There is also a need to simplify the legal framework applicable and eliminate current ambiguities.

2.10 It is necessary to simplify the RAPEX procedure, and introduce a regulation on product safety to replace the GPSD, together with a new regulation on surveillance to replace the current provisions that are currently spread across a number of documents at various levels.

2.11 Improvements to the coordination and effectiveness of surveillance and control measures would be achieved not only through the normal procedure for evaluating legislation, but also via Eurobarometer surveys on consumer perceptions, the GRAS-RAPEX and ICSMS information systems and the introduction of indicators allowing peer review. State notification procedures will be streamlined, with a single notification system for all products.

2.12 Border controls will be stepped up and the movement of any product suspected of presenting a risk will be suspended until its status can be more accurately ascertained by the surveillance authority.

2.13 The RAPEX notification system for products presenting a risk will be improved in terms of notification periods and the relevance of the information provided on the risks posed by the product concerned.

2.14 The Commission may adopt appropriate restrictive measures for dangerous products, which would be applicable immediately, should standard emergency measures prove inadequate or unsuitable.

2.15 The Single Market Act makes provision for a Multi-annual Action Plan (MAP) on market surveillance. This plan should apply to areas in which coordination by the Commission could bring real added value and substantial improvements.

2.16 The MAP is the main tool for action at EU level and will foster improved communication and cooperation. IT tools will allow easy access to information and best practice from surveys and studies stored in the system. Needs will be identified and training, technical assistance and guidance tools will be offered within this framework.

2.17 The Commission will establish a common approach for technical and documentation checks and for laboratory tests. Tighter coordination of joint measures and programmes will make surveillance more effective.

2.18 By pooling resources, synergies will be generated and overlaps prevented. The data collected by national authorities in the course of their work will be kept on the ICSMS platform managed by the Commission, which will provide the funding and training needed to derive the full potential from this database.

2.19 All the parties involved must be informed and consulted on a regular and flexible basis.

2.20 The report drawn up by the Commission under Regulation (EC) No 765/2008 provides the institutions and stakeholders with information and assesses the accreditation, surveillance and market control measures funded by the EU.

2.21 It is necessary to increase the resources and powers of customs services and step up checks at the external frontiers of products entering the EU and the European Economic Area, which will mean earmarking additional resources, particularly with respect to training and technical tools.

3. General comments

3.1 The Committee welcomes the initiative to step up surveillance and safety checks on products placed on the market, be they of EU, EEA or third country origin. This guarantees better product safety and is thus a key Single Market Act measure and in line with the new approach.

3.2 The Committee nevertheless points out that the procedures for informing and consulting the economic and social stakeholders are very vague. It would be better to establish a suitable and flexible framework at various levels, without introducing or entrenching bureaucratic procedures.

3.2.1 The businesses concerned expect a great deal from legal and technical information, which should offer them the legal certainty they need when it comes to making decisions about investment in the manufacturing or marketing of their products. They should have access to the information gathered by the various surveillance and control bodies concerning the

products they are presenting to be checked or assessed for compliance.

3.2.2 Consumers and workers have the right to be sure that the products on the market, which they will be using for work or for their own consumption, are safe. They are entitled to know what steps are being taken to this effect at national, EU or sectoral level to ensure that their health and safety are not being compromised.

3.2.3 The Committee believes that confidence in product safety is essential to the smooth functioning of the single market and to the free movement of goods, which has a positive effect on growth and employment.

3.3 It considers that surveillance and checks, particularly at the EU's external borders, are mainly the responsibility of the Member States, whilst the EU takes care of coordination and the measures essential for effective joint action, together with product standardisation. Such surveillance and checks impact on businesses and represent a substantial cost for both the Member States and economic operators in terms of compliance (standardisation, the CE marking). The Committee calls on Member States and the Commission to take due account when conducting their activities of the administrative burden shouldered by businesses, and particularly SMEs, to avoid putting them under financial pressure during a period of crisis and high unemployment.

3.4 The free movement of non-food products covered by the proposal for a regulation should not be affected by leniency or weakness in the regulatory framework or in the number or quality of resources and checks. The Member States and the Commission must therefore allocate sufficient resources for implementing surveillance and control measures so as to ensure that they are fully effective. The Committee recognises that budgets are currently tight, but nevertheless feels that the public interests at stake require every effort to be made to secure consumer health and safety and environmental protection when it comes to defective or dangerous products. The proper functioning of the internal market is essential for economic recovery and creating new jobs.

3.4.1 In this respect, the Committee believes that the current system of market surveillance and control has serious shortcomings and weaknesses. Cooperation between the relevant national bodies, the Commission and the parties concerned should be stepped up and regular consultations organised. Consumers' and workers' organisations should be given the right to issue warnings in respect of certain products, for which they should enjoy a guarantee of immunity. The bodies responsible, surveillance authorities, technical certification bodies, customs departments and fraud prevention agencies must cooperate and share information collected, so as to avoid overlaps and waste and constantly improve the checks being carried out.

3.5 The effectiveness of the Community system for rapid exchange of information (RAPEX) depends entirely on how quickly notification is sent and on the relevance of technical information on suspect products. The guidelines drawn up for managing RAPEX need to be constantly updated and sufficiently clear for there to be no doubt as to the nature and scope of the information to be provided. Criteria should be established within the framework of these guidelines to make it possible to identify serious risks, and the measures to be taken accordingly - such as a temporary ban, the requirement to make technical changes, or even an outright ban - should be clearly set out.

3.6 Even moderate risks, or those that have not been verified scientifically, should be notified under RAPEX in order to consider enforcement measures such as a temporary ban under the precautionary principle if necessary or other appropriate measures, such as requirements to provide further information for consumers or warnings to users, in addition to the usual product labelling requirements.

3.7 Where risks have been identified and the Commission is intending to adopt implementing acts with respect to a product or category of products in order to establish uniform conditions for checking these products, the Committee would like consumers', employers' and workers organisations to be notified and their opinions taken into account as far as possible. It should be noted that these organisations can quickly pass on to their members any measures adopted by the Commission, helping greatly in terms of them being understood and swiftly implemented.

3.8 As regards the Commission and Member State forum established by the regulation, the Committee notes that civil society organisations would be invited to participate in an advisory capacity in any sectoral sub-groups the forum might set up. It feels that, although only providing advice, the opinions and proposals issued by these organisations should be duly taken into consideration as far as possible, bearing in mind the active role they play for the consumers and the economic and social spheres they represent.

3.9 The same should apply when, acting on certain risks, the surveillance authorities of a Member State draw attention to the risks presented by certain products and potential protective measures. They should cooperate with the economic operators to avert the risks presented by certain products and also with the relevant civil society organisations that can make available their knowledge and channels for passing on information to their members.

3.10 Finally, the Committee believes that, on the whole, the proposal under consideration meets the requirements of the New Legislative Framework (New Approach), as well as those of subsidiarity and proportionality. It also approves of the legal basis on which the relevant DGs have established their proposal.

The Committee also refers to Article 12 TFEU, which stipulates that consumer protection must be 'taken into account in defining and implementing other EU policies and activities'.

4. Specific comments

4.1 The Committee is still concerned about the potential differences in the way the regulation is interpreted in the various countries. EU action must be aimed at making interpretations and practice truly uniform for the sake of operators' legal certainty and user safety.

4.2 It is also concerned about the implementation of the provisions governing confidentiality, which might stand in the way of better information on components or dangerous products which could impact on health, personal safety and the quality of the environment, for example in terms of trade secrets. The public interests at stake are generally more important than private interests, which would be wrongly protected by too absolute an interpretation of the concept of confidentiality. Information must, under all circumstances, flow between the Member States and EU bodies entrusted with the surveillance and control system. Personal data must, however, be protected by law and investigations under way must not be compromised.

4.3 As the regulation requires, the authorities must publish on a dedicated website information concerning dangerous products and the risks they pose, any preventative measures and the decisions taken with regard to operators. The Committee calls for care to be taken that this is not hampered by excessive concern for confidentiality regarding trade secrets when the health and safety of users is at stake. This is moreover the approach taken by the Commission when managing the RAPEX system, an approach which must be maintained.

4.4 The Committee emphasises the need for surveillance and control bodies to be independent and transparent. The staff working for these bodies must be protected from any interference and any attempts to corrupt them in the performance of their duties. They must be impartial and take on board all complaints raised by consumers and users or their organisations, and take action if appropriate. Test laboratories must also operate completely independently, as must the bodies responsible for issuing standardised labels, which are essential for enabling business decision-makers and consumers to make their choices.

4.5 The Committee believes that the proposed Regulation should contain also provisions establishing a pan-European Injuries Database (IDB) which would cover all types of injuries. Such database would:

— assist market surveillance authorities to make more informed risk assessment decisions,

- provide a basis for preventive actions and public awareness-raising campaigns; allow standardisers to develop better product standards,
- help manufacturers to adapt the design of safety into new products, and
- evaluate the effectiveness of preventive measures and set priorities in policy making.

4.5.1 Therefore, the Committee suggests to:

- include in the proposal a missing provision from Regulation (EC) No 765/2008 requesting Member States to monitor accidents and harm to health which are suspected to have been caused by those products, and
- establish a legal basis for the IDB where the European Commission would support the co-ordination of the collection of data from Member States and smooth operation of the IDB.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: towards Social Investment for Growth and Cohesion — Including implementing the European Social Fund 2014-20’

COM(2013) 83 final

(2013/C 271/17)

Rapporteur: **Oliver RÖPKE**

On 18 March 2013, the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the EU, on the

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020

COM(2013) 83 final.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May 2013), the European Economic and Social Committee adopted the following opinion by 160 votes to 3 with 11 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Commission's Social Investment Package and the shift in approach it represents, to one in which a stronger focus on social investment is no longer seen as a mere cost, but as investment in the future and in growth and employment that will materially contribute to achieving the Europe 2020 objectives and underpin the European social model.

1.2 However, targeted social investment does not just bring about social progress whilst increasing competitiveness. Particularly in times of unprecedented, dramatic unemployment and increasing poverty, investment in the welfare state also plays a critical role in strengthening social cohesion and integration and in tackling social exclusion and poverty.

1.3 The labour market is the key to managing demographic change and to sustainable fiscal consolidation. In the EESC's view, robust, targeted social investment sustainably increases employment opportunities for people. The Social Investment Package could therefore make a significant contribution to a change of policy direction in favour of more growth and jobs, if it were consistently implemented in practice.

1.4 The EESC agrees with the European Commission that the details of social policy are primarily a matter for the Member States and that each country needs to find its own balance of sustainability and fitness for purpose of its welfare systems and the organisation of social services. Given the significant differences between countries, the European Commission should play a key role in the exchange of tried and tested

and innovative approaches among Member States and all relevant stakeholders.

1.5 The EESC welcomes the fact that the important role of the social economy, social enterprises, civil society and the social partners for implementing the social investment package is expressly recognised in the communication. In this context, the EESC expressly supports the call for the fundamental involvement of the social partners and civil society actors at Member State level and within the coordination process of the European Semester.

1.6 The EESC calls on the European Commission to publish a plan for the practical implementation of the social investment package, to support the Member States in implementing the necessary measures and to promote exchanges between countries, the social partners, social economy organisations, non-governmental organisations, organised civil society and social service providers. These stakeholders have the necessary specialised knowledge in the area of social investment, social innovation and job creation.

1.7 However, the EESC is critical of the question of financing for the Social Investment Package remaining largely unanswered. Without a change in the lop-sided policy of spending cuts, successful implementation of the proposals does not seem a realistic prospect. Better use of the European structural and investment funds (ESIF) and the best possible targeting of the measures are certainly to be welcomed, but will certainly not be enough to achieve the desired policy shift.

1.8 The EESC therefore reaffirms its view that it is imperative that new sources of revenue for public budgets be identified. In this context, measures such as changes to and broadening of tax bases, closing tax havens, ending the ruinous race to cut taxes and combating tax evasions should be mentioned along with levies on various forms of wealth.

1.9 Specifically, the EESC reiterates in this context its call for a European growth and investment programme worth 2 % of GDP. This could fund a social investment package that would make the shift in policy priorities towards social investment and strengthening and modernising social policy in the Member States possible in practice despite efforts towards fiscal consolidation. Only if it is adequately funded can the social investment package be successfully implemented; otherwise it will remain empty words.

1.10 The EESC calls on the European Commission to ensure that greater focus on social investment is also reflected in the coordination process of the European Semester. This new focus must be explicitly taken into account in the country-specific recommendations and in the forthcoming Annual Growth Survey (2014). The European Commission should quickly publish concrete proposals to that effect. It must be made clear that greater social investment is compatible with 'differentiated, growth-friendly' fiscal consolidation.

2. The Social Investment Package for Growth and Cohesion

2.1 One of the goals of the Europe 2020 strategy is to get at least 20 million citizens out of poverty by 2020. The far-reaching consequences of the crisis and the need to return to growth have led to a series of Commission initiatives aimed at safeguarding and creating jobs, smooth employment transitions and, in general terms, getting people into jobs⁽¹⁾.

2.2 On 20 February 2013 the Commission produced its long-awaited Social Investment Package, which consists of a Communication ('Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020'), a Recommendation ('Investing in children: breaking the cycle of disadvantage'), and seven Staff Working Documents.

2.3 The package puts improved social investment in the context of the European Semester and streamlines EU and

Member State governance and reporting requirements in an effort to meet the social, employment and education policy objectives of the Europe 2020 strategy.

2.4 The Commission notes that the crisis that has persisted since 2008 has increased poverty, social exclusion, and exclusion from the labour market for many citizens in a number of Member States, and that such problems have reached record dimensions, especially among the most vulnerable groups. In its Communication the Commission therefore advises Member States to place more emphasis on social investment and to use resources more efficiently.

2.5 According to the Commission, social investment helps people. It strengthens their skills and capacities and helps them participate in society and the labour market, in turn leading to greater welfare, stimulating the economy and helping the EU to emerge from the crisis stronger, more cohesive and more competitive.

2.6 Welfare systems are said to fulfil three functions: social investment in a better future, social protection during difficult periods in life, and, not least, stabilisation of the economy.

2.7 The Commission calls for action to ensure that welfare systems meet the needs of people at critical stages of their life. To this end, it recommends preventive measures in the form of investment at as early a stage as possible rather than reacting to problems after the fact, which proves to be much more costly. Investment in children and young people is therefore vital.

2.8 This is made more specific in the form of guiding principles in the Commission Recommendation to Member States. The Commission argues that preventive investment against child poverty and social exclusion, which it believes will increase children's welfare, can be achieved through a whole range of different measures.

2.9 Under the heading 'Room for efficiency gains in social policies', the Communication calls for more effective deployment of funding to ensure adequate and sustainable social security and for better, evidence-based social policy. To this end, Member States are encouraged to simplify administration of benefits and services, target benefits more effectively and to make them conditional, for example on participation in further training.

⁽¹⁾ Employment Package, Youth Employment Package, Youth Opportunities Initiative, Rethinking Education.

3.10 The Member States are repeatedly called on to do more to involve all relevant stakeholders, especially the social partners and civil society groups, when improving social policy in connection with the Europe 2020 strategy.

3. General comments on the Social Investment Package

3.1 The economic and financial crisis with its far-reaching effects on growth, jobs, and economic and social cohesion has been dominating the political agenda of the European Union for five years now. Whilst the Member States initially responded with counter-cyclical economic policies to stabilise the economy, bank rescue packages in particular have led to a significant rise in public debt. The attempt by governments to achieve consolidation of public budgets during a recession simply by cutting expenditure is widely seen as having failed. The Commission communication on social investment thus brings a new perspective on dealing with the crisis to bear, namely that social investment means outlay in the short term, but in the medium to long term leads to gains in prosperity for society and higher revenues for the state, which in turn lead to significant reductions in future social costs.

3.2 The EESC therefore explicitly welcomes the Commission's social investment package and the associated paradigm shift for the European institutions' outlook. Member States are now expressly called on to put more emphasis on social investment and to modernise and strengthen social policy and use available resources more efficiently. Social policy must become more sustainable. In doing so, the Commission appears to correct mistakes made in recent years and to cease to view social investment as a mere cost. Such investment will strengthen people's skills and qualifications, improve their opportunities in society and the labour market and consequently their welfare, stimulate the economy, and help the EU to emerge from the crisis stronger and more competitive. This package could be one of the most important social policy initiatives of recent years, provided it is actually implemented in a consistent and ambitious way. This will require long-term support from the European Commission.

3.3 However, the details of social policy are largely in the hands of the Member States. The diversity of national conditions and circumstances requires that every Member State must find its own balance between sustainability and appropriateness of its social system, as there is no one-size-fits-all model. The Commission should collate a list of examples of best practice, which should include use of public procurement and freedom of choice in social services to promote private service providers operating in the general

interest, and encourage the Member States to make their social systems innovative and efficient, with the emphasis on employment and labour market integration, so as to achieve the poverty reduction goal of the Europe 2020 strategy.

3.4 At a time of unprecedented unemployment and increasing poverty in the EU, the welfare state has become indispensable to overcoming the challenges that have emerged. Targeted investment in social protection and welfare can address structural problems and create jobs. Existing potential can be better used by pursuing the most comprehensive and active inclusion and participation strategy possible for as large a share of the population as possible, and by all Member States implementing the recommendations from 2008 on active integration of people excluded from the labour market.

3.5 Whereas so far social spending has mainly been seen as a cost that some believe should be cut, this Communication could represent something of a policy shift both at EU level and in some Member States. The EESC has long argued that there is an enormous need for investment, including social investment, and that this could create jobs, prevent poverty and combat social exclusion. This will require both private and public investment as well as reforms ⁽²⁾.

3.6 The life cycle and need-based approach to social investment taken in the Communication, which can improve individual opportunity and social cohesion, and strengthen economic development, is also welcomed by the EESC as a new perspective and a new way of thinking about intervention. More generous social investment has positive effects in both the medium and long term. However, the short-term positive effects should certainly not be underestimated. Investment in better, evidence-based social policy has demonstrated rapid, positive results in a variety of situations ⁽³⁾.

3.7 Social investment does not just affect employment, however, it also plays a critical role in strengthening social cohesion and integration and in tackling social exclusion and poverty. The profound economic crisis in Europe has dramatically worsened the social position of many people. To counter this trend, a policy shift towards more social investment is absolutely vital.

⁽²⁾ OJ C 11, 15.1.2013, pp. 65-70.

⁽³⁾ 'Housing first', also known as 'rapid re-housing', is an approach to homelessness first adopted in the USA as an alternative to the traditional system of emergency accommodation and short-term housing. In recent years it has also been adopted in Austria, Denmark, Finland, France, Germany, Portugal and the United Kingdom.

3.8 With this in mind, the Commission should clarify and define in precise terms just what it means by its call for 'conditionality' of social security benefits. While it can make sense in areas such as active labour market policy to link benefits to a certain target (such as participation in training), on no account should this principle be applied across the board in social policy (to child care, for example). Social security benefits should be seen as rights subject to predictable criteria in a way that ensures legal certainty.

3.9 The key areas in which the new approach to social investment is to be applied are reflected in the Recommendation and the Staff Working Documents issued alongside the Communication. The Commission should now start dialogue with all relevant stakeholders about how the logic of social investment is to apply in practice to these thematic priorities, and produce a plan for the implementation of its Communication, including guidelines for action to support Member States.

3.10 The EESC welcomes the Commission's explicit recognition of the crucial role to be played by the social economy, social enterprises and civil society in implementing the Social Investment Package⁽⁴⁾. As well as providing experience and additional resources, they are often directly and actively involved in meeting policy targets, for example by providing social services. To support them in these tasks, public funds and private capital have to be made available in a better and simpler way. The inclusion of thematic objectives for social investment and of investments as actions under EU cohesion policy in 2014-2020 are welcome proposals. They should be taken into account in negotiations on the programmes between national authorities and the Commission, which should involve civil society representatives.

3.11 The Commission believes that innovation is an important factor in the social investment policy area because social policy needs to be constantly adapted to new challenges. Private companies supported by public contracts thus play an important role as an alternative and complement to the public sector.

3.12 The Member States are to make more use of innovative approaches to financing in the form of private sector participation or social investment bonds, for example, which the Commission asserts will lead to savings in public expenditure⁽⁵⁾. However, social investment bonds are a controversial matter of debate, and a series of further studies into their knock-on effects are needed. In addition, the potentially affected fields that are suited to 'innovative financing' should

be described in more detail. At any rate, the EESC stresses that such instruments must on no account lead to a commercialisation of social policy. The state must not shirk its responsibility for social policy.

4. Specific comments

4.1 Unfortunately, it has to be assumed that the coming years will see a continuation of the economic and social downward spiral and slower growth, not least because of fiscal consolidation measures by EU Member States. Sustainable economic growth will therefore depend on stronger (internal) demand, for example through increased female participation in the labour market. Growth in social services and the social economy, which have demonstrated their resilience in the crisis, will also play a key role here.

4.2 The Social Investment Package can play a key role here. Expanding social services does more to boost employment than any other form of public spending. In addition, investment in social services is needed in order to cover growing demand and increasing social need. As well as tackling (youth) unemployment and better integrating older people into the labour market, achieving the Europe 2020 employment goals will depend on getting more women into work.

4.3 It is important to recognise that the support given by the Social Investment Package in areas of national policy, such as social integration, health care and social services, should also include easily accessible, affordable and high-quality services for disadvantaged groups in society, such as the disabled and the rising number of people who live in extreme poverty. These social services increase their chances of living dignified lives and of finding and keeping a job.

4.4 The example of child care shows that with targeted investment, social progress can be combined with increased competitiveness. Greater investment in child care and in social services more broadly (care for the elderly, education, nursing, services for disabled people, sheltered housing, etc.) makes places more attractive, but it also makes a vital contribution to boosting employment rates among women and those who are remotest from the labour market, such as people with disabilities, and helps relieve pressure on public budgets over the medium and long term. As the Commission has already recognised, it is important to ensure that such investment is targeted at the specific needs of a person rather than a group, so that individual support can be provided and the best possible

⁽⁴⁾ COM(2013) 83 final, p. 5.

⁽⁵⁾ COM(2013) 83 final, p. 6, 7.

results achieved⁽⁶⁾. In addition, the EESC takes the view that action to prevent all possible forms of social problems is necessary, regardless of the age of those affected. Prevention should thus be an overarching approach to social policy, applying not only to children but to all groups within society.

4.5 The labour market is the key to managing demographic change and to sustainable fiscal consolidation. The Commission's call to improve labour market participation, including through active labour market policy and stronger social integration, is therefore welcome. If the employment potential that exists is used more effectively, the balance between contributors and beneficiaries can largely be maintained despite the massive increase in the number of older people⁽⁷⁾. However, the EESC reiterates its view that social investment must also address those social groups for whom drawing welfare benefits does not lead to their integration into the labour market.

4.6 At the same time, social investment and improved social policy can not only make an important contribution to boosting employment. If Member States implement social inclusion policy consistently and poverty is tackled across the board, this will yield considerable advantages for society as a whole and promote social peace and cohesion.

4.7 The policy shift outlined in the Communication also makes an important contribution to sustainable consolidation of public budgets. Promoting inclusive growth and a substantial increase in employment rates by 2020 could provide additional room for manoeuvre in EU-27 government budgets to the tune of EUR 1 000 billion⁽⁸⁾.

4.8 However, important questions remain unanswered about the shift in priorities outlined in the Communication and its integration into the European Semester. The EESC welcomes improved monitoring, but is aware that the focus of the 2013 Annual Growth Survey still contains last year's priorities. In the EESC's view, the country-specific recommendations for the second half of the year should focus more on social investment. In the next Annual Growth Survey (2014), social investment should then be dealt with explicitly and social problems be included in the forthcoming European Semester. It should also be made explicitly clear during the Semester that more generous social investment is compatible with 'differentiated, growth-friendly' fiscal consolidation.

⁽⁶⁾ COM(2013) 83 final, p. 8.

⁽⁷⁾ COM(2012) 55 final, Commission White Paper on An Agenda for Adequate, Safe and Sustainable Pensions, p. 6.

⁽⁸⁾ See EPC Issue Paper No. 72, November 2012: '1 000 billion euros at stake: How boosting employment can address demographic change and public deficits'.

4.9 The remarks in the Communication on financing the social investment offensive and on changing the tax structure are disappointing, however, and are overshadowed by the Employment Package, where the Commission recommended both reducing the burden on labour and taxing wealth more heavily. Only if financing is guaranteed can the policy shift ushered in by the Social Investment Package actually be carried out in practice.

4.10 The question of financing for the Social Investment Package remains largely unanswered. The European structural and investment funds (ESIF), particularly the ESF, can be important funding instruments if used more effectively, but they will certainly not be enough to achieve the desired policy shift. Instead, the EESC reiterates that, as well as increasing the efficiency of public spending and targeting it more accurately, it is imperative that new sources of revenue for public budgets be identified. The potential contribution of different kinds of income and assets should be considered here⁽⁹⁾. At the same time, available resources should be better used.

4.11 The EESC points out that the aim of social investment will also be achieved by changing and improving policies where they have proven inefficient. In such cases, it is not primarily additional investment that is needed. The EESC calls on the Commission to provide information about new social policies that are better for the recipient whilst remaining comparable or cheaper in terms of cost.

4.12 The EESC has long advocated broadening the focus to include not just spending but also public revenue, such as by changing and expanding the tax base, by levying a financial transaction tax, by closing tax havens, by ending tax competition and by taking measures to tackle tax evasion⁽¹⁰⁾. Precisely in view of the Social Investment Package and the challenges it entails, the EESC underlines these recommendations and expressly reiterates the need for a European stimulus and investment programme to the tune of 2 % of GDP⁽¹¹⁾. While this package sets the right priorities, what is missing are proposals for a social investment package that moves beyond declarations of intent to practical implementation of new policy priorities.

⁽⁹⁾ See OJ C 143, 22.5.2012, pages 94-101, point 4.3 and OJ C 306, 16.12.2009, pages 70-75, point 3.4.2.

⁽¹⁰⁾ See OJ C 143, 22.5.2012, p. 23-28, point 6.1.3.1.

⁽¹¹⁾ See OJ C 133, 9.5.2013, p. 77-80, point 3.2.4.

4.13 As well as calling for closer involvement of the social partners and organised civil society by the Member States, which the EESC welcomes, the Commission should quickly produce specific proposals for closer, ongoing involvement in coordinating the European Semester. This concerns, not least, the stronger focus on social investment and active inclusion. Such involvement should be fundamental and enable real influence on policy making.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union’

COM(2013) 95 final — 2013/0057 (COD),

on the ‘Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)’

COM(2013) 96 final — 2013/0060 (COD),

and on the ‘Proposal for a regulation of the European Parliament and of the Council establishing a registered traveller programme’

COM(2013) 97 final — 2013/0059 (COD)

(2013/C 271/18)

Rapporteur-General: **Cristian PÎRVULESCU**

On 14 March and 16 April 2013 the European Parliament and on the 27 March 2013 the Council decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union

COM(2013) 95 final - 2013/0057 (COD)

Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)

COM(2013) 96 final - 2013/0060 (COD)

Proposal for a regulation of the European Parliament and of the Council establishing a registered traveller programme

COM(2013) 97 final - 2013/0059 (COD).

On 19 March 2013 the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pîrvulescu as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 125 votes to 4 with 3 abstentions.

1. Introduction

1.1 The legislative proposal is part of the ‘next generation of border checks’ package, which is a strategic initiative in the Commission's Work Programme for 2012. According to the European Commission, this package ‘responds to two major and interconnected challenges: how to efficiently monitor travel flows and movements of third-country nationals across the external border for the Schengen area as a whole, and how to ensure that border crossings are fast and simple for the growing number of regular travellers that constitute the vast majority of border crossers’.

1.2 In its communication of ‘Preparing the next steps in border management in the European Union’ of 13 February

2008, the Commission suggested the establishment of an entry/exit system (EES).

1.3 The proposal was endorsed in the Stockholm Programme agreed by the European Council in December 2009, which reaffirmed the potential for an entry/exit system that allowed Member States to share data effectively while safeguarding data protection.

1.4 The Conclusions of the European Council of 23 and 24 June 2011 called for work on “smart borders” to be speeded up. In response, the Commission adopted a new communication on 25 October 2011 on the various options and the way ahead.

1.5 The European Economic and Social Committee has drafted a number of opinions relevant to the implementation of the two complementary systems⁽¹⁾. Its opinions have highlighted the added value of the EU's commitments and instruments in tackling the challenges of increasing cross-border mobility. The EU has a major role and responsibility in ensuring coordination between the member states. In view of the recent challenges related to mobility and migration the EESC has advocated the principles of proportionality and effectiveness. It has also promoted the central importance of ensuring the protection of fundamental rights in the design and implementation of policies and programmes.

2. General comments

2.1 Given the expected increase in mobility across EU borders, efforts to build reliable and effective systems of border management and control must be accelerated.

2.2 The EESC welcomes the underlying approach of the "smart borders" package, which aims to strike the right balance between the need to encourage mobility and to appease the security concerns that seem to have gained ground across the EU in recent years.

2.3 The EESC acknowledges the added value of an EU-level commitment, management and investment and hopes that the Member States will coordinate efforts in order to ensure a successful implementation of the envisaged programmes.

2.4 The EESC wishes to stress that the European Union's identity is explicitly and implicitly associated with openness and interconnectedness not only within but also across borders. The EU is a vibrant cultural, social, political and economic space and cross-border mobility is instrumental in maintaining its relevance in the global arena. With this in mind, the EU institutions and Member States should make sure that the new systems do not affect the travel and willingness to travel to the EU of third-country nationals.

2.5 By the same token, significant attention should be given to public perception of the two systems and their functioning, with rules being properly explained to third-country nationals. The EU and the Member States should engage with third-country authorities to ensure that prospective travellers have access to information and support, especially regarding their rights. The package needs a properly funded communication dimension.

2.6 The EESC invites all relevant actors and institutions to consider fundamental rights as the two systems are further developed and implemented. Despite the rather technical nature of the two systems, there is a significant impact on the fundamental rights and freedoms of individuals/all third-country nationals coming to the EU. The EESC welcomes the attention given to data protection/data privacy issues and hopes that the protection of all relevant fundamental rights will be given due attention and properly monitored.

2.7 The EESC draws attention to the significant differences in institutional frameworks and capabilities between Member States, several of which implement their own versions of the two systems. A transformation on such a scale, involving a significant number of institutions and people, is challenging if not risk-prone. The institutions involved should make sure that the transition does not affect travellers in any way.

2.8 In the light of previous experiences, the EESC would also like to draw attention towards the problem of costs and their estimation. Such systems are notably costly and we must ensure that spending here is proportional and effective. Moreover the initial estimates should be as accurate as possible.

2.9 The EESC wishes to invite further reflection on the differentiation of travellers, which is a key strand of the "smart borders" policy programme. It is possible that differentiation will result in practice in quasi discrimination. Access to the Registered Travel Programme (RTP) will depend on status, income, language skills and education. This risk can be mitigated if the relevant authorities take an inclusive view of the types of acceptable activities and affiliations of prospective travellers.

2.10 The EESC notes the lack of relevant and specific data on mobility. Apart from the absence of accurate figures on short-term travellers who become overstayers, there is a lack of qualitative data that could help in understanding this phenomenon. The policy should not rely only on the quantitative data to be gathered after the systems are in place. More resources are needed in order to research the uses and abuses of the current system.

2.11 The EESC encourages the EU and the Member States to pay proper attention to the training of personnel working directly with travellers, especially consular officials and border officers. These should be very well trained and able to assist travellers through procedures which are technically challenging and psychologically sensitive.

⁽¹⁾ OJ C 88, 11.4.2006, p. 37–40, OJ C 128, 18.5.2010, p. 29–35, OJ C 128, 18.5.2010, p. 80–88, OJ C 44, 11.2.2011, p. 162–166, OJ C 376, 22.12.2011, p. 74–80, OJ C 299, 4.10.2012, p. 108–114.

2.12 While acknowledging the advantages of collecting biometrical data, the EESC notes the impact that fingerprinting has on regular or non-regular travellers. The psychological impact is detrimental to the motivation to travel and generally to the individual's relationship with the host society. Moreover, fingerprinting is traditionally associated with criminal activities and with policing practices. The EESC calls for further consideration of biometrical data gathering as part of the two programmes and of ways to limit its adverse effects.

3. Specific comments

3.1 The EESC considers that the right to be informed should be made effective, especially where the use of personal data is concerned. Third-country nationals must be made aware of their rights. In certain situations, language barriers can play a role in impeding the effective use of this right. Existing and forthcoming justice and home affairs (JHA) data bases should provide for non-discrimination by default, which should be closely linked with ensuring that data protection principles are upheld (the right to information, effective remedies and individual consent for data processing) vis-à-vis third country nationals, with particular attention to vulnerable categories of third country nationals as data subjects.

3.2 The EESC considers that a more detailed picture is needed on JHA Databases and information schemes. The European Commission should provide on a regular basis, possibly yearly, a consolidated monitoring report of the activity of all schemes involving data and information exchange in the JHA policy domain indicating what kind of information is exchanged and for what purpose.

3.3 The EU should encourage national governments to properly support the institutions designated to exercise monitoring and overview responsibilities over the entry/exit system.

3.4 The EESC welcomes the gradual shift in granting access to the RTP from the country-based approach to the individual approach. It recommends that an interview with the applicant should be the rule, especially in situations where further clarifications are needed. The EESC also draws attention to the logic of profiling (automated decision making) and data-mining associated with JHA Databases and Smart Borders and considers that the potential use of race, ethnicity or other

sensitive grounds as a basis for statistical dataveillance is difficult to reconcile with non-discrimination principles, secondary legislation and fundamental rights obligations.

3.5 The EESC advocates a more inclusive definition of frequent travellers that covers any cultural, economic and social activity. It encourages the Members States to take into account the full diversity of social life. We should avoid giving preferential treatment to any socio-professional category.

3.6 Third-country nationals can request to be recorded in the RTP at consulates, common application centres and any border crossing point. This is helpful to the applicant, but is also a management challenge. All the staff involved should be informed and properly trained in how the systems work.

3.7 The EESC thinks that the proof of sponsorship and/or private accommodation could be burdensome. If it is maintained, it should at least have a minimal and standard format to be used across EU. This way Member States will not use the statement as a deterrent.

3.8 As a matter of principle, the issuing of the supporting documents needed to complete the RTP application should not entail unnecessary and excessive costs to the applicant and the organisations involved. The costs incurred by individual applicants and supporting organisations should be calculated as part of the interim evaluations.

3.9 Regarding the period in which the relevant authorities must make a decision, we recommend setting a maximum period of 25 days, while encouraging authorities to make a decision as soon as possible.

3.10 The criteria for rejecting an RTP application should be clarified. It is not clear on what grounds the level of threat to public policy, internal security and public health is assessed. This opens the way for arbitrary decisions. This evaluation is performed by thousands of individuals who have very diverse backgrounds, training and levels of information about the traveller, his activities and home country. Moreover, listing the threat to the international relations of a Member State as a reason for rejection is questionable.

3.11 It is very important that unsuccessful applicants (non-admissible application/rejected application) can effectively appeal against the decision. The EESC encourages the Commission and the Member States to assist individuals who are willing to exercise their right of appeal.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for an amendment to the Commission Proposal COM(2011) 607 final/2 — For a regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006’

COM(2013) 145 final — 2011/0268 (COD)

and on the ‘Proposal for a regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006’

COM(2013) 146 final — 2011/0276 (COD)

(2013/C 271/19)

Rapporteur general: **Mário SOARES**

On 25 March 2013 the Council decided to consult the European Economic and Social Committee, under Articles 164 and 177 of the TFEU of the Treaty on the Functioning of the European Union, on the

Proposal for an amendment to the Commission Proposal COM(2011) 607 final/2 - for a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006

COM(2013) 145 final – 2011/0268 (COD)

and

Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006

COM(2013) 146 final - 2011/0276 (COD)

On 16 April 2013 the Committee Bureau instructed the Section for Employment, Social Affairs and Citizenship to prepare the Committee’s work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mário SOARES as rapporteur-general at its 490th plenary session, held on 22 and 23 May (meeting of 22 May), and adopted the following opinion by 135 votes to 3 with 4 abstentions.

1. Conclusions & Recommendations

1.1 In spite of the misgivings that it has expressed about the amounts and manner of funding secured for the Youth Employment and Youth Guarantee initiatives, the EESC agrees with the Commission about the need to adjust, in line with the proposal put forward, the Parliament and Council regulations on the European Social Fund and the Structural Funds.

1.2 The EESC stresses the need for policies decided upon now to contribute to growth and the creation of high-quality, stable jobs and to strengthen social cohesion.

1.3 The EESC regrets the fact that funding for the Youth Employment initiative has not come from an increase in funds from the Union, but instead comes from a reduction in the overall budgetary envelope for cohesion, which is already lower than that available in the 2007-2013 period.

1.4 The EESC firmly believes that the 6 000 million euros earmarked for this is not enough to cope with the magnitude of the problem and the urgent need to resolve it.

1.5 Since the crisis has not yet come to an end, and since job creation has not yet begun, the EESC is recommending either that there be greater flexibility in setting the percentage of youth unemployment enabling access to the allocated funds, in such a way as to be able to assess developments in the youth unemployment situation, or that this percentage be set at 20 %.

1.6 The EESC recommends that the age limit for accessing the Youth Guarantee be raised to 30, particularly in those countries with higher levels of youth unemployment.

1.7 Lastly, the EESC calls on Member States not to cut back the financial commitment provided for in the proposal for the Multiannual Financial Framework for promoting Youth Employment, and to accept that the Commission's suggestion that additional resources be used to achieve the objective of eradicating a problem which is jeopardising the future of a whole generation of young Europeans.

2. Key elements of the Commission proposal

2.1 Following the European Council's decision of 28 February 2013 to create a Youth Guarantee, the Commission submitted two proposals: one amending Commission proposal COM(2011) 607 final/2 – Regulation of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (COM(2013) 145 final); the other amending Commission proposal COM(2012) 496 laying down common provisions on various funds and repealing Council Regulation (EC) No 1083/2006 (COM(2013) 146 final).

2.2 These proposals are designed to provide funding for the Youth Employment initiative as part of the 'Youth Guarantee', which aims to secure a decent supply of jobs for all young people up to the age of 25, or to provide continuing education or professional apprenticeships/traineeships in the four months after the end of their studies or after they become unemployed.

2.3 The total funding provided for the 2014-2020 period is 6 000 million euros: 3 000 million investment allocation from the European Social Fund and 3 000 million as a specific allocation for the Youth Employment initiative as part of sub item 1b: 'Economic social and territorial cohesion'.

2.4 The funding is earmarked for NUTS 2 regions which, in 2012, registered youth (15 to 25 years) unemployment rates of over 25 %.

3. General comments

3.1 The drastic youth unemployment picture can be seen in various Member States and amply warrants the initiative decided

upon by the Council on 28 February 2013 to create a Youth Guarantee which the social partners and civil society organisations have called for on several occasions in a variety of forms.

3.2 According to the European Commission, there are 7,5 million youth NEETs ⁽¹⁾ in the European Union, representing 12,9 % of young Europeans between the ages of 15 and 24. Many have not finished their secondary education and left school early; many are immigrants or belong to more vulnerable sectors of society. However some countries have seen a deterioration in the situation of middle-class youths (the new poor) who have not yet finished their studies and run the risk of not completing them.

3.3 In previous opinions, the EESC has highlighted the catastrophically bad youth unemployment figures in the EU and has called on all interested parties to adopt urgent, effective and definitive measures to break the vicious circle which is jeopardising the future of a whole generation ⁽²⁾. This is not just a concrete problem for the people involved, but also a threat to the social cohesion of the EU which could, in the long-term, compromise economic growth and competitiveness in Europe.

3.4 The EESC points out that the policies being decided on now must help restore growth and create high-quality, stable jobs with the guarantees and protection which historically have contributed to building up the European social model and social cohesion. At the same time, it reaffirms the importance of full participation by the social partners and civil society organisations in planning, implementing and monitoring these policies.

3.5 In truth, the Youth Employment initiative, incorporated in the Youth Guarantee, will only work if corresponding stimulus is given to 'demand on the labour market' (in other words if there is economic growth). Moreover, education, apprenticeships and traineeships and efforts to improve the skills of millions of young people with little prospect of getting jobs, entail huge risks in themselves.

3.6 The EESC is concerned to note that the European Council is viewing Europe's economic difficulties as essentially a problem of budgetary consolidation, without even trying to quantify the opportunity costs or the subsequent negative impact, such as mass youth unemployment, disillusion and despair ⁽³⁾.

⁽¹⁾ NEETs refers to young people who are neither in education, employment or training.

⁽²⁾ See in particular EESC opinion on *Moving Youth into Employment*, OJ C 161, 6.6.2013, p. 67-72

⁽³⁾ The cost of young people not getting jobs, either in terms of excessive social transfers (welfare benefits) or in terms of taxes which cannot be collected, amounts to over 150 000 million euros.

4. Specific Comments

4.1 Since the amendments to the regulations submitted by the Commission are designed to adapt the current European Social Fund regulation and the more general regulation on various European funds to the European Council decision of 7 and 8 February, the following comments are not directed at the Commission proposals, but at the assumptions decided upon by the Council.

4.2 Against the background of the current crisis, the EESC feels it must express its concern that the Council is proposing a budget for Europe for the 2014-2020 period which is lower than that provided for in the previous period, and this has a negative impact on the resources needed to cope with the present-day situation.

4.3 As a consequence of this decision, the funding proposed for combating youth unemployment does not mean a budgetary addition, but rather a reduction of the resources earmarked for other areas: 3 000 million from the European Social Fund and 3 000 million from cohesion policy funds.

4.4 Likewise, the overall 6 000 million euros allocated for this purpose, spread out over seven years, is clearly inadequate ⁽⁴⁾.

4.5 Setting 2012 as the year for determining the youth unemployment rate (25 %) which triggers access to the funds

now allocated does not take into account either the developments in the crisis or the current recession and may fail to take account of dramatic situations which might arise during this period. The EESC therefore holds the view that there has to be greater flexibility to be able to assess developments in the youth unemployment situation or, as a preventive measure, that the relevant rate should be brought down to 20 %.

4.6 On the other hand, the EESC recommends that the age limit for receiving the Youth Guarantee should be raised to 30, so as to allow young people leaving university later or finding themselves in a transition phase between training and employment, to have access to the Guarantee. This situation is particularly important for countries with higher youth unemployment rates.

4.7 The EESC supports the decision a) to exempt Member States from co-financing the specific allocation for Youth Employment (EUR 3 000 million), and b) not to apply the 5 % performance reserve to the resources allocated to the Youth Employment initiative.

4.8 Lastly, despite the above comments, the EESC would reiterate that this initiative deserves support and recommends that it be converted into a structural measure for active employment policies and not limited to being an instrument for coping with the current economic crisis ⁽⁵⁾.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽⁴⁾ According to the ILO, which welcomes this initiative - albeit cautiously, the level of funding required to generate significant changes to this situation would amount to EUR 21 000 million.

⁽⁵⁾ The Youth Employment initiative must be linked to the European Semester. This is consistent with the EESC opinion on *Moving Youth into Employment*, OJ C 161, 6.6.2013, p. 67-72.

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 — CARS 2020: Action Plan for a competitive and sustainable automotive industry in Europe’

COM(2012) 636 final

(2013/C 271/20)

Rapporteur: **Mr RANOCCHIARI**

Co-rapporteur: **Ms HRUSECKÁ**

On 8 November 2012 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 - CARS 2020: Action Plan for a competitive and sustainable automotive industry in Europe

COM(2012) 636 final.

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 147 votes to 1 with 6 abstentions.

1. Conclusions and recommendations

1.1 The EESC values the commitment of the European Commission, and in particular its vice-president, Antonio TAJANI, Commissioner for Industry and Entrepreneurship, who has taken steps to verify the state of the automotive industry by listening to the views of all the stakeholders participating in the CARS 21 High Level Group before launching an action plan based on the outcomes of this exercise in order to counter the difficult situation the sector is facing and to facilitate its recovery.

1.2 The action plan set out in the CARS 2020 Communication presents views and recommendations that the EESC fully endorses with respect to at least three of its four defining points, namely financial support for research, smart regulation that avoids needless costs for the sector and the development of the sector's international dimension. On the fourth point the EESC supports the Commission's suggestions on anticipating changes, while some doubts remain on restructuring process.

1.3 It is an ambitious strategy that seeks a balance between climate change mitigation and the need for more competitiveness, i.e. an increasingly competitive and sustainable industry to beat the challenge from increasingly aggressive external and internal competition ensuring a socially acceptable way for this transition.

1.4 Achieving this goal means moving towards common economic and trade policies, using all available means at the EU level to implement the recommended measures as a matter of utmost urgency, overcoming the divisions that have hitherto prevented a swift and coordinated response to the crisis and, if necessary, reviewing certain orientations, or even decisions, which could hinder the plan, and therefore the sector's much needed recovery.

1.5 A defining problem of these times is the shortage of available funds to cover the manufacturers' and their component suppliers' ever-growing need for investment in research, development and innovation (RDI) in order to meet the Commission's goals within the next few years. The problem is even more serious for SMEs and other related and often dependent companies operating in this sector.

1.6 The EESC endorses the Commission's decision to avoid technology-specific incentives, i.e. reserved for a particular technology to the exclusion of all others. However, this decision must not mean that incentives for the short and medium term (e.g. methane, LPG, new generation high-efficiency engines), should create obstacles for development in the medium and long-term, e.g. electric or hydrogen-powered vehicles.

1.7 As regards CO₂ regulations, the EESC believes that only a life cycle assessment (LCA) approach can help to mitigate the total vehicle environmental footprint.

1.8 The Communication states that the European automotive industry is engaged in a significant restructuring process (possibly involving assembly plant closures), which will have repercussions on employment. It does not however study or give details on the main underlying situation, i.e. Europe's structural overcapacity. Although precise data on its extent is not available, estimates carried out by sectoral analysts indicate that overcapacity is between three to five million vehicles. The EESC urges the Commission to act quickly to carry out more detailed research to provide more precise figures on employment and overcapacity and the cost of any capacity under-utilisation.

1.9 The Commission therefore seems to be taking an excessively backseat approach by only playing a complementary role vis-à-vis businesses, States and regions, bearing in mind that unless there is a shared solution to the problem, another of the Communication's objectives, i.e. *enhancing competitiveness on global markets*, could be weakened. As a result, the EESC believes that production overcapacity cannot be addressed through isolated solutions, but needs a guide to steer the process itself.

1.10 The EESC regrets that such an important social issue has not been adequately addressed in the action plan and urges the Commission to take on this responsibility by exercising its right of initiative developing guidelines and collecting good practices used in the past that have helped avoiding redundancies. Given the urgency of the situation, the Commission could and, in the EESC's view, should assume the coordination and eventually also financially support a vast restructuring process which, if inadequately managed, could destabilise many European regions and have a heavy impact on employment in the sector. The EESC strongly recommends to closely involve the regional and local authorities to any restructuring plan.

1.11 For this operation to succeed and to maintain the sector's production base in Europe, open and constructive social dialogue needs to be enhanced. This is the only way to ensure the right balance between the different aspects of the action plan, prioritising human capital in terms of re-skilling workers or managing redundancies when job losses become inevitable. This is also true for the linked industries facing the same serious problems.

1.12 In the short term, a European framework would have to be established for social bridging measures in order to avoid EU labour market distortions, capitalising on lessons learned from the 2008-2009 crisis. The role of social partners is essential in this transition period.

1.13 Finally, the EESC believes that the EU must strengthen its entire industrial policy, and in particular regarding the manufacturing sector. The Europe 2020 goals are unattainable without a strong and competitive industrial sector to

underpin the Union's economic development. Proactive policies are needed to support innovation and development and transform today's problems into tomorrow's opportunities. The automotive industry needs an industrial policy that aims to achieve sustainable growth and not merely to downsize production. There is a need for capital investment and investment in increasingly well prepared and qualified human resources. Technologies, processes and design must all come together to reinstate the European automobile industry at the head of the global automotive market. International competition must be faced by focusing on development and innovation. Possible plant closures will definitely not be enough to solve the problem.

2. Introduction

2.1 In order to better understand and assess the action plan on which the EESC is asked to comment, we need to take a look at the work that preceded it and the experience gained and progress made since the first version of CARS 21.

2.2 In January 2005, the then European Commission vice-president and industry Commissioner, Günter VERHEUGEN, set up the CARS 21 (an apposite acronym for *Competitive Automotive Regulatory System for the 21st Century*) High Level Group.

2.3 CARS 21 was set up to define an EU policy, and therefore legislation, that could bolster the sector's competitiveness against ever-growing competition on the global market. This initiative was all the more appropriate in light of the importance of the automotive industry⁽¹⁾, which employs around twelve million people in Europe (in production plants in 19 Member States), makes R&D investments of over EUR 28 billion every year, has a positive trade balance in the region of EUR 90 billion, and contributes over EUR 430 billion to the Member States' tax revenues, i.e. 4 % of European GDP.

2.4 CARS 21 concluded its work in December 2005 with a document that listed 18 recommendations and set out guidelines which the Commission should have followed when developing its legislative proposals. Regulatory policy should have provided the industry with a favourable and reliable framework based on the principle of 'smart regulation' that checks the cost-benefit ratio of each proposal, based on a careful assessment of the impact on the industry and society and recognition of the minimum timeframes needed for each technical innovation required, and the establishment of long-term goals through the systematic involvement of all stakeholders.

2.5 In fact, the application of these recommendations was not always coordinated among all the Commission's directorates and the other EU institutions, but on the whole, the CARS 21 guidelines have proved extremely useful not only for the industry but also for the sector's other stakeholders.

⁽¹⁾ This term is being used to cover the entire industry, ranging from the manufacture of vehicles to the provision of components and after sales service. The products include passenger vehicles, light and heavy commercial vehicles, motorcycles, and more generally, two, three and four-wheel motor vehicles.

2.6 In 2010, given the need to make vehicles increasingly clean and efficient - and in the middle of an unprecedented crisis of the European market - Antonio TAJANI, vice-president of the Commission and Commissioner for industry, rightly recognised the need to renew CARS 21, introducing a number of changes based on past experience.

2.7 Indeed, the previous version of CARS 21, although well-received, gave rise to some criticism due to its composition which, according to some, did not include all the stakeholders, giving considerable space to manufacturers; but above all it did not involve all the European Commissioners liable to be involved in the sector's legislative policy.

2.8 As a result, efforts were made in the recent version to involve all possible public and private stakeholders: eight Commissioners, nine Member States, and representatives from other institutions such as the EESC and the Committee of the Regions. With regard to the private sector, in addition to European manufacturers, other participants from the sector included the manufacturers of components, repairers, the oil industry, and, moreover, trade unions, environmentalists and representatives from associations and movements that support new motor technologies, amounting to a total of about forty participants in the high level group, assisted by sherpas and experts.

2.9 Work was launched at a first high level group meeting in November 2010, and was developed during a series of working group meetings culminating in a final report, which was discussed and approved in June 2012.

2.10 This initiative was of the utmost importance and it is to the credit of the Commission, and in particular DG Enterprise and Industry, which coordinated the work and demonstrated professionalism and efficiency in producing a report that achieved general consensus among the participants.

2.11 As explained by Commission vice-president TAJANI, the Communication on the CARS 2020 action plan, under consideration in this opinion, is based on these experiences and this report.

3. The Communication from the Commission: CARS 2020 - Action Plan

3.1 The action plan set out in the Communication is based on four pillars:

- Investing in advanced technologies and financing innovation
- Improving the internal market and implementation of smart regulation

- Enhancing competitiveness on global markets
- Anticipating change and softening the social impacts of restructuring.
- Each of these points comprises a set of initiatives, the implementation of which is to be monitored by setting up **CARS 2020**, a high level group – involving the same stakeholders as CARS 21 – which will meet informally every year and which will also avail itself of expert meetings on issues relating to the automotive sector's competitiveness.

3.2 Investing in advanced technologies and financing innovation

The Commission intends to:

- continue working with the EIB in order to ensure the availability of financing for automotive research and innovation projects;
- work with the industry to develop a European initiative for green vehicles under **Horizon 2020** ⁽²⁾;
- implement goals set to lower CO₂ emissions from passenger and light commercial vehicles by 2020;
- support the development of a new driving test-cycle and test procedure to measure fuel consumption and emissions that is more representative of real-world driving;
- continue to implement road safety work in line with the objectives of its **Policy Orientations 2011-2020** ⁽³⁾;
- draw up an alternative fuels strategy and present a legislative proposal on the infrastructure required for their use.

3.3 Improving the internal market and implementation of smart regulation

The Commission intends to:

- set up a dialogue with stakeholders to reach an agreement on self-regulation for the distribution of vehicles in Europe;
- establish guidelines for financial incentives for clean and energy-efficient vehicles put in place by Member States;

⁽²⁾ Horizon 2020 (COM(2011) 808 final, 30.11.2011, COM(2011) 809 final, 30.11.2011) - The proposed framework instrument for financing Research and Innovation from 2014 to 2020 with a budget of EUR 80 billion.

⁽³⁾ COM(2010) 389 final.

- reaffirm the principle of ‘smart regulation’, which is one of the most important outcomes of the first version of CARS 21 and is reiterated in the last one, also including a competitiveness proofing exercise in the impact assessments of legislative proposals; and

- review the type-approval framework to include provisions for market surveillance.

3.4 Enhancing competitiveness on global markets

The Commission intends to:

- assess the impacts of each free trade agreement (FTA) as well as their cumulative impact on the competitiveness of this industry;

- reform the UNECE agreement ⁽⁴⁾, also bringing in third markets; and,

- as far as possible, complement multilateral regulatory cooperation under the UNECE framework with bilateral regulatory cooperation in the context of trade agreements with non-UNECE countries.

3.5 Anticipating change and softening the social impacts of restructuring

The Commission intends to:

- support the establishment of a European Automotive Skills Council involving all stakeholders, including organisations of education and training providers to analyse trends in automotive employment and skills and therefore the skills gaps that need to be filled;

- encourage the use of the European Social Fund (ESF) for retraining and re-skilling workers and, in the most serious cases of plant closures and downsizing, the European Globalisation Adjustment Fund (EGF);

- monitor restructuring activities to ensure their compliance with EU legislation, in particular concerning state aid; and

- with regard to restructuring production overcapacity, play a purely complementary role to the industry, which is responsible for managing the restructuring process.

4. Comments of the European Economic and Social Committee

4.1 The EESC welcomes the Communication, which not only confirms many of the CARS 21 recommendations in its action

plan, but also undertakes to continue dialogue with CARS 21 participants to ensure that the implementation of the plan's recommendations is monitored and evaluated at regular intervals, and updated if necessary.

Production capacity installed in Europe

4.2 In connection with the above, the EESC underlines an important lack in the Communication: the problem of production overcapacity is not tackled with the due attention but it is simply included in the more general restructuring process. Dimensions and data of this problem are highlighted hereby.

4.3 AlixPartners ⁽⁵⁾ estimates that ‘About 40 car plants in Europe last year were running below their financial break-even point of 75 to 80 percent capacity use ...’ and that about ten are below 40 percent. In other words, between 2007 and 2012, car sales in Europe fell by 3.5 million, i.e. a fall of about 23 %, rising to 34,6 % for commercial vehicles. The situation is even more critical for the motorcycle sector, where registrations fell by 46 %, about twice as much as for four-wheeled vehicles.

4.4 It should however be added that sector analysts disagree about overcapacity levels, with estimates ranging from three to five million vehicles depending on the data collection criteria applied. The EESC believes that despite the complexity of such an exercise, the European Commission must take on the task of more detailed research in order to provide more precise figures.

4.5 Furthermore, production overcapacity is the first causal link in a chain that has a major impact on the automotive industry's competitiveness: production overcapacity – high fixed costs – price war – reduced profits and aggravated financial situation – plant closure – overall investment cuts, especially in R&D – risk of reduced long-term competitiveness. As a result, the EESC asks the Commission not to underestimate the fact that overcapacity also has a bearing on the action plan's third pillar, i.e. *enhancing competitiveness on global markets*.

4.6 There is no question of taking a simplistic approach to this issue since the situation varies from one country to another and from one manufacturer to another. Although average production capacity in Europe for 2012 has been around 70 %, there are wide variations between countries: 80 % in the United Kingdom and Germany; 70 % in Spain; 60 % in France; and just above 50 % in Italy (source: The Economist). Variations between different car manufacturers depend on a number of factors. One of these is the level of exports since manufacturers that have high levels of exports to non-EU countries (e.g. BMW, Audi, Daimler) are in a better position, whereas those that rely more on the domestic market are in difficulty.

⁽⁴⁾ The 1958 Agreement of the United Nations Economic Commission for Europe (UNECE) on international technical harmonisation in the motor vehicle sector.

⁽⁵⁾ AlixPartners, *Automotive Outlook 2012 – An Industry at the Crossroads*, Jens-Ulrich Wiese, IFF - Prague, September 21, 2012.

4.7 Another factor is the differentiation between manufacturers and the segment where they specialise. A Roland Berger study shows that the utilisation rate of plants varies according to the segment. The utilisation rate of manufacturers or makes specialised in the economy segment (Dacia\Logan, Chery, Hyundai, Chevrolet) is 77 %, whereas in the generalist mid-range segment (PSA, Renault-Nissan, Toyota, Suzuki, Fiat, Opel, VW) it is 62 %, and in the premium\high-end segment (BMW, Mercedes, Audi, Lexus, Infinity, DS) it is 83 %.

4.8 As a result, production overcapacity cannot be addressed in isolation by individual manufacturers and national or regional governments. The EESC believes, on the contrary, that a guide is required to steer and coordinate the process itself, and that this role can be carried out by the Commission.

Investing in advanced technologies and financing innovation

4.9 The plan does not mention any funding to be added to previously allocated and available funds. The goal announced by Commission vice-president TAJANI at the closure of CARS 21 to raise Horizon 2020 financing for green vehicles from EUR one to two billion does not feature in the Communication. Thus, as things currently stand, even the possibility of new EIB interventions is no more than an aspiration based on the recent EUR 10 billion capital increase.

4.10 The entire automotive industry supply chain, which is expected to undertake significant RDI activities to achieve the technological leap that will enable it to produce increasingly 'greener' cars by 2020, would also need more EU funds to boost their own investments, which have become more difficult in a European market that does not seem able to recover from the recession in the near future.

4.10.1 In this context, the EESC takes a favourable view of the implicit reference to the principle of technological neutrality vis-à-vis the different types of propulsion (internal combustion engines, electric, hybrid powertrains and fuel cells), which should underpin EU support for R&D and innovation activities aimed at developing 'a diverse portfolio of fuels necessary to meet the climate change objectives'.

4.10.2 In line with the abovementioned technological neutrality, the Commission's commitment to developing infrastructure to facilitate the market penetration of vehicles powered by alternative fuels, without a priori preferences between electric energy, hydrogen, sustainable biofuels, methane (natural gas and biomethane) or LPG is particularly positive. To this end, the Commission has put forward an alternative fuels strategy and a legislative proposal indicating minimum refuelling/recharging infrastructure requirements.

Unfortunately, in apparent contradiction with the plan's objective to promote the extension of these structures, a recent proposal for a directive (Energy taxation) penalises not only diesel but also alternative fuels such as methane and biomethane, thereby compromising their market deployment.

4.10.3 The Commission's position on 'technological neutrality' nevertheless also raises two issues:

A) the Commission does not state its position vis-à-vis the different impacts of the various technologies, either in terms of time (short-term outcomes vs. long-term outcomes) or the costs pertaining to each solution for the private as well as the public sector (e.g. in terms of incentives), using the well-to-wheel impact as a reference.

B) It does not address an important issue raised by the CARS 21 High Level Group on page 72, where it states as follows: 'It should be investigated whether in longer-term, the automotive industry might become less labour intensive as the electric vehicle (requiring less parts and therefore less labour input) increase their market penetration. Electrification brings with it a reduction of powertrain complexity (from ca. 1 400 parts in a conventional driveline to ca. 200 parts in an electric one)'. This shows how technological neutrality does not mean neutrality in terms of the social and economic impact on the industry. A Commission study on the impact of new technologies on the production cycle and on employment is expected shortly.

4.11 Cars are a significant source of CO₂ emissions. The Committee believes that a more accurate way of measuring automotive CO₂ emissions would be to use life cycle assessments, which take into account all the emissions created during a product's life cycle from raw material production to product end-of-life.

4.12 Nevertheless, while confirming commitments to lowering CO₂ emissions, the Communication says nothing about the timeliness of the Commission proposing a review of Directive 1999/94/EC on fuel economy labelling, with mandatory indication of absolute CO₂ emission values for all passenger car models. This initiative would all the more timely since the regulation establishing new limits of 95g of CO₂/km for passenger cars, as recommended by the EESC in one of its recent opinions ⁽⁶⁾, is currently under discussion.

4.13 Another interesting announcement concerns a new European green car initiative under Horizon 2020 (as follow-up to the European Green Cars Initiative (EGCI) Public-Private Partnership), which will therefore involve private funding.

⁽⁶⁾ OJ C 44, 15.2.2013, p.109.

4.14 At the same time, it will not be sufficient to just develop new technologies, if the appropriate training for the workforce is not ensured in parallel. Indeed, new technologies will imply new skills and competences needed from the workers. Those are not currently available within this sector, and partly need even to be developed within the education system. This requires on the one hand sustained efforts from the employers active in the sector to introduce new programmes for apprenticeships, but on the other hand also cooperation with the education and training institutions as well as research and higher education systems to offer new training curricula.

Improving the internal market and implementation of smart regulation

4.15 It is appropriate to reiterate the commitment to legislate in accordance with the principle of smart regulation, which should be the basis for framing legislation for this sector, applying parameters such as cost-benefit ratios, lead times ⁽⁷⁾ and the impact on the industry's competitive position on global markets.

4.16 It is also very appropriate to develop guidelines for financial incentives for clean vehicles, which should be based on objective and available data such as CO₂ emissions, avoiding market fragmentation due to uncoordinated measures.

4.17 With regard to effectiveness in time, consumer attitudes to new technologies must be taken into account, especially with respect to electric power. To date, outcomes are poor, and in any case below expectations. As a result, we have to ask ourselves whether it would not make more sense to aim for short and medium-term environmental goals by investing more in research on new generation high-efficiency engines.

4.18 With regard to electric powertrains and their future development, we must bear in mind that there are considerable variations and differences in estimates, depending on the parameters considered. A comparison of different forecasts reveals multiplication factors that range as far as from one to ten ⁽⁸⁾.

Enhancing competitiveness on global markets

4.19 FTAs were given a lot of attention in CARS 21 discussions, following the industry's criticism of the agreement

with South Korea ⁽⁹⁾. The need to study the cumulative impact of these agreements also emerged, in light of the need for close coordination between industrial and trade policies in Europe, with a view to the total elimination of non-tariff barriers to EU exports. The EESC therefore supports the Commission's decision to launch a study of FTAs that have already been concluded or are being formulated, such as the agreement with Japan. The study will assess the cumulative impact of these agreements on the automotive industry's competitiveness.

4.20 More generally, the EESC welcomes the Commission's efforts to implement a trade policy designed to maintain a strong industrial base for the sector in Europe by using and refining available instruments, ranging from the review of the UNECE agreement to the development of a new regulation on the international harmonisation of vehicles.

4.20.1 However, the European automotive industry also faces challenges in domestic markets, where changes in demand and mentalities will affect its capacity to succeed in the future. This needs to be addressed as well, alongside the competitiveness on global markets.

Anticipating change and softening the social impacts of restructuring ⁽¹⁰⁾

4.21 A strategy for a successful and sustainable automotive industry in Europe must involve not only investing in new technologies and innovation together with smart regulation and improved internal market, but especially its firm place in the overall EU industrial policy and giving the workforce same importance and attention as all the other aspects.

4.22 In order to maintain an industrial base in Europe, businesses have to be able to adapt their production capacities swiftly to new technologies and market developments and need a skilled and continually updated workforce. As a result, the establishment of a European Automotive Skills Council in 2013 for the automotive industry will be very welcome. The Council will involve all stakeholders, also in order to make recommendations to the political authorities on developing skills in the sector and education and training needs in the light of expected changes. Continuously developed qualification makes the workforce employable and is the best answer which all the stakeholders should aim to; special attention should be paid to the SMEs and their specific problems in this area.

⁽⁹⁾ Between 1 July 2011 and 30 June 2012, i.e. the first year following the agreement's entry into force, 433 000 vehicles were imported from Korea, representing a 46 % increase vis-à-vis the previous twelve months (source: EUROSTAT).

⁽¹⁰⁾ As stated in the Commission Green Paper entitled *Restructuring and anticipation of change: what lessons from recent experience?* (COM(2012) 7 final): 'Restructuring operations are part of the everyday life of companies, workers, public authorities and other stakeholders.' This may involve redeploying human resources to activities with higher added value, vocational training; temporary reductions in working hours, closing parts of supply chains or plants.

⁽⁷⁾ The time needed for the industry to meet any new requirement involving changes to vehicle structures.

⁽⁸⁾ Roland Berger: *Rebound of the US suppliers industry*, Detroit, October 2012.

4.23 Anticipative measures to prevent the negative employment consequences of restructuring should fully use social dialogue in general, but mainly to explore the European Works Councils' right to participation and consultation in restructuring situations and its potential to play an active role in presenting alternative solutions. Proper communication between the suppliers and final producers should ensure that if production plants are shut down as a last resort, it will not have a domino effect on regional economies that depend on the automotive industry, bearing in mind that the closure of assembly plants will have repercussions for the upstream and downstream production chain.

4.24 As we have seen in para. 4.2 -4.8 the Communication, however, seems to avoid the issue in that it makes a general reference to a 'restructuring' process without any mention of the causes. In fact, this part of the document fails to refer back, in particular, to the 'the long-standing structural issue of over-capacity' mentioned on page 6, which is the reason why some manufacturers have announced production plant closures. Indeed, the EESC thinks that there would be a need to study to what extent overcapacity is a temporary imbalance in production capacity that depends on traditional geographical distribution, and demand in Europe, and is influenced by factors such as consumer purchasing power, product policy, austerity, and other public policies.

4.25 In other words, the action plan does not address the reasons for the restructuring process, nor does it assess its magnitude. However, it mentions the situation merely to suggest that it should intervene to soften the social impact, while entrusting the industry with responsibility for the restructuring process, and restricting the Commission to a complementary role alongside the Member States and local authorities. In this way, it does not propose to coordinate restructuring measures, and does not even suggest guidelines for Member States to follow in the measures they adopt.

4.26 This is why the EESC believes that given the level of unused production capacity, it will not be enough for the Commission to play a complementary role alongside other stakeholders.

4.27 The CARS 2020 Communication also offers some interesting pointers which deserve to be developed. On page

21, it mentions that the Commission intends to 're-launch the inter-service task force to study and follow up the main cases of automotive plant closures or significant downsizing. The task force has been active and highly efficient in past cases in the automotive industry' (referring to the cases concerning VW Forest and MG Rover). The EESC asks for a specific study to be provided on these outcomes in order to establish best practice guidelines for the current situation.

4.28 The EESC suggests to explore alternatives for restructuring processes following examples that worked in the past and/or are proposed today. e.g. Opel's Bochum plant. There, a wide variety of measures has been agreed upon by the unions and employers' representatives, involving also external stakeholders in order to reach a socially acceptable solution in view of the closing of the plant planned for the end of 2016.

4.29 There is a need, however, to develop a perspective for a long term industrial policy for the sector. This must be paramount with respect to any short-term decisions on adjustment of production capacity. Just shutting down capacities does not improve the overall capability of the sector to face future challenges, and has tremendous consequences for the whole supply-chain. Instead, it is necessary to work towards a transformation of the sector, and new policies for products better in line with the expectations of the consumers, offering opportunities to make this industry a sustainable one for the 21st century.

4.30 Otherwise the risk exists that in such a situation of long lasting depressed sales levels and consequent profit losses, companies specialised in the generalist mid-range segment could decide to offload the burden of reduced production by closing plants in Western Europe and by shifting production to their remaining plants, most of them opened recently, in new Member States or outside Europe, in order to take advantage of lower wages and working conditions.

4.31 Finally, the Commission has shown a laudable commitment to monitoring compliance with state aid and internal market rules, as well as urging Member States to use the ESF and EGF, but in view of the foregoing, this is far from enough.

Brussels, 23 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

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 — Clean Power for Transport: a European alternative fuels strategy’

COM(2013) 17 final

and on the ‘Proposal for a directive of the European Parliament and the Council on the deployment of alternative fuels infrastructure’

COM(2013) 18 final — 2013/12 (COD)

(2013/C 271/21)

Rapporteur: **Mr BACK**

On 24 January 2013, 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 - Clean Power for Transport: A European alternative fuels strategy

COM(2013) 17 final.

On 5 February and 8 February 2013, the European Parliament and the Council respectively decided to consult the European Economic and Social Committee, under Article 91 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and the Council on the deployment of alternative fuels infrastructure

COM(2013) 18 final – 2013/12 (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 30 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 147 votes to 1 with 5 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the Clean Power for Transport Package⁽¹⁾ and its aim to create conditions for mass market deployment of clean propulsion by clean power sources.

1.2 The EESC approves the approach of market development and a minimum coverage of charging/refilling infrastructure with common standards to create user confidence and ensure cross border mobility.

1.3 The EESC also welcomes the proposals' focus on consumer information and consumer confidence to help develop the mass market which is a vital prerequisite for affordable vehicles with alternative propulsion systems.

1.4 The EESC welcomes the contribution to the creation of growth and jobs that can be expected to follow from the new market opportunities and improved competitiveness of European industry due to development of alternative fuels and their infrastructure.

1.5 Implementation of a strategy for clean fuels should not be limited to a number of mature fuels but also address long term issues regarding other clean power sources, the rapid and broad development in this sector and the need to encourage innovation and market introduction.

1.6 The EESC refers to the issues raised in its opinion on Indirect land-use change (ILUC)/Biofuels (TEN/502 - CES2363-2012), and in particular points 1.9 - 1.12, that demonstrate the complexity and long term character of these issues and the need for constant reassessment.

⁽¹⁾ Communication on Clean Power for Transport: A European alternative fuels strategy (the Communication), the proposal for a Directive on the deployment of alternative fuels infrastructure (the Proposal) and the accompanying staff working document on LNG for shipping (the Working Document).

1.7 The EESC therefore thinks that the long term strategic aims of the communication should be better followed up in the proposal. For instance, the national policy framework for clean fuels and their infrastructure, which Member States are to create under the proposal, should include all those energy sources, such as biofuels, that are seen as important in the communication.

1.8 The proposal should therefore define an economically and environmentally optimised fuel mix at EU level where coordinated national policies could enhance development and deployment. Articles 3, 8 and 10 as well as Annex I of the proposal should be reviewed in this sense.

1.9 The EESC doubts that public loading infrastructure for electric vehicles can be provided without public funding, at least during the initial phase, until the number of electric vehicles has attained a level where charging fees may reasonably finance the investment.

1.10 The EESC underscores the need to ensure a smooth and viable transition to a modified energy mix, and the importance of bearing in mind the potential of improving the environmental record of fossil fuels.

1.11 The EESC draws attention to the danger of blocking the development of new and more viable technical solutions for different modes and user groups. One example of this danger is the strong commitment to LNG for shipping although new and cheaper alternatives are being developed. Likewise, new user-oriented power solutions are appearing, for instance, for lorries, buses and two-wheeled vehicles.

2. Introduction: policy context and presentation of the communication and the proposal

2.1 In its flagship initiatives 'Resource efficient Europe' and 'Innovation Union', the Europe 2020 strategy for a smart sustainable and inclusive growth addresses climate change, energy and resources scarcity, the need to enhance competitiveness and improve energy security by improved resource and energy efficiency. In the field of transport, the 2011 White Paper on transport policy calls for transport's dependence on oil to be broken and sets a target of a 60 % reduction of greenhouse gas emissions stemming from transport by 2050. In its ten goals for a competitive and resource efficient transport system, the White Paper refers to developing and deploying new and sustainable fuels and propulsion systems. The list of initiatives in the White Paper addresses those aims under Initiative 24, 'A technology Roadmap', and Initiative 26 'A regulatory framework for innovative transport'. The communication and the proposal for a directive address these issues, entirely or in part.

2.2 In a number of opinions, the EESC has called for an initiative by the Commission to promote alternative fuels and the related infrastructure. They include the following:

— The opinion on the transport policy White Paper ⁽²⁾, points 4.19 and 4.20, where the EESC took a favourable attitude towards the development and deployment of cleaner and more energy efficient propulsion systems and supported the Green Cars Initiative and the 2010 strategy for the development of clean vehicles. In point 4.30 the EESC took favourable note of the attention given to the deployment of electric vehicles and the necessary charging infrastructure, referring to its opinion on Toward the wider uptake of electric vehicles ⁽³⁾ where the EESC expressed strong support for measures with this objective in order to reduce greenhouse gas emissions and dependency on imports of oil. The importance of smart technology was also indicated in enabling the use of electric vehicles as energy providers at peak hours.

— The opinion on the sulphur content of marine fuels ⁽⁴⁾ where the EESC welcomed the Commission's intention to improve compliance conditions through a 'toolbox', including technology measures such as alternative fuels (LNG) and shore-side electricity, through investments by both the private and public sectors.

— The opinion on the proposal for new guidelines for the Trans-European Transport Network ⁽⁵⁾. The EESC argued that the requirement on the availability of alternative clean fuels needed to be strengthened, as it would be crucial to link the TEN-T Guidelines to the forthcoming alternative transport fuels strategy.

2.3 The package presented by the Commission consists of the following elements:

— The communication provides an overview of the policy background and aims together with an overview of the current main fuel alternatives, and sets out the priority fields for further EU action.

— The proposal aims to ensure the build-up of a minimum alternative fuel infrastructure and the implementation of common technical specifications for this infrastructure in the EU to ensure EU wide mobility and economies of scale.

⁽²⁾ EESC opinion on the Roadmap to a Single European Transport Area – White Paper, OJ C 24, 28.1.2012, p. 146.

⁽³⁾ EESC opinion on Toward the Wider Uptake of Electric Vehicles, OJ C 44, 11.2.2011, p. 47.

⁽⁴⁾ EESC opinion on Sulphur Content of Marine Fuels, OJ C 68, 6.3.2012, p. 70.

⁽⁵⁾ EESC opinion on Guidelines for the Development of the Trans-European Transport Network, OJ C 143, 22.5.2012, p. 130.

2.4 The fuels covered by the communication are natural gas including biomethane (LNG, CNG, GTL), electricity, biofuels (liquid) and hydrogen, with different characteristics and different uses. The communication sets out a strategy for all modes of transport. The strategy seeks to establish a long term framework to guide technological development and investment in the deployment of alternative fuels with the aim of reducing oil dependence, improving fuel security and reducing emissions. Actions foreseen by the strategy concern four areas:

- Alternative fuels infrastructure should be built with sufficient density to create certainty about utilisation possibilities and ensure mobility throughout Europe. This will make possible more widespread use of vehicles and ships using alternative fuels, with a focus on electricity, hydrogen, CNG and LNG. The EUR 10 billion cost calculated for building the necessary infrastructure will be paid back with the market take-up. Direct use of public funding can be avoided if use is made of tools such as building permission requirements, concessions, procurement regulations, access and charging regulations and non-financial incentives.
- Common specifications are needed, most urgently for the interface between electric vehicles and the recharging points, but also for hydrogen, CNG and LNG.
- Consumer acceptance is vital. The means to obtain consumer acceptance span from non-financial measures, such as privileged access for electric vehicles and information campaigns, to financial incentives.
- Addressing the technological development as follows: (a) within the framework of the Horizon 2020 programme, funding will be made available for research, demonstration or market-oriented projects for alternative fuels in all modes; (b) roadmaps will be developed under the Strategic Transport Technology Plan (COM(2012) 501 final); (c) private public partnerships should be further developed and partnerships such as the Smart Cities and Communities' initiative (COM(2012) 4701 final) should be used; (d) specific projects include the European Industry Bioenergy Initiative under the Strategic Energy Technology Plan, and new research facilities for Electric Vehicle/Smart Grid interoperability are planned in the EU Joint Research Centre.

2.5 The proposal focuses on alternative fuels infrastructure, developing common technical specifications and consumer information. However, it also obliges the Member States to adopt a national policy framework for the market development of alternative fuels and their infrastructure. That framework is to

include an information requirement, policy and regulatory measures to support infrastructure development, support measures, research and target setting and cooperation with other Member States: a) to ensure international coherence in the infrastructure; b) to make journeys across the entire EU possible.

2.6 At the same time as the communication and the proposal, the Commission also made public the Working Document setting out an action plan towards a comprehensive EU framework on LNG for shipping. The Commission, in cooperation with EMSA, is planning to propose, by the end of 2014, a comprehensive set of rules, standards and guidelines for LNG provision, bunkering and use in shipping.

3. General comments

3.1 As pointed out above, the EESC has on a number of occasions addressed the questions of the need for alternative fuels for transport and the urgency in developing an adequate infrastructure for a credible refuelling or recharging system, that supports cross-border mobility. It has also stressed the need to launch further measures to promote the market uptake of electric vehicles and to grant sufficient autonomy to Member States in implementing this policy. The EESC therefore welcomes this initiative.

3.2 The EESC supports the approach outlined in the communication and implemented in the proposal, to stipulate an obligation for Member States to adopt national policy frameworks for the market development of alternative fuels that fulfil a certain number of minimum requirements, subject to a notification and evaluation system managed by the Commission.

3.3 In particular, the EESC approves the focus on refuelling/recharging infrastructure as a means to trigger market take-off for vehicles and ships using alternative fuels. It seems to be generally agreed that such measures are important for creating confidence in alternative fuels on the part of users which is an essential element for the market to take off.

3.4 The EESC also welcomes the establishment of technical standards valid within the EU for refuelling/recharging infrastructure. This measure is a decisive factor in inspiring confidence in alternative fuels as a viable alternative for cross-border transport. The EESC assumes that the Commission will make use of its power, as provided by the proposal, to adopt delegated acts to update the specifications, in order to ensure that they are always compatible with those applying on the world market.

3.5 The EESC observes that the proposal obliges Member States to adopt a national policy framework for alternative fuels. Article 3(3) however appears to authorise Member State to omit fuels from that policy, and the infrastructure obligations set out in Articles 4 to 6 only cover electricity, hydrogen and natural gas supply. However, the consumer information obligation in Article 7 seems to cover all alternative fuels on the market. It also appears from the communication that in particular the so called advanced biofuels are an important element in the future energy mix, at least as things now stand, also bearing in mind the minimum quotas foreseen for biofuels in the future energy mix. The EESC therefore thinks that Article 3 of the legislative proposal should indicate a core set of alternative fuels that must be addressed by national policy frameworks.

3.6 According to Article 3 of the proposal, the Member States should assess the trans-border continuity of the infrastructure coverage for alternative fuels. It also provides that the Member States are to cooperate, through consultations or joint policy frameworks, to ensure that the measures to implement the Directive are coherent and coordinated. The only means of ensuring that this fundamental obligation is adequately implemented seems to be the reporting and evaluation mechanism laid down in Article 3(5) and (6). The EESC questions if this is enough and wonders if it might not be useful to create a permanent coordination function, on the lines of the coordinators for certain TEN-T projects under the TEN-T Guidelines.

3.7 The communication seems to assume that financing of alternative fuels infrastructure can be obtained without direct public funding and with the support exclusively of policy tools such as building permits, concessions, procurement regulations, access and charging regulations and non-financial incentives. In the EESC's view this may be true for non-public loading stations for electric vehicles, but it doubts whether this concept works as regards public loading stations for electric vehicles, where commercial operation is generally considered to be unfeasible and public financing the only realistic solution, at least during the build-up phase. (See, for instance, *Fortschrittsbericht der Nationalen Plattform Elektromobilität (Dritter Bericht)*, Section 5.5 – a report prepared for the German Ministry of Transport in July 2012).

3.8 Because of the level of investment costs and uncertainty of markets the EESC takes the view that there will be a general and long term need for public financing of dedicated refuelling/recharging infrastructure for alternative fuels. The EESC therefore feels that the assessment made in the communication on this point should be reconsidered. These financing needs have been considered in the Guidelines on Financial Incentives for Clean and Energy Efficient Vehicles (SWD(2013) 27), which have now been issued, and should also be considered when setting priorities, for instance, on TEN-T funding.

3.9 The EESC also questions the number of loading stations per Member State foreseen for 2020 in Annex II to the proposal. Quoting one example, Germany, the Annex foresees 1 500 000 loading stations, of which 150 000 are to be public. The report on the implementation of the German electro mobility programme quoted under 3.7 above predicts a total of just fewer than one million loading stations for about the same number of cars. Of these loading stations, 150 000 are to be public, but there is a question mark over 50 % of these. The EESC would therefore suggest that the target figures in Annex II should be reconsidered and that a simple mechanism for revising the provisions in Annex II should be devised.

4. Specific comments

4.1 The EESC questions the criterion of cost effectiveness regarding shore electricity facilities set out in Article 4.4 of the proposal. It is not clear against what effectiveness criteria the cost is to be weighed.

4.2 The EESC welcomes the requirement that all public loading stations should be equipped with intelligent metering systems. This will facilitate future development of functions such as selection of green energy for charging and electricity delivery from the vehicle at peak hours. The EESC wonders if this requirement might not be considered also for non-public charging points.

4.3 The EESC questions if the provisions of Article 4.8 of the proposal are sufficient to ensure a right to roaming when using an electric vehicle in cross-border travel. The EESC takes the view that serious consideration should be given to the alternative of imposing an obligation on the Member States to ensure that roaming can be carried out within the EU at a reasonable cost.

4.4 Comparing Article 6(1) and (2) with (4), the EESC questions whether the planned deadline for the availability of technical standards for LNG, set out in Annex III 3.1 to the proposal as 'by 2014' is really satisfactory, considering that the 0,1 % sulphur rule for marine fuels will apply in Sulphur Emission Control Areas as from 1 January 2015. This gives extremely short notice for actually carrying out the work, let alone for defining financing conditions. The EESC therefore suggests that measures be taken to ensure that ports, ship-owners and ship operators can make timely use of the possibility to adapt to the 0,1 % requirement by using LNG, without incurring the risk of non-compliance with EU rules according to Directive 1999/32/EU as amended through Directive 2012/33/EU Article 1(4).

4.5 The EESC would welcome a reference in the proposal, possibly in Article 3, to the need to find appropriate solutions to ensure that adequate infrastructure is available in sparsely populated areas, where financing may be particularly difficult to obtain without public aid also after the end of a start-up period.

4.6 Lastly, the EESC notes that although LNG as such may be sourced from fossil fuels or biofuels, it appears from the Working Document (Section 1, last point), that the variety considered for maritime use currently seems to be of fossil origin, although with very good environmental characteristics. The EESC assumes that efforts will be made to promote the use of other LNG varieties or other propulsion systems. The possibly provisional character of the LNG solution again puts into question the high level of commitment to LNG facilities of the proposal.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites'

COM(2012) 721 final – 2012/0340 (COD)

(2013/C 271/22)

Rapporteur: **Ask Lønbjerg ABILDGAARD**

On 10 December 2012 and 18 December 2012 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 114 paragraph 1 and 304 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites

COM(2012) 721 final – 2012/0340 (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 30 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 148 votes to 1 with 6 abstentions.

1. General observations and recommendations

1.1 The EESC welcomes the initiative from the European Commission. The relevancy of the proposal is unquestionable and reflects an ambition to serve both citizens and the providers of web services in the EU, by facilitating the creation of an internal market for web-accessibility.

1.2 The EESC, however, has serious concerns about the adequacy of the proposed means to realise this ambition. A strong legal instrument is needed in order to avoid that budget constraints, brought about by the current economic crisis, are used as a misplaced excuse for the possible failure of Member States to implement the Directive.

1.3 The scope of the Directive is limited, thereby narrowing down the categories of public body websites falling within the requirements of the Directive. The potential consequence is a lack of access to essential services provided through public websites that fall outside the scope of the Directive.

1.4 In addition, an extension of the scope of the Directive to all public sector websites would be a necessary condition for the accumulation of the critical mass needed for the creation of a European market for accessible web services, and thereby for the creation of a globally competitive sector for web accessibility which potentially could provide additional job opportunities for people, with and without disabilities, in Europe.

1.5 Hence, the EESC strongly recommends the expansion of the scope of the Directive to gradually cover all public body

websites in accordance with the imperatives of public order, public security, public health and personal data protection⁽¹⁾. The EESC, furthermore, strongly recommends the European Commission to propose regulation which also puts the EU institutions under the obligations implied by the Directive in question.

1.6 Furthermore, the EESC strongly recommends a number of flanking measures, such as awareness-raising, web-accessibility training programmes, the appointment of web-accessibility coordinators in large public sector bodies, and the opportunity for citizens to report on the accessibility of public websites, in order to facilitate the implementation of the directive. The social partners should have a more proactive role to play in these areas.

1.7 The EESC recommends the European Commission to carefully assess the implications of the Directive for employment in both the public and private sectors, with a particular view to the net job effect, the creation of quality jobs, and potential jobs for persons with disabilities.

1.8 The EESC encourages the European Standardisation Organisations to adopt the relevant European standard, to which the Directive in question refers, without delay in order to facilitate the smooth implementation of the Directive. At the same time, implementation should not be delayed while this European standard is under adoption, as a fully adequate temporary legal arrangement is proposed as an integral part of the Directive by the European Commission.

⁽¹⁾ (Article 8 of the Charter of Fundamental Rights); OJ C 218, 23.7.2011, pp. 130-134; OJ C 255, 22.9.2010, p. 98-102.

2. Background

2.1 Web-accessibility is part and parcel of many political initiatives at European level: the European Disability Strategy 2010-2020 (ICT accessibility); the eGovernment Action Plan 2011-2015 (inclusive and accessible eGovernment services); and the Digital Agenda for Europe (the Commission proposes to ensure fully-accessible public sector websites by 2015).

2.2 Back in 2006, EU Member States also committed themselves to improving the accessibility of public websites in the so-called Riga Declaration. The Member States have so far not delivered on these commitments in a satisfactory way. This is an important part of the background to the proposal of the European Commission for the Directive in question.

2.3 The proposal for a Directive on the accessibility of public sector body websites aims to support the Member States in achieving their national commitments regarding web-accessibility, and thereby to support in particular the commitment of Member States to the provisions of the United Nations Convention on the Rights of Persons with Disabilities regarding websites of public sector institutions. Article 9 of the Convention obliges Member States, and the EU as such, to apply appropriate measures to ensure access for persons with disabilities, on an equal basis with others, to inter alia information and communication technologies, including the internet.

2.4 The lack of harmonised approaches to web-accessibility creates barriers in the internal market. As less than 10 % of websites are accessible, the European market for web-accessibility could grow significantly and harmonised approaches could facilitate this by putting an end to the existing fragmentation and lack of confidence in the web-accessibility market.

Hence, web-accessibility is an area where the internal market could be put at the service of European citizens to a much larger extent than it is the case today. At the same time, legislation concerning this subject matter could facilitate the creation of a truly European market for web-accessibility, thereby opening up markets in Member States where legal uncertainty risk hinders web developers from other Member States in operating.

2.5 Ultimately, a harmonised approach to web-accessibility across the EU would bring down costs for web developer companies and consequently the costs for public bodies who procure services from these companies.

2.6 In addition, it is important to stress that public bodies, and many other institutions of great importance for citizens, provide essential information and services through websites. Hence, all citizens, including persons with disabilities, people with functional impairments, children, the elderly, etc., need to have access to these websites and their functionalities. This is as much about making technical adjustments (regarding the version of the text, the option of altering the font size or contrast, the possibility of accessing sites using other search engines and with the help of programs to assist access) as it is about aspects such as the clarity of the language used. The number of websites providing e-government services, and public sector websites in general, is growing rapidly. Access to information and services provided through websites will be important for the realisation of the fundamental rights of citizens in the future, including access to employment.

2.7 The proposal is also relevant in terms of facilitation of e-Inclusion, since web-accessibility is a tool used in the efforts to reach the goal of including people with disabilities in society and giving all citizens access to services provided through websites.

2.8 In the EESC's view, accessibility must be seen as an integral part of the principle of universal equality. Website accessibility should thus become an equality measure alongside certain other key conditions, including:

- widespread availability of infrastructure ensuring universal access to high-speed internet (broadband) ⁽²⁾;
- access for all citizens to public or private computers (hardware);
- accessibility of software that is easy to understand and use for all sections of the population, including excluded population groups ⁽³⁾.

3. Approach taken by the proposal for a Directive

3.1 The Directive aims at the approximation of the laws, regulations and administrative provisions of the Member States on the accessibility of public sector bodies' websites, by defining harmonised requirements.

⁽²⁾ OJ C 318, 23.12.2006, pp. 222-228.

⁽³⁾ OJ C 318, 29.10.2011, pp. 9-18; OJ C 24, 28.1.2012, pp. 139-145; OJ C 175, 28.7.2009, pp. 8-12.

3.2 Furthermore, the proposal lays down the technical provisions whereby Member States are to make accessible the content of certain types of websites of public sector bodies. The types of public sector websites concerned provide information and services of essential importance for public participation in the economy, including the labour market, and society at large, as well as the enjoyment by EU citizens of their rights. The categories of relevant websites are drawn from the 2001 eGovernment benchmarking exercise ⁽⁴⁾ and are listed in an annex to the Directive.

4. Comments and recommendations

4.1 Scope

4.1.1 Article 1 defines the scope of the Directive by referring to its annex listing certain types of websites drawn from the 2001 eGovernment benchmarking exercise. The types of websites on this list are important websites. However, the list of websites concerned leaves out many services which are prerequisites for the inclusion of citizens in the economy and the society at large.

4.1.2 Examples of key sectors falling outside the scope of the Directive are:

- Child care
- Primary education
- Secondary education
- General and local elections
- Public transport
- Cultural activities.

The list of examples is not exhaustive. Public sector websites providing information and services within these key sectors are not explicitly covered by the Directive.

4.1.3 The European Commission refers to the so-called spill-over effect as the mechanism whereby the Directive would have an impact on public body websites which are not explicitly covered by the scope of the Directive.

4.1.4 The assumed rationale underlying this spill-over effect is that public sector bodies will make websites falling outside the scope of the Directive accessible at the same time as, or following, the ones explicitly covered, as a consequence of the fact that the process is already underway. A factor which could contribute to generating the spill-over effect is public procurement carried out according to EU legislation, whereby public procurers might be expected to have an obligation to

refer to European standards on web-accessibility in their technical specifications. The contribution of this factor depends on the political will of EU decision-makers and the will and ability of public procurers to address web-accessibility.

4.1.5 However, the EESC is worried that the solidity of the causal links assumed to bring about this spill-over effect are weak. The EESC does not find that the mechanism has been demonstrated to work. As a consequence, the EESC welcomes the measure in the Directive whereby Member States are encouraged to expand the web-accessibility requirements to other websites than those explicitly mentioned in the annex to the Directive. Under present circumstances, the EESC remains worried about the adequacy of this measure.

4.1.6 The benchmarking study *Measuring Progress of eAccessibility in Europe (2006-2008)* showed a clear connection between the existence of legislation in Member States and the degree of accessibility of websites. Thus, the effect of legislation as such has been demonstrated.

4.1.7 The EESC is concerned that the European Commission, by defining the scope of the Directive on the basis of a benchmarking study carried out in 2001, is introducing a disconnect between the approach of the Directive and the situation faced by web developers, public bodies, and citizens, in a rapidly changing information and communication society. Member States have since then revised their strategies for the digitalisation of the public sector, and will continue to do so in the future.

4.1.8 The implication for citizens, who are dependent on web-accessibility, is that they will be facing a serious risk of being partly or fully excluded from benefitting from the services and information provided through websites that fall outside the relatively narrow scope of the Directive. The EESC feels that this would run counter to the principle of universal equality (Articles 20 and 21 of the Charter of Fundamental Rights).

4.1.9 The implication for public bodies is that they will face a policy environment with different mandatory legal requirements for different types of websites. This might risk making implementation of the Directive more complex than it needs to be. In order to reduce this complexity, the EESC recommends, as a minimum, that the text of the Directive explicitly spells out that the full website, on which a concerned service is provided, is covered by the scope of the Directive, and not only the service function in itself.

4.1.10 A further implication for the public sector as such in Member States would be that services which are inaccessible to some citizens will have to be provided to these persons in other ways thereby leading to unequal treatment of certain groups of citizens. This might involve increased costs for practical personal assistance to people with disabilities, costs for specialised transport solutions adapted to persons with disabilities, and assistance available to attend to e.g. older people, who come in person to the premises of the public body in question.

⁽⁴⁾ <http://ec.europa.eu/digital-agenda/en/news/egovemment-indicators-benchmarking-europe>

4.1.11 The implication for companies of the web-sector is that they risk continuing to be operating in a market which is fragmented along the lines of the different levels of requirements regarding web-accessibility. The number of public body websites subject to the consistent requirements of the Directive across the EU could remain low, and Member States might expand or limit this scope to varying degrees.

4.1.12 If the full potential from the creation of an internal market for accessible web services were not to be exploited, this would also impede the associated creation of jobs in the sector. This would be a lost opportunity in particular with regard to the potential for specialised jobs for persons with disabilities. A clear and comprehensive legal framework at European level is a necessary condition for a European web accessibility sector capable of competing at a global level, and thereby for the creation of additional employment in the EU.

4.1.13 On this basis, the EESC strongly recommends a reconsideration of the scope of the Directive. The EESC considers it appropriate to expand the scope to all public body websites providing services directly to citizens. Such an expansion could then be accompanied by extended deadlines for compliance with the requirements of the Directive as regards websites providing services to numerically limited groups, thereby introducing a gradual implementation of the Directive.

4.1.14 As a minimum, the EESC recommends an update of the list of services drawn from the 2001 benchmarking exercise with additional key services which now feature prominently in the digitalisation strategies of Member States. An additional consideration in the selection of such additional key services should be their potential contribution to the creation of an internal market for accessible web-services. The disadvantage of this approach would be the ongoing need for further updates of this list according to technological developments and the digitalisation of the public sector across the EU.

4.1.15 The EESC strongly recommends that the scope of the Directive explicitly covers versions of public websites designed to be accessed through mobile devices as well as features designed to facilitate mobile access in general. Mobile devices are gradually becoming the preferred user agents, and the Directive should take this into account. Despite the fact that the technical specifications, according to which the Directive is to be implemented, incorporate mobile devices, it would be an important signal to recognise this aspect, thereby enhancing the future relevancy of the Directive.

4.1.16 Furthermore, the EESC recommends that functions provided through websites, which are external to the website of the public sector body in question, e.g. by the use of web-links, be explicitly covered by the scope of the Directive. Such

clarification would help to avoid legal uncertainty with regard to responsibility for the accessibility of a given service.

4.1.17 The EESC, furthermore, recommends the European Commission to propose regulation which will put EU institutions, including the EESC, who is willing to take a proactive and pioneering role, under the obligations implied by the Directive in question.

4.2 *The use of standards and technology neutrality*

4.2.1 The Directive includes a solution for presumption of conformity with harmonised standards for the websites concerned in order to facilitate compliance with the web-accessibility requirements. Using harmonised standards makes it possible to update relevant standards without necessarily needing to change EU or national legislation.

4.2.2 The Directive indicates in a recital that the Success Criteria and Requirements for Level AA conformance specified in the version 2.0 of the Web Content Accessibility Guidelines (WCAG 2.0) issued by the World Wide Web Consortium (W3C), are expected to be taken into account in the European standard resulting from Mandate 376 and subsequently in the harmonised standard that should be built upon the outcome of this work. These technology neutral specifications provide the basis for the requirements for web-accessibility as understood in the Directive.

4.2.3 The EESC compliments the European Commission on the choice of internationally recognised web-accessibility specifications as a reference for the proposed Directive. The EESC takes note of the fact that WCAG 2.0, level AA, is the reference point for web-accessibility, and will remain so in the foreseeable future. Consequently, the adoption and implementation of the Directive should not be delayed by the European standardisation process.

4.2.4 The EESC also compliments the European Commission on the choice to use harmonised standards, which would allow for the integration of future evolutions in the web-accessibility specifications, if technological or other developments make this necessary in order to maintain the level of accessibility envisaged by the Directive.

4.2.5 At the same time, it is essential that access to the relevant standards remains open and free of charge for all relevant stakeholders, and that the responsibility for their implementation and further development is not left solely to standardisation bodies and commercial players.

4.2.6 Technology neutrality is a prerequisite for working with web accessibility in an ICT environment which is changing rapidly. This allows for continuous innovation. Hence, the technology neutrality of WCAG 2.0 will contribute to the relevancy of the Directive in the future.

4.2.7 Moreover, the choice of internationally recognised specifications increases the probability that web-developers operating across global regions, and not only in the EU, will be working under converging requirements regarding web-accessibility, thereby simplifying their implementation within the web solutions provided. This is an important aspect to consider in a market which is international and global by nature. It is important that users benefit too from common criteria in terms of equal opportunities for access and participation, or from the presentation and installation of other structural elements that could for instance make website navigation much easier.

4.3 *Awareness-raising and training*

4.3.1 In Article 6, Member States are encouraged to introduce measures which can contribute to awareness-raising, the establishment of cooperation arrangements regarding web-accessibility, and growth of the web-accessibility market.

4.3.2 The EESC recommends including a legal obligation for Member States to raise awareness of web-accessibility among public bodies, web-developers, and other stakeholders. Knowledge about the issue, and its importance, is a prerequisite for the effective implementation of the Directive.

4.3.3 The EESC further recommends introducing a legal obligation for Member States to establish training programmes to the relevant staff of public bodies, through consultation with the social partners, in order to further facilitate the concrete implementation of the web-accessibility requirements. The added value of the coordination and quality assurance of such programmes at a European level would be significant and could capitalise on existing good practices.

4.3.4 The EESC strongly recommends that the social partners be fully involved in the development and implementation of the training and awareness-raising programmes. They could play an important role in communicating ideas and concerns of the staff and managers involved in ensuring web-accessibility on a daily basis. Moreover, the social partners could assist in putting the issue of web-accessibility on the agenda.

4.3.5 Both awareness-raising and training of professionals would be necessary, but not sufficient, instruments with a view to ensuring that the so-called spill-over mechanism envisaged by the Commission works.

4.4 *Monitoring*

4.4.1 In the light of regular updates of web content, the accessibility of websites should be continuously monitored. In Article 7 of the Directive, Member States are requested to monitor the public sector bodies' websites concerned, using the methodology established by the European Commission in accordance with the procedure laid down in the Directive. Member States are to report annually on the results of such

monitoring, including on the possible extension of the list of types of websites concerned, as well as on any additional measures taken in the area of accessibility of public websites. The Commission should, in the EESC's view, take account of the fact that the Member States may not all be in a position to implement the Directive and include all citizens by the end of 2015. The Committee advocates developing European standards; the European Parliament will no doubt be careful to ensure that the delegated acts do not lay down technical requirements that have harmful political consequences for the European public.

4.4.2 The EESC welcomes the European Commission's recognition of the need for continuous monitoring of the accessibility of public body websites.

4.4.3 The EESC recommends the introduction of an obligation for Member States to make public to citizens, in accessible formats, the results of such continuous monitoring, including possible general conclusions drawn by relevant authorities on the basis of the monitoring.

4.4.4 The EESC also strongly recommends the introduction of an obligation for Member States to establish mechanisms whereby citizens, and representative organisations, can report on the accessibility and inaccessibility of public body websites. Information provided through such mechanisms could feed into the general monitoring efforts.

4.4.5 The EESC asks to the European Commission to consider introducing an obligation for large public sector bodies to appoint a web accessibility coordinator who can oversee the implementation of the requirements of the Directive and of related requirements. Experience shows that organisational commitment is important for the implementation of accessibility requirements.

4.5 *Consistency in the policy environment*

4.5.1 In light of the fact that European legislation on digital ID solutions is being adopted and that European legislation concerning accessibility for persons with disabilities in other sectors of society, the so-called European Accessibility Act, is under consideration, it is important to ensure that public sector bodies and web developers alike will be facing a consistent policy environment across sectors. The relevancy of this point is further underlined by the fact that the package on public procurement, currently being adopted at EU level, is expected to contain provisions on accessibility for persons with disabilities as well.

4.5.2 The EESC, therefore, strongly recommends that consistency between the requirements of the Directive under consideration in this opinion, and of other legislative proposals touching upon web-accessibility, is ensured by means of a thorough legal and technical analysis.

4.6 *Innovation and new solutions*

4.6.1 The availability, functionality, and use of ICT solutions change rapidly over time. A clear example of this is the increasing number of services offered through applications for smart phones and tablets, also by public sector bodies.

4.6.2 The EESC recommends that smart phone and tablet applications, to the extent that their functionality is integrated with services provided through public body websites, be explicitly covered by the scope of the Directive, in light of

the fact that such applications are already part of the interaction between citizens and public bodies.

4.6.3 It should be pointed out that access to websites is directly linked to people's right to access information freely and participate as citizens in political life. One example of best practice that should be implemented in the European Union is the addition of an easily accessible 'public participation' heading on the websites of all public bodies.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

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: eHealth Action Plan 2012-20 — Innovative healthcare for the 21st century’

COM(2012) 736 final

(2013/C 271/23)

Rapporteur: **Isabel CAÑO AGUILAR**

On 19 February 2013, 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: eHealth Action Plan 2012-2020 - Innovative healthcare for the 21st century

COM(2012) 736 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 154 votes in favour, with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the proposed eHealth Action Plan 2012-2020. However, the communication does not have a special chapter on the social aspect of providing services and further development of social and health care.

1.2 The EESC points out that the principal responsibility for the new plan's success lies with the Member States, although the Commission plays a vital supporting and coordinating role.

1.3 The human dimension must be at the heart of eHealth. The risk of 'being impersonal' and failure to pay attention to psychological factors should be avoided.

1.4 The EESC finds it particularly regrettable that the number of health workers is falling while demands on healthcare systems are increasing.

1.5 The EESC points out that the communication makes only partial references to how the new plan will be financed. A general overview is needed to establish what contribution is expected from the public sector, the private sector and – where appropriate – from patients and taxpayers in general.

1.6 The EESC highlights the need for full coordination among the programmes, activities, projects and working groups included in the communication in order to avoid the risk of overlap.

1.7 As regards standardisation of the necessary IT equipment functions, the need for proper monitoring by public authorities must be underlined in order to prevent the abuse of dominant positions, as has occurred in certain areas of ICT.

1.8 The EESC welcomes the decision to tackle another key aspect of interoperability, namely the main legal issues which stand in the way of a system of cross-border telemedicine being implemented.

1.9 The EESC welcomes the Commission's plans for the development of the economic fabric relating to eHealth, especially because of its support for SMEs, but the lack of detail and figures prevents a more precise assessment from being carried out.

1.10 The EESC stresses that the Connecting Europe Facility must not consist only of 'connecting systems', but must also enable people to become familiar with, understand and reap the benefits of connecting European citizens.

1.11 The new eHealth programme must aim to guarantee greater equality among European citizens as regards access to health services. Rolling out of broadband will play a key role in this connection.

To ensure that the inequality that already exists in access to healthcare does not also occur in eHealth, broader measures and bigger investments are required than those provided for by the ERDF (European Regional Development Fund).

1.12 Improving the digital health literacy A) of patients: taking account of the experience of the Sustains project, it is very important to train people how to access and use their own data currently 'locked away' in health information systems; B) of health professionals: it is vital to include knowledge of eHealth in training programmes.

2. Introduction

2.1 Although progress has been made since the EU launched the first eHealth action plan in 2004, there are still obstacles facing the development of an integrated European system. The reasons for this include:

- lack of awareness of, and confidence in eHealth solutions among patients, citizens and healthcare professionals;
- lack of interoperability between eHealth solutions;
- inadequate or fragmented legal frameworks;
- regional differences in accessing ICT services, limited access in deprived areas.

2.2 The proliferation in Europe of products which are incompatible with one another is the inevitable consequence of a fragmented market and the non-existence, or lack of awareness on the part of major buyers, of communication and exchange standards. As a result, IT systems in countries, neighbouring regions or even within health centres often cannot be connected to one another. For example, in some cases, hospital radiology departments have tailor-made software that cannot communicate with programmes used in other departments of the same hospital.

2.3 In line with the objectives of the Europe 2020 Strategy and the Digital Agenda for Europe, the new action plan seeks to address and remove these barriers, in addition to clarifying the policy domain and outlining the vision for eHealth in Europe.

2.4 The global eHealth market, which is growing strongly, may be worth USD 27,3 billion by 2016. In some cases, major European businesses are world leaders and, overall, it is estimated that there are 5 000 businesses in this sector.

3. Commission proposals

3.1 The Commission highlights the challenges facing European healthcare systems. Public health expenditure in the EU's 27 Member States may rise to 8,5 % of GDP by 2060 as a result of population development and other factors. During the same period, the size of the working population will decrease and the number of over-65s will go up. Another challenge is to ensure active European participation in the global eHealth market.

3.2 Aims:

- achieving wider interoperability in services;
- supporting research, development, innovation and competitiveness;
- facilitating uptake and ensuring wider deployment of eHealth;
- promoting policy dialogue and international cooperation in this area.

3.3 Measures include facilitating cross-border interoperability (technical and semantic elements, quality labelling, certification); adopting a green paper on health, improving market conditions for businesses and increasing citizens' digital literacy (Competitiveness and Innovation Framework Programme and Horizon 2020).

4. The EESC's view - General observations

4.1 The EESC welcomes the proposed eHealth Action Plan 2012-2020.

4.2 However, the EESC believes that the plan should include a special chapter on the social aspect of providing services, covering in particular the proper approach to the digital divide, availability of technology, the ability to use it, or an analysis of social inequalities in health which run the risk of increasing. It should also cover broader development of social and health care, which could be facilitated enormously with the use of ICT.

4.3 The EESC points out that, given the distribution of competences, the principal responsibility for the action plan's success lies with the Member States. At present, there are clear differences among the Member States in the extent to which eHealth has been implemented.

The Commission plays a vital supporting and coordinating role, underpinned legally by Articles 114, 168, 173 and 179 of the Treaty on the Functioning of the European Union in particular. There must be full cooperation and active participation on the part of the Member States and the Commission within the framework of the eHealth network (Directive 2011/24/EU).

4.4 eHealth must foster mutual trust between patients and professionals by avoiding the risk of 'being impersonal' and failing to pay attention to psychological factors. The human dimension must be at the heart of eHealth. However, the EESC notes that according to some European patient rights organisations, such as the European Patients Forum (EPF), the process is driven more by technology than by patient needs. This concern must be taken into account.

4.5 IT cannot be a substitute for a lack of staff. The EESC finds it particularly regrettable that the number of health workers is falling while demands on healthcare systems are increasing. ICT is merely a tool to help those women and men who everyday carry out the self-sacrificing work of providing healthcare to patients, and to help facilitate the relationship between patients and health professionals.

4.6 The EESC points out that the communication makes only partial references to how the new plan will be financed. A general overview is needed to establish what contribution is expected from the public sector, the private sector and – where appropriate – from patients and taxpayers in general.

4.7 The EESC highlights the need for full coordination among the programmes, activities, projects and working groups included in the Commission communication, and the need to avoid the risk of overlap.

4.8 Organisational change by health service providers is key to the success of the new eHealth plan. Implementing access to e-Health cannot be the sole responsibility of top administrative levels, and nor can the public as final users be expected to bring it about. Intermediary organisations providing health services have to take steps to adapt their structures and their staff to these new service models.

5. Specific comments

5.1 Interoperability

5.1.1 Technical and semantic aspects

5.1.1.1 In general, the EESC welcomes the Commission proposal on interoperability, although points out that it is not enough to introduce the possibility of exchanging data or documents using common medical protocols, because there are also problems of a semantic, organisational or legal nature which have to be resolved.

5.1.1.2 Semantic interoperability

The Commission proposal should clarify the relationship between the various programmes, activities or work groups – such as the 7th framework programme and ISA – and SNOMED CT (Systematized Nomenclature of Medicine – Clinical Terms), the most wide-ranging, accurate and important encoded, multilingual and comprehensive clinical terminology in the world, distributed by the International Health Terminology Standards Development Organisation (IHTSDO). The latter is a non-profit organisation whose members include various EU countries, the USA and Australia.

5.1.1.3 Standardisation

There are multiple providers of software and hardware for eHealth. It is vitally important to make progress, within the framework of regulation (EU) No 1025/2012, on the process of standardising necessary functions, with a view to offering industry and users – especially those who are in a position to

make purchasing decisions – a more attractive framework, fewer risks and a more cost-effective and useful investment. The EESC underlines the need for proper monitoring by public authorities in order to prevent the abuse of dominant positions, as has occurred in certain areas of ICT.

5.1.1.4 The organisational aspect

The EESC welcomes the Commission's decision to present specific measures geared towards integration and cooperation in the EU. The pilot project epSOS (European Patients Smart Open Services) ⁽¹⁾, will facilitate the drafting of the specific measures to be announced by the Commission aimed at integrating cross-border eHealth processes.

5.1.1.5 Legal aspects

5.1.1.5.1 The EESC welcomes the decision to tackle the main legal issues which stand in the way of a system of cross-border telemedicine being implemented ⁽²⁾. Given that these are innovative technologies, the regulatory gaps and obstacles have not yet been fully resolved at international, or even at national level.

5.1.1.5.2 Granting licenses and authorisations to professionals and medical institutions

According to Directive 2011/24/EU on patients' rights in cross-border care, the legislation of the Member State of treatment applies (Art. 4(1)(a)) ⁽³⁾. The EESC suggests considering reform of Directive 2005/36/EC on recognition of professional qualifications, which does not cover cross-border provision.

5.1.1.5.3 Data protection

Medical information is sensitive. Patients want to be able to control this information and access to it for their benefit. The discussion on the patient's right to block access to information about their own medical history should be analysed globally in order to achieve the same standards for all European citizens. The EESC points out that the lack of trust in the security of medical data may lead patients to hide vital information.

5.1.1.5.4 Protection of personal data is a fundamental right guaranteed by Article 16 of TFEU and the Charter of Fundamental Rights (Articles 7 and 8). Directive 95/46/EC provides for such protection in the event of the processing or free movement of data ⁽⁴⁾. However, the scope granted to Member States in their implementation has led to significant disparity in the level of protection, which currently represents one

⁽¹⁾ epSOS develops recommendations, technical specifications, system descriptions, organisational models, IT applications and tools, etc., which are aimed at improving interoperability at multinational level. In addition, **pilot systems have been introduced** in various regions.

⁽²⁾ See Commission Staff Working Document on the applicability of the existing EU legal framework to telemedicine services, SWD(2012) 414 final.

⁽³⁾ See Directive 2000/31/EC, Art. (3)(1) and (2) 'country of origin principle'.

⁽⁴⁾ Also applicable are Directive 2002/58/EC on protection of privacy in the electronic communications sector and Directive 2011/24/EU.

of the biggest obstacles to cross-border telemedicine. The EESC must therefore reiterate its support for the proposed general regulation on data protection⁽⁵⁾, as expressed in its opinion of 23 May 2012⁽⁶⁾.

5.1.1.5.5 Reimbursement

The country of affiliation (where medical care is received) must ensure that, where appropriate, the costs of cross-border care are reimbursed (Directive 2011/24/EU, Art. 7(1)). The EESC's view: there should be clear information for the patient on the conditions of reimbursement.

5.1.1.5.6 Responsibility for damage caused by professional error and supplies of medical equipment

This is a complex issue because, among other things, of the possibility that several stakeholders may be involved. As regards cross-border medical care, there is a general principle – the legislation of the Member State of treatment applies (Directive 2011/24/EU, Article 4(1)). Defective products are governed by Directive 85/374/EEC, which establishes the principle of liability without fault. The EESC's view: underpinned by existing legal bases, specific cases must be dealt with using case-law.

5.1.1.5.7 Applicable jurisdiction and legislation

Another very complex subject which must be dealt with according to current international norms and treaties. The EESC suggests that consideration be given to out-of-court systems for conflict resolution, such as arbitration and mediation.

5.1.1.5.8 Right of access

The level of access by patients and citizens to medical information and their personal medical history has increased. Some regions have increased the level of services by providing care centres and service 24 hours each day, for the whole population, for selected groups of patients at risk or for entire regions. Patients may make their own appointments and have appropriate access to the information contained in their medical history. This encourages the patient to take active responsibility for their healthcare and for prevention. The EESC's view: the right of access in the case of cross-border care should be regulated.

5.1.1.5.9 Mobile health and wellbeing

The EESC welcomes the Commission's decision to address mobile health and wellbeing applications (mobile eHealth) in the Green Paper to be presented in 2014. This is a particular aspect of eHealth, which is growing strongly at the present time as a result of widespread use of mobile devices (smart phones, tablets, etc.) and special software for these devices (apps). The popularity of such tools means that the technical and legal aspects related to their use should be regulated.

5.2 RDI

5.2.1 The EESC regards as appropriate the areas of research which the Commission proposes should be supported under Horizon 2020's 'Health, demographic change and wellbeing' programme.

5.2.2 With the EU's appropriation for medical research in the 2014-2020 period still to be established, the EESC points out that the National Institute of Health (USA) invests USD 30 900 million annually for this purpose.

5.2.3 In light of the proposals drawn up by organisations representing the health sector, such as EPHA (European Public Health Alliance), the EESC suggests that research programmes take account of the following, among other things:

- Complementing other programmes, such as Health for Growth, by compiling reliable statistics on the development of diseases with a high incidence in the population: obesity, cardiovascular diseases, cancer, diabetes, etc.
- Coordination, given that traditionally researchers have worked independently and not communicated enough with each other.
- The conditions of patents for work paid for by the taxpayer to avoid the danger of socialising the risks of research while privatising the benefits⁽⁷⁾.

5.3 The EESC welcomes the Commission's plans for the development of the economic fabric relating to eHealth, especially because of its support for SMEs, but the lack of detail and figures prevents a more precise assessment from being carried out.

5.4 In accordance with the results of the pilot project epSOS and of other projects and studies, the EESC stresses that the 2014 – 2020 Connecting Europe Facility must not consist only of 'connecting systems'. In addition, people must have the possibility to become familiar with, understand and reap the benefits of a 'connected citizenship'.

5.5 Cohesion

5.5.1 The new eHealth programme must aim to guarantee greater equality among European citizens as regards access to health services. As the Committee has already pointed out, it is clear that broadband access in all countries and full connectivity are key conditions for the development of telemedicine. Digital services in the regions, especially in rural and outlying areas, must therefore be consolidated⁽⁸⁾.

⁽⁵⁾ COM(2012) 11 final – 2012/0011 (COD).

⁽⁶⁾ EESC exploratory opinion on *The digital market as a driver for growth*, OJ C 229, 31.7.2012, p. 1.

⁽⁷⁾ EPHA Position on Horizon 2020 (June 2012). http://ec.europa.eu/research/horizon2020/pdf/contributions/during-negotiations/european_organisations/european_public_health_alliance.pdf

⁽⁸⁾ OJ C 317, 23.12.2009.

5.5.2 With the current ERDF programming period coming to an end, the EESC trusts that in the 2014-2020 period the current proposals to roll-out the latest technologies on a large scale throughout the EU will be carried out and that, above all, they will have a sufficient budget. However, to prevent the inequality that already exists in access to healthcare from also occurring in eHealth, broader measures and bigger investments are required than those provided for by the ERDF.

5.6 *Improving digital health literacy*

5.6.1 For the EESC, in the case of patients it is very important to train people how to access and use their own data which in many cases is currently 'locked away' in health information systems. In this connection, we would like to draw attention to the Sustains project, currently established in 13 European regions and which seeks to facilitate peoples' access to their medical data through 'personal medical files' and other added services in web environments.

5.6.2 In the case of the health community, it is vital to promote the inclusion of eHealth knowledge in the training programmes of clinicians and managers.

5.7 *Programme evaluation*

5.7.1 The EESC believes that the establishment of common values and evaluation programmes – to be carried out by the Commission - on the advantages of eHealth is one of the most interesting aspects, given that the speed of technological change often makes it impossible to determine its real usefulness. Surveys carried out stress that support for eHealth from the public and the medical community is directly linked to the

belief that it will entail a verifiable improvement in the health system.

5.7.2 The EESC must also point out that a sound knowledge of the models and technologies which have a positive impact and a clear effort to promote them are essential for health models based on ICTs. In order to obtain this benefit, there must be flexible and dynamic evaluation methodologies, with a special focus on the overall evaluation of the service provided and not so much the technology itself. It is also necessary to include an evaluation of the service's effectiveness, covering its overall financial costs and benefits. Clearly however, economic effectiveness must not be the only criteria for recommending use of care models based on ICTs.

5.7.3 In general, among public authorities, industrial sectors and representative organisations, the predominant view is that eHealth (which covers a wide range of applications) may offer health benefits. The EESC shares this view, while pointing out that consideration should also be given to critical opinions, based on real experiences, which cast doubt on the cost savings and highlight problems: IT errors, 'cloning' of reports, possibility of fraud, high costs, etc.

5.8 *Promoting policy dialogue and international cooperation*

There is clearly a need for policy dialogue on eHealth at international level, as proposed by the Commission, given that developing countries are also making major strides in this area. This will make it possible to steer the use of ICT towards meeting the objectives of the United Nations and to apply them in a spirit of solidarity.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

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 Digital Agenda for Europe — Driving European growth digitally’

COM(2012) 784 final

(2013/C 271/24)

Rapporteur: **Mr McDONOGH**

On 18 March 2013, 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 Digital Agenda for Europe - Driving European growth digitally

COM(2012) 784 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 30 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 156 votes in favour with 7 abstentions.

1. Conclusions and recommendations

1.1 The Committee welcomes the Communication on the review of the Digital Agenda by the Commission to focus on priority actions, so urgently needed for economic growth and jobs.

1.2 The European economy is in crisis. According to the Commission, GDP in the EU27 is at best stagnant, and will shrink by a further 0,25 % in 2013 within the euro area. Unemployment reached a new record high in February, with 10,9 % of the labour force in the EU27, more than 26 million people, unemployed ⁽¹⁾. Greece and Spain continue to suffer the highest rates of unemployment of 26,4 % and 26,3 % respectively, while the youth unemployment rate in EU27 is 23,5 %.

The EESC agrees with the Commission that ‘... this unacceptably high level of unemployment is a tragedy and that Europe must mobilise all available resources to create jobs and return to sustainable growth’ ⁽²⁾.

1.3 Despite economic recession, the digital economy is growing quickly and creating jobs. In fact, the ICT industry estimates that by 2015 it will have 700 000 job vacancies because of ICT skill shortages in Europe. This skills gap at a time of high unemployment is appalling.

1.4 Europe desperately needs the Digital Agenda strategy to speed-up recovery and deliver sustainable, inclusive growth, especially in the most economically challenged regions of the EU. It is timely to have a review of the strategy now to prioritise the most critical actions for economic growth and employment.

1.5 Broadband is the essential enabling infrastructure for the Digital Agenda. Therefore, the Committee was extremely disappointed by the decision of the Council in February ⁽³⁾ to reduce the 2014-20 budget in the Multiannual Financial Framework (MFF) for digital infrastructure and services under the Connecting Europe Facility, from EUR 9.2bn to only EUR 1bn. This cut would remove MFF support for broadband roll-out, and hurt the poorer and less advantaged regions of the EU most, exacerbating the growing digital divide.

1.6 The Commission Communication outlines a very ambitious suite of proposals to address barriers to Europe's digital transformation. The EESC looks forward in due course to reviewing the specific communications from the Commission on each of the major initiatives proposed; only then will it be possible to comment fully on the particular measures, their likely impacts and possible issues.

1.7 Considering time and resource constraints, the EESC believes that a refocusing of the Digital Agenda strategy should prioritise the following actions for growth:

- Provide affordable high-speed Internet connectivity for all citizens;
- Increase digital inclusion and digital literacy;
- Develop ICT skills, close the ICT skills-gap, create jobs, and support entrepreneurship;

⁽¹⁾ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Unemployment_statistics

⁽²⁾ <http://www.euractiv.com/socialeurope/commission-calls-eu-unemployment-news-518852>

⁽³⁾ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/135344.pdf

- Build trust and strengthen cybersecurity;
- Protect privacy and personal online safety (especially for children);
- Create a Charter of Digital Rights for users;
- Increase engagement of all sections of society in policy development and implementation;
- Implement an effective cloud computing strategy, including appropriate regulation;
- Increase global competitiveness in ICT and digital services, with the goal of establishing global market leadership for European companies in key technologies and services;
- Leverage synergies from the European GNSS projects, Galileo and EGNOS.

1.8 The EESC is pleased to see that many of the actions called for in the Committee's Opinions *The digital market as a driver for growth* ⁽⁴⁾ and *An inclusive digital internal market* ⁽⁵⁾ are covered in the Communication, including broadband connectivity, interoperability, online security, Net neutrality and the Open Internet, and VAT harmonisation.

1.9 Because the rollout of EU-wide high-speed broadband is so important, the Committee calls on the Commission to recommend a range of funding instruments to support accelerated investment in broadband infrastructure, especially where normal market returns are insufficient to attract private funds.

1.10 Innovative solutions, including greater use of wireless technologies, must be deployed as soon as possible to speed-up broadband deployment and to address the growing digital divide between urban and rural areas.

1.11 The EESC would like the Commission to advise how access to high-speed broadband can be recognised as a universal right of all citizens, regardless of location.

1.12 The EESC stresses the need to fully integrate ICT in education policy, so that life-long learning in digital literacy and ICT skills is available to all citizens ⁽⁶⁾, and supports the development of a strong digital intelligence throughout society and the economy. The Committee also considers it essential to implement policies that promote gender equality in ICT education.

1.13 Special attention should be paid to the need for targeted digital literacy and eSkills training for unemployed citizens, as well as up-skilling people already in the workforce, who need the new skills for continuing employment in the digital economy.

1.14 The Committee calls on the Commission to consider how the use of public ICT infrastructure, especially broadband and computing resources in schools and libraries, could be used as a matter of policy to support ICT skills and digital literacy training across the Union.

1.15 Consumers' trust is fundamental to stimulating demand for innovative digital services. This trust would be enhanced by stronger legislative protections for consumers, including enforcement of 'non-conformity' rules when consumers fail to receive the broadband speeds advertised by ISPs.

1.16 The Committee calls again on the Commission to advance proposals for the introduction of a European trustmark for businesses. As argued in previous Opinions by the EESC ⁽⁷⁾, an EU-wide certification and labelling scheme for e-traders would greatly increase consumer confidence in digital, cross-border commerce, and would help SMEs to grow cross border online business.

1.17 The Committee directs the Commission to the EESC's Opinion on the *Open Internet and Net Neutrality* ⁽⁸⁾, and strongly requests that the principle of Net Neutrality be formally enshrined in EU law as soon as possible.

1.18 The EESC would like to see the creation of a Charter of Digital Rights for all citizens to strengthen consumer protection.

1.19 The Committee calls again on the Commission to realise the substantial synergies to be gained by proper inclusion of the GNSS programmes in the Digital Agenda.

1.20 As the digital society evolves and more critical public services are provided online, the Committee stresses the need for the Commission to maintain focused support for strategies aimed at increasing digital inclusion across the Union. Special attention must be paid to the inclusion of citizens that are disadvantaged because of disabilities, literacy problems, age, economic means or gender. The EESC is pleased with the appointment of the Digital Champions in the Member States (MS) and looks forward to seeing reports on the effectiveness of this strategy.

⁽⁴⁾ OJ C 229, 31.7.2012, p. 1-6.

⁽⁵⁾ CES273-2012_00_00_TRA_AC_EN.DOC.

⁽⁶⁾ OJ C 318, 29.10.2011, p. 9-18.

⁽⁷⁾ OJ C 54, 19.2.2011, p. 58-64.

⁽⁸⁾ OJ C 24, 28.1.2012, p. 139-145.

2. Gist of the Commission Communication

2.1 The digital economy is growing at seven times the rate of the rest of the European economy and 50 % of all productivity growth derives from investment in ICT. There are more than 4 million ICT workers across many sectors in Europe and their number is growing by 3 % annually, despite the crisis. ICT is the essential transformative technology that supports structural change in sectors like energy, health care, financial services, manufacturing, public services, and education. But a fragmented pan-European policy framework and structural barriers currently hold this potential back.

2.2 The Communication outlines the Commission's plans to boost economic growth and jobs in Europe by refocusing the Digital Agenda in key areas:

- Completion of the **Digital Single Market** ⁽⁹⁾ by 2015.
- Speeding-up **digital innovation in the public sector** by leveraging the Connecting Europe Facility (CEF) ⁽¹⁰⁾.
- Accelerating delivery of **high-speed Internet connectivity**.
- Implementing the **Cloud Computing** Strategy ⁽¹¹⁾, which will cut ICT costs and boost productivity, growth and jobs.
- Implementing the European **Cybersecurity Strategy** ⁽¹²⁾. The Commission also proposes to expand the Global Alliance against Child Sexual Abuse Online ⁽¹³⁾.
- Driving a 'Grand Coalition on **Digital Skills and Jobs**', which will carry out coordinated action across the EU to boost employment and eSkills.
- A more business-friendly environment for start-ups and an action plan for web **entrepreneurship**.

By implementing the actions in the Communication it is hoped that 3.8 million new jobs would be created throughout the economy in the long term.

- Driving a **new electronics industrial strategy**, with R&D&I funding concentrated on strategic requirements, in key technologies.

⁽⁹⁾ OJ C 143, 22.5.2012, p. 69-73; OJ C 299, 4.10.2012, p. 165-169.

⁽¹⁰⁾ OJ C 143, 22.5.2012, p. 116-119.

⁽¹¹⁾ OJ C 76, 14.3.2013, p. 15-19, and OJ C 24, 28.1.2012, p. 40-47.

⁽¹²⁾ JOIN(2013) 1 final.

⁽¹³⁾ OJ C 317, 23.12.2009, p. 43-48, OJ C 48, 15.2.2011, 138-144, OJ C 24, 28.1.2012, p. 154-158.

3. General comments

3.1 Much more must be done to achieve the virtuous cycle envisaged by the Digital Agenda, linking digital infrastructure, content, services, market, and innovation towards higher productivity and growth. The Digital Single Market is still far from being a reality and MS still vary considerably in their pace of infrastructure development and regulatory reform.

3.2 The European economy is in crisis. More than 26 million people in the EU27, 10,9 % of the workforce, are unemployed. The dire condition of Europe's economy contrasts unfavourably with our global competitors: unemployment in the United States was only at 7,7 % in January, a 4-year low, and at 4,3 % in Japan.

3.2.1 The latest figures from Eurostat ⁽¹⁴⁾ also highlight the significant differences between MS. Austria and Germany had unemployment rates of only 4,8 % and 5,4 % respectively. In contrast, Greece and Spain's unemployment rate is over 26 %.

3.2.2 Unemployment among the under-25s is particularly high. More than one in two young people are without work in Greece (58,4 %) and Spain (55,7 %).

3.3 The Digital Agenda sets ambitious broadband coverage and speed targets and requires MS to take measures, including legal provisions, to facilitate broadband investment. However, according to the Commission ⁽¹⁵⁾, Europe is falling further behind its global competitors in the delivery of broadband infrastructure. Investments in high-speed broadband are taking place more quickly in parts of Asia and in the United States, leading to significantly better coverage and higher speeds. As of December 2011, South Korea, with 20,6 % of subscriptions per 100 inhabitants, had the highest take-up of fibre worldwide, i.e. double that of Sweden (9,7 %), the best in the EU. Japan had the second highest fibre take-up at 17,2 %.

3.4 Digital inclusion should be a right of all citizens, regardless of their place in society. Special efforts must be made to include those citizens that are disadvantaged because of physical disability, economic means, age, literacy problems or gender.

3.5 Access to high-speed broadband must become recognised as a universal right for EU citizens. The Commission raised the question re inclusion of broadband in the Universal Service Obligation in 2010 ⁽¹⁶⁾. An answer to this question is urgently needed to promote citizen welfare, employment and digital inclusion.

⁽¹⁴⁾ http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Unemployment_statistics

⁽¹⁵⁾ SWD(2013)0073(part 1).

⁽¹⁶⁾ COM(2008) 572 final.

3.6 Governments should ensure that digital accessibility and digital literacy is available to everyone. The Committee would like to see every citizen have access to lifelong eSkills training for professional, personal, and citizenship reasons.

3.7 The digital divide becomes increasingly important in the context of high-speed broadband, as citizens are not only deprived of access to information, as is the case with basic broadband, but also of Internet-based digital services available only on high-speed connections, such as eHealth, eEducation, and eGovernment.

3.8 The Digital Agenda for Europe Scoreboard⁽¹⁷⁾ and the latest figures from Eurostat⁽¹⁸⁾ show that the digital divide is growing wider, and the differences between MS are big. In 2012, 28 % of the households in EU27 are without broadband connectivity. However, in Germany, Finland, Sweden, and the United Kingdom over 80 % of households have a broadband connection; while in Bulgaria, Greece, Italy and Romania under 60 % of households have broadband. Furthermore, 90 % of households without broadband are located in rural areas. 35 million homes in rural areas are still waiting for high-speed connectivity, and unless proper attention is given to citizens living outside urban centres they will suffer increasing social and economic disadvantage.

3.9 Digital literacy and use of the Internet is highly correlated to broadband connectivity, so whereas less than 10 % of people in Finland and Sweden have never used the Internet, this figure climbs to over 40 % for Bulgaria, Greece and Romania.

3.10 Reform of planning regulations, smart infrastructure planning, investment incentives and innovative technologies can help to bridge the broadband gap. However, citizens also have to act responsibly and facilitate the rollout of high-speed Internet connectivity.

3.11 Trust and engagement is crucial to the achievement of the Digital Agenda goals. Without trust, there would be little demand for a number of innovative services with high growth potential such as e-commerce and cloud computing. To underpin trust, it is important that legislative provisions keep pace with the technological and transactional evolution of the Digital Single Market. Unfortunately, this is not the case and more progress is urgently needed on critical actions such as collective redress, on which the Committee called for a directive in 2009⁽¹⁹⁾.

3.12 It is critical for the success of the Digital Agenda that all sections of society are fully engaged in the development and

execution of the strategy and properly represented in consultations. Unfortunately, consumers and general citizens are often underrepresented in discussions on some critical issues, and the Commission needs to make greater efforts to ensure equal representation for civil society members in all fora.

4. Specific comments

4.1 Because the roll-out of EU-wide high-speed Internet is so important, the Committee calls on the Commission to propose a range of funding instruments to support the accelerated pace of investment in broadband infrastructure that Europe requires, especially when normal market returns are insufficient.

4.2 The Committee welcomes the Commission's focus on reducing the costs of providing broadband infrastructure; it draws the attention of the Commission to the multiplier effect on the economy and quality of life from such cost reductions; and it calls on all stakeholders to work assiduously on this issue.

4.3 The Committee calls on the Commission and MS to help achieve the broadband coverage target rapidly by fully implementing the Radio Spectrum Policy programme⁽²⁰⁾.

4.4 The delivery of high-speed Internet connectivity must ensure that there is fair and competitive access by new operators to the infrastructure, otherwise the quality of service choices for consumers will be distorted or limited.

4.5 The Committee believes it is important to develop costing models for high-speed broadband that are consistent across the EU, for use by the national regulatory authorities; to help ensure that costs are universally fair and calculated according to the same standards.

4.6 New jobs created in the digital economy require workers to be digitally literate, and often demand special ICT skills. Unfortunately Europe is failing to train workers in the quantity needed by the growing ICT industry. While the EU is suffering record-high levels of unemployment, the ICT industry estimates that by 2015 it will have 700 000 job vacancies. This skills gap must be bridged urgently by whatever extraordinary measures are required.

4.6.1 Under the 'Agenda for New Skills and Jobs', the Commission has committed to delivering a EU-wide approach and instruments to support MS in the integration of ICT competences and digital literacy into core lifelong learning policies. Europe needs this element of the EU 2020 strategy to deliver results without delay.

⁽¹⁷⁾ <https://ec.europa.eu/digital-agenda/en/scoreboard>

⁽¹⁸⁾ http://epp.eurostat.ec.europa.eu/portal/page/portal/information_society/data/main_tables

⁽¹⁹⁾ OJ C 128, 18.5.2010, p. 97-102.

⁽²⁰⁾ OJ C 107, 6.4.2011, p. 53-57.

4.6.2 The high rate of youth unemployment is partially due to a mismatch between education policy and the needs of employers. As a matter of urgency, MS should respond to this problem by adding new ICT skills programmes to the higher education cycle. It is also essential that ICT education policy promotes gender equality.

4.6.3 For people already in the workforce, digital skills are increasingly necessary to maintain productivity and job flexibility. The risk of future underemployment, or even unemployment, is increasing for workers who lack the requisite digital skills. Therefore, it is essential to European productivity and competitiveness that companies and workers cooperate to implement on-the-job training programmes for up-skilling in digital literacy and ICT skills.

4.6.4 Furthermore, to help combat Europe's serious unemployment problem, special ICT skills and digital literacy education programmes should be particularly developed to assist unemployed workers get back into paid jobs.

4.6.5 Broadband and computing resources in schools, public libraries and other public buildings, could be used as a matter of policy, to support ICT skills and digital literacy training across the Union.

4.7 In previous Opinions the Committee has called for a charter for citizens' online rights⁽²¹⁾. Although the EESC welcomes the Commission publication of 'Code of EU Online Rights'⁽²²⁾, the Committee believes that the EU should establish a Charter of Digital Rights, to provide clear protection for all users, and recently called for this in its opinion on *An Inclusive Digital Internal Market*⁽²³⁾.

4.8 Consumers across Europe are complaining that their ISPs are not providing them with the Internet connection speeds promised in their contracts. This contractual 'non-conformity' and false advertising undermines trust in the digital market. The problem needs to be addressed by stronger legislation and enforcement provisions.

4.9 The EESC stresses the critical importance to completing the Digital Single Market of progressing the eCommerce Action Plan, the Green Paper on Internet, Card and Mobile Payments, and the European Consumer Agenda.

4.10 In a previous Opinion⁽²⁴⁾ the Committee has strongly supported the proposed EU Data Protection Regulation. The EESC hopes that the comprehensive reform of the EU's data

protection rules is formally adopted as soon as possible. It is important that the discussions concerning the General Data Protection Regulation take into account its possible impact in other policy areas. Obligations that are too restrictive may limit the opportunities to use personal data to benefit society and to achieve the objectives of the digital agenda (e.g. monitoring patients' data to predict the development of a specific disease; or for energy management through smart grids).

4.11 The Committee calls again on the Commission to advance proposals for the introduction of a European trustmark for businesses. As argued in previous Opinions by the EESC⁽²⁵⁾, an EU-wide certification and labelling scheme for e-traders could provide consumers with universal protection when buying goods and services on-line, regardless of national boundaries; which would greatly increase consumer confidence in digital, cross-border commerce, and would help SMEs to grow cross border online business.

4.12 In addition to implementing pan-European interoperability for national eID schemes, the Committee would like the Commission to consider introducing a voluntary eID scheme for all EU citizens, to provide a limited EU-authenticated eID for eCommerce transactions.

4.13 To stimulate the digital economy, MS and regional authorities should promote free WiFi hotspots in public areas.

4.14 Although the Committee welcomes the intention of the Commission to adopt a Recommendation on safeguarding the Open Internet for consumers, the EESC strongly requests that the principle of Net Neutrality should also be formally enshrined in EU law as soon as possible. The Committee draws the Commission to the EESC's Opinion on the *Open Internet and Net Neutrality*⁽²⁶⁾, which explains that Net Neutrality seeks to ensure that ISPs treat all sources of similar Internet data equally, without discrimination for profit motives.

4.15 The use of Cloud Computing reinforces the need to protect the public, their data and their private lives, particularly when the data of European consumers and businesses is being stored outside of the EU or by non-EU companies. The EESC directs the Commission to the Committee's recent Opinion on the Cloud Computing Strategy⁽²⁷⁾ where it encourages the Commission to strengthening the regulatory framework on:

— Protection of data and privacy;

— Government access to data;

⁽²¹⁾ OJ C 229, 31.7.2012, p. 1-6.

⁽²²⁾ <https://ec.europa.eu/digital-agenda/en/code-eu-online-rights>

⁽²³⁾ CES273-2012_00_00_TRA_AC_EN.DOC.

⁽²⁴⁾ OJ C 229, 31.7.2012, p. 90-97.

⁽²⁵⁾ OJ C 54, 19.2.2011, p. 58-64.

⁽²⁶⁾ OJ C 24, 28.1.2012, p. 139-145.

⁽²⁷⁾ OJ C 76, 14.3.2013, p. 59-65.

- Monitoring data and managing disputes between users and providers;
- Portability and interoperability.

The EESC also cautions the Commission to take account of the need to future-proof any Cloud Computing frameworks adopted at EU-level, because the future evolution of this technology will be highly dynamic and unpredictable for some time to come.

4.16 The EESC notes the published Cybersecurity Strategy of the European Union and looks forward to reviewing the package of measures supporting it, including the proposed directive on Network and Information Security.

4.17 Special measures are needed to protect the interests of children and vulnerable persons online, particularly regarding data protection, online fraud, and unscrupulous marketing and advertising that target the vulnerabilities of users. The EESC draws the Commission's attention to the numerous Committee opinions on this issue⁽²⁸⁾, in particular a *European Strategy for a Better Internet for Children*⁽²⁹⁾, and on *A framework for advertising aimed at young people and children*⁽³⁰⁾.

4.18 As stated in the Committee's Opinion on the *Digital Agenda for Europe*⁽³¹⁾, open standards facilitate competition and enable SMEs to grow and compete globally. Therefore encouragement and support of open standards for all ICT products and services in Europe should be an explicit component of Digital Agenda policy.

4.19 American and Asian companies dominate the ICT industry. Europe has been spectacularly unsuccessful in

leveraging ICT innovation to create market-leading mega-companies like Google, Microsoft, Apple and Samsung. The Committee welcomes the plan for a new industrial strategy on micro- and nano-electronics, to increase Europe's attractiveness for investment in design and production as well as growing its global market share. However, EU policy must shift radically to ensure that European companies have the nurturing ecosystem they need to become global market-leaders in ICT technologies and services.

4.20 The Commission must also ensure that proper investment management practices should apply to this industrial policy: investments should be granted on the basis of expected economic and/or societal returns, and all investments should be subject to rigorous stewardship to ensure that projected benefits are delivered.

4.21 Governance of the proposed R&D&I investment must ensure that there is good coordination across programmes and projects to maximise benefits and avoid wastage through duplication of effort.

4.22 The EESC believes that the massive investment in European GNSS technologies and services should contribute to the success of the Digital Agenda. Therefore the Committee calls again on the Commission to realise the substantial synergies to be gained by proper inclusion of the GNSS programmes in the formulation and implementation of the Digital Agenda. The EESC drew attention to this issue in its original opinion on the Digital Agenda⁽³²⁾.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽²⁸⁾ OJ C 54, 19.2.2011, p. 58-64, OJ C 128, 18.5.2010, p. 69-73, and OJ C 224, 30.8.2008, p. 61-66.

⁽²⁹⁾ OJ C 351, 15.11.2012, p. 68-72.

⁽³⁰⁾ OJ C 351, 15.11.2012, p. 6-11.

⁽³¹⁾ OJ C 54, 19.2.2011, p. 58-64.

⁽³²⁾ OJ C 54, 19.2.2011, p. 58-64.

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union'

COM(2013) 48 final — 2013/0027 (COD)

(2013/C 271/25)

Rapporteur: **Mr McDONOGH**

On 21 February and on 15 April 2013, the Council and the European Parliament respectively decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union

COM(2013) 48 final – 2013/0027 (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 30 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), the European Economic and Social Committee adopted the following opinion by 163 votes to 1 with 5 abstentions.

1. Conclusions and recommendations

1.1 The Committee notes the proposed Directive, which should be seen in the broader context of the recently published Cybersecurity Strategy ⁽¹⁾, outlining a comprehensive vision for network and information security (NIS) to ensure that the digital economy can grow safely whilst furthering the European values of freedom and democracy.

1.2 The EESC welcomes this proposal for a Directive to ensure a high common level of NIS across the EU. Harmonisation and management of NIS at European level is essential to the completion of the Digital Single Market and the smooth functioning of the Internal Market as a whole. The Committee shares the concern of the Commission about the enormous damage that could be done to the economy and the welfare of citizens by a failure of NIS. However, the proposed Directive does not meet the expectations of the Committee for strong legislative action on this critical issue.

1.3 The Committee is extremely disappointed with the lack of progress made by many Member States (MS) to implement effective NIS at a national level. The EESC deplores the increased risks that this failure creates for citizens as well as the negative impact it is having on the completion of the Digital Single Market. All MS should take action on their outstanding NIS obligations without further delay.

1.4 This lack of progress is creating another digital divide between the elite group with highly advanced NIS and the less-advanced MS. This gap is adversely affecting trust and collaboration around NIS at EU level and, unless it is urgently addressed, is likely to cause Internal Market failures associated with the divergence in capabilities across the MS.

1.5 As advised in previous opinions ⁽²⁾ the EESC believes that tentative, voluntary measures do not work and there needs to be strong regulatory obligations on MS to ensure harmonisation, governance and enforcement of European NIS. Unfortunately, the EESC does not think that this proposal for a Directive provides the clear and decisive legislation needed. To provide the high common level of NIS required, the Committee believes that a Regulation, with well-defined compulsory obligations on MS, would be more effective than a Directive.

1.6 Notwithstanding the European Commission's intent to adopt delegated acts to ensure some uniform conditions for the implementation of parts of the Directive, the Committee perceives a dearth of standards, clear definitions and categorical obligations in the proposed act; thus providing too much flexibility to MS on how they interpret and transpose critical elements. The Committee would like to see much more explicit definitions in the act of the standards, requirements and procedures for MS, public authorities, market operators and key Internet enablers to observe.

⁽¹⁾ *An Open, Safe and Secure Cyberspace JOIN* (2013) 1.

⁽²⁾ EESC opinions on *Critical Information Infrastructure Protection*, OJ C 255, 22.9.2010, p. 98 and on the *Directive on Attacks against Information Systems*, OJ C 218, 23.7.2011, p. 130.

1.7 To provide strong policy formulation and implementation for NIS in the EU, the Committee would like to see an EU-level authority for NIS created, analogous to the central authority in the aviation industry (EASA) ⁽³⁾. This body would establish standards and monitor enforcement for all elements of NIS across the Union: from the certification of secure terminal devices and usage, to network security, and data security.

1.8 The EESC is very aware of the increased risks to cybersecurity and data protection from the adoption of cloud computing ⁽⁴⁾ in Europe. The Committee would like the proposed act to explicitly include special, additional security requirements and obligations regarding the provision and use of cloud services.

1.9 So that there is proper accountability for NIS, the act should make it clear that entities with obligations under the proposed Directive would have a right to hold suppliers of software and hardware liable for any defects in their products or services that contribute directly to NIS incidents.

1.10 The EESC calls on MS to provide special attention to increasing the NIS knowledge and cybersecurity skills of Small and Medium-Sized Enterprises (SMEs). The Committee also draws the attention of the Commission to the success of 'hacker competitions' in the US ⁽⁵⁾ and in some MS ⁽⁶⁾, at raising cybersecurity awareness and cultivating the next generation of NIS professionals.

1.11 Given the importance of compliance in all MS to the network and information security of the entire EU, the EESC asks the Commission to consider what Multiannual Financial Framework (MFF) funding might be targeted at NIS compliance to assist MS that need financial assistance.

1.12 Spending on Research, Development and Innovation (R&D&I) for NIS technologies should be a high priority in the EU Framework Programme for Research and Innovation 'Horizon 2020', so that Europe can keep pace with the fast-changing landscape of cyber threats.

⁽³⁾ European Aviation Safety Agency: <http://easa.europa.eu/>

⁽⁴⁾ EESC opinions on *Cloud computing in Europe*, OJ C 24, 28.1.2012, p. 40 and on *Unleashing the Potential of Cloud Computing*, OJ C 76, 14.3.2013, p. 59.

⁽⁵⁾ http://www.nytimes.com/2013/03/25/technology/united-states-wants-to-attract-hackers-to-public-sector.html?pagewanted=all&_r=0

⁽⁶⁾ <http://www.bbc.co.uk/news/technology-17333601>

1.13 To help provide clarity about which entities have legal responsibilities under the proposed act, the EESC would like to see an obligation on every MS to publish an online directory of all entities covered by the risk management and reporting requirements of the Directive. This transparency and public accountability would build trust and support compliance.

1.14 The Committee directs the Commission's attention to the many previous opinions of the EESC that have discussed the topic of network and information security, and which commented on the need for a secure information society and protection for critical infrastructures ⁽⁷⁾.

2. Gist of the Commission proposal

2.1 The proposed NIS Directive was published alongside the EU Cybersecurity Strategy, which aims to strengthen the resilience of information systems, reduce cybercrime, enhance EU international cybersecurity policy and cyberdefence, and develop the industrial and technological resources for cybersecurity, while promoting fundamental rights and other EU core values.

2.2 NIS is concerned with the protection of the Internet and other networks, information systems and underpinning services, which support the functioning of our society. NIS is essential to the smooth functioning of the Internal Market.

2.3 The purely voluntary approach to NIS that the EU has followed to-date does not provide sufficient protection against NIS risks. Existing NIS capabilities are insufficient to keep pace with the fast-changing world of threats and to ensure a common high level of protection in all the Member States.

⁽⁷⁾ EESC opinion on *A Strategy for a Secure Information Society*, OJ C 97, 28.4.2007, p. 21.

EESC opinion on *Critical Information Infrastructure Protection*, OJ C 255, 22.9.2010, p. 98.

EESC opinion on *ENISA Regulation*, OJ C 107, 6.4.2011, p. 58.

EESC opinion on *General Data Protection Regulation*, OJ C 229, 31.7.2012, p. 90.

EESC opinion on *Attacks against information systems*, OJ C 218, 23.7.2011, p. 130.

EESC opinion on *Electronic transactions in the Internal Market*, OJ C 351, 15.11.2012, p. 73.

EESC opinion on *Unleashing the Potential of Cloud Computing*, OJ C 76, 14.3.2013, p. 59.

2.4 Today the MS have very different levels of capabilities and preparedness, leading to fragmented approaches to NIS across the EU. Given the fact that networks and systems are interconnected, those MS with an insufficient level of protection weaken the overall NIS in the Union. This situation also hinders the creation of trust among peers, which is a prerequisite for cooperation and information sharing. As a result, there is cooperation only among a minority of MS with a high level of capabilities.

2.5 The purpose of the Directive, proposed in accordance with Article 114 of the TFEU, is to facilitate the completion and smooth operation of the Digital Single Market:

- putting in place a minimum common level of NIS in the MS and thus increase the overall level of preparedness and response to incidents;
- improve cooperation on NIS at EU level to counter cross border incidents and threats;
- create a culture of risk management and improving the sharing of information between the private and public sectors.

2.6 The proposed Directive lays down legal requirements including:

- (a) Each MS must adopt a NIS strategy and designate a national NIS competent authority (CA) with adequate financial and human resources to prevent, handle and respond to NIS risks and incidents.
- (b) The creation of a cooperation mechanism among Member States and the Commission to share early warnings on risks and incidents to cooperate and to organise regular peer reviews.
- (c) The obligation on specific types of entities throughout the EU to adopt risk management practices and to report major security incidents on their core services to their national CA. The entities covered by these requirements include operators of critical information infrastructures in some sectors (financial services, transport, energy, health), enablers of

information society services (notably: cloud computing, e-commerce platforms, Internet payment, search engines, app stores, and social networks) and public administrations.

2.7 Member States will have to implement the Directive within 18 months of its adoption by the Council and European Parliament (expected sometime in 2014).

3. General comments

3.1 The growth of the Internet and digital society is profoundly impacting everyday life. However, as our dependency on the Internet grows, our freedom, prosperity and quality of life become increasingly dependent on robust network and information security (NIS): If the Internet is down and you can't access electronic medical records in an emergency, people will die. However, the security of Europe's critical information infrastructure is under increasing threat and our level of NIS is not good enough.

3.2 The Director of Europol stated last year that he was '... very worried by this great misplaced confidence in the unbreakable nature of the Internet' ⁽⁸⁾. We frequently hear of new cyber attacks on essential infrastructure by criminals, terrorists or foreign governments. Targets do not report most attacks because they fear reputational damage; however, in recent weeks we have witnessed attacks on Europe's Internet infrastructure ⁽⁹⁾ and banking systems ⁽¹⁰⁾ that were too disruptive to hide. One report ⁽¹¹⁾ estimated that the Netherlands suffered 92 million cyber attacks in 2011 and Germany 82 million. The UK government estimates that the UK suffered 44 million cybercrime attacks in 2011 at a cost to the economy of up to EUR 30 billion ⁽¹²⁾.

3.3 In 2007, the Council of the EU addressed Europe's NIS problem ⁽¹³⁾. But the policy approach followed since then ⁽¹⁴⁾ has mostly relied on voluntary action by MS and only a minority of them have taken effective action. The Committee notes that many MS still have neither published a national cybersecurity strategy nor have developed a national cyber incident contingency plan; and some haven't yet created a Computer Emergency Response Team (CERT). Also, a number of MS have still not ratified the Council of Europe Convention on Cybercrime ⁽¹⁵⁾.

⁽⁸⁾ <http://forumblog.org/2012/05/what-if-the-internet-collapsed/>

⁽⁹⁾ http://www.nytimes.com/2013/03/27/technology/internet/online-dispute-becomes-internet-snarling-attack.html?pagewanted=all&_r=0

⁽¹⁰⁾ http://www.dutchnews.nl/news/archives/2013/04/online_retailers_demand_banks.php

⁽¹¹⁾ http://www.securelist.com/en/analysis/204792216/Kaspersky_Security_Bulletin_Statistics_2011

⁽¹²⁾ UKCyber Security Strategy – Landscape Review: <http://www.nao.org.uk/wp-content/uploads/2013/03/Cyber-security-Full-report.pdf>

⁽¹³⁾ Council Resolution 2007/C 68/01

⁽¹⁴⁾ COM(2006) 251 and COM(2009) 149

⁽¹⁵⁾ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CL=ENG>

3.4 Ten MS that are highly advanced in NIS have formed the European Government CERTs (EGC) group to collaborate closely on NIS and incident response. Membership of the EGC is closed at present: the other less-advanced 17 MS and the newly formed CERT-EU⁽¹⁶⁾ are currently excluded from this elite group. A new digital divide is opening- up between MS that are highly advanced in NIS and the rest. Unless this gap is bridged, the NIS divide will attack the heart of the Digital Single Market, limiting the development of trust, harmonisation and interoperability. Furthermore, without strong action, the divide between the highly advanced and the less-advanced Member States is likely to increase and so would the internal market failures associated to the divergences in the capabilities across the MS.

3.5 The success of the Cybersecurity Strategy and the effectiveness of the proposed NIS Directive will depend on having a strong NIS industry in Europe and sufficient workers with specialist NIS skills. The EESC is pleased to see that the need for MS to invest in NIS education, awareness and training is included in the proposed Directive. The Committee would also like to see every MS make special efforts to inform, educate and support the SME sector with cybersecurity. The large firms can easily acquire the knowledge they need but SMEs need support.

3.6 The EESC is looking forward to cooperating with the European Network and Information Security Agency (ENISA) to promote NIS during 'Cybersecurity Month' later this year. Regarding the objective in the Cybersecurity Strategy and the NIS Directive to develop a security-conscious culture across the Union, and to increase the level of NIS skills, the Committee directs the attention of the Commission to the 'hacker competition' events for teenagers that have proven so successful at raising awareness in some MS and the USA.

3.7 The Committee is also pleased to note the commitment in the Cybersecurity Strategy to R&D&I spending on NIS technology.

3.8 The growth of cloud computing creates many new risks for cybersecurity to deal with. For example, massive computing power for relatively little expense is now available to cyber criminals; and data from thousands of companies are now located in centralised data stores that are vulnerable to focused attacks. The EESC has called for greater cyber resilience for cloud computing⁽¹⁷⁾.

⁽¹⁶⁾ CERT-EU is the a permanent Computer Emergency Response Team (CERT-EU) for the EU institutions, agencies and bodies

⁽¹⁷⁾ EESC opinions on *Cloud computing in Europe*, OJ C 24, 28.1.2012, p. 40 and on *Unleashing the Potential of Cloud Computing*, OJ C 76, 14.3.2013, p. 59.

3.9 The Committee has previously called for the introduction of a voluntary, EU eID scheme for online transactions, to complement existing national schemes. A scheme would provide a higher degree of protection against fraud, a greater climate of trust between economic operators, lower costs of service provision, and a higher quality of service and protection for citizens.

4. Specific comments

4.1 Regrettably, this NIS Directive proposal from the Commission is too tentative, lacks sufficient clarity and depends too heavily on self-regulation by MS. A shortage of standards, clear definitions and categorical obligations, particularly in Chapter IV of the Directive, provides too much flexibility to MS on how they interpret and transpose critical elements of the act. A Regulation, with well-defined compulsory, legal obligations on MS, would be more effective than a Directive.

4.2 The Committee notes that Article 6 of the Directive requires each MS to designate a 'competent authority' (CA) to monitor and ensure the consistent application of the Directive across the EU. It is further noted that Article 8 establishes a 'cooperation network' (CN), which, through powers vested in the CN and the Commission, will provide pan-European leadership, stewardship, and enforcement if necessary, down to MS-level. The EESC believes that building on this governance framework the EU should consider creating an authority at EU-level for NIS, analogous the European Aviation Safety Agency (EASA) that establishes standards and manages security enforcement and compliance for aircraft, airports and airline operations.

4.3 The EU-level NIS authority proposed by the Committee at point 4.2 above, could be set- up on the foundations of the cybersecurity work already being done by ENISA, the European Committee for Standardization (CEN), the CERTs, European Government CERTs (EGC) group and others. Such an authority would establish standards and monitor enforcement for all elements of NIS: from the certification of secure terminal devices and usage, to network security, and data security.

4.4 Given the high- interdependence among MS to provide NIS across the Union and the potentially very high cost of NIS failure events on all affected parties, the EESC would like to see legislation include explicit and proportionate sanctions for compliance failures, harmonised to reflect the pan-European dimension of the responsibility and the scale of damage that could be caused, not only in the domestic market, but also across the Union. Article 17 of the act, which deals with sanctions, is general, allows too much discretion to MS to set sanctions, and does not provide sufficient guidelines to take account of cross-border and pan-European effects.

4.5 Today, governments and the providers of vital services do not publicise security and resilience failures unless they have to. This lack of disclosure hurts Europe's ability to respond speedily and effectively to cyber threats, and to improve general NIS through shared-learning. The Committee commends the Commission on the decision to make notification of all significant NIS incidents mandatory under the Directive. The EESC does not believe that voluntary, self-reporting of incidents would work because there is an incentive, for reputational and liability fears, to cover-up failure events.

4.6 However, Article 14 of the Directive, which deals with reporting, fails to define what would constitute an incident having a 'significant impact' on security, and it allows too much discretion to relevant entities and MS on whether or not to report NIS incidents. Effective legislation requires unambiguous requirements. Because the proposed Directive is too vague on essential definition of requirements, it is not possible to hold parties liable for compliance failures as envisaged under Article 17 of the Directive.

4.7 Because the provision of NIS is mostly in the hands of the private sector, it is important that high levels of trust and cooperation are fostered with all companies responsible for vital information infrastructure and services. The European Public Private Partnership for Resilience (EP3R) initiative launched by the Commission in 2009 is to be applauded and encouraged. However, the Committee believes that the initiative needs to be strengthened and supported with a regulatory obligation in the

NIS act to compel the cooperation of key stakeholders who fail to properly engage.

4.8 Each MS should publish an online directory for its jurisdiction of all the entities that fall under the security requirements and incident notification obligations of Article 14 of the proposed Directive. As well as clarifying how each MS decides to apply the definitions in Article 3 of the act, this transparency would help build trust and encourage a culture of risk management among citizens.

4.9 The EESC notes that software developers and hardware manufacturers are explicitly excluded from the requirements of the Directive because they are not providers of information society services. However, the Committee believes that the proposed act should state that those entities with obligations under the Directive would have recourse to suppliers of software and hardware for any defects in their products or services that contribute directly to NIS incidents.

4.10 Although the Commission estimates that implementing the proposed NIS Directive will cost about EUR 2bn/annum, spread across the public and private sector in Europe, the Committee notes that some MS under financial pressure will struggle to find the investment required for compliance. There is a need to consider how support might be provided under the MFF for NIS compliance, by various instruments, including the European Regional Development Fund (ERDF) and perhaps the Internal Security Fund.

Brussels, 22 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on fluorinated greenhouse gases’

COM(2012) 643 final — 2012/0305 (COD)

(2013/C 271/26)

Rapporteur: **Mário SOARES**

On 21 November and 19 November 2012 respectively, the Council and 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, on the

Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases

COM(2012) 643 final — 2012/0305 (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 26 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 92 votes to 2 with 1 abstention.

1. Conclusions and recommendations

1.1 The EESC firmly supports the Commission's efforts to strengthen legislation on fluorinated greenhouse gases (F-gases).

1.2 The EESC stresses the urgent need to draw up an international agreement on the control of F-gases that subjects all the world's economies to identical rules.

1.3 In the ongoing economic and social crisis, protecting jobs has to be a priority. The transition to a climate- and environment-friendly economy must be based on strong social dialogue so that future changes can be managed collectively and democratically. Social dialogue, negotiation and participation are fundamental values and tools that underpin and reconcile the promotion of social cohesion and quality jobs, job creation and enhanced innovation and competitiveness in European economies.

1.4 The EESC calls for the financial and administrative burden of implementing the various aspects of this regulation to be reduced, especially for small and medium-sized enterprises (SMEs).

1.5 The EESC calls for more thought to be given to life-cycle energy consumption and for the cost-benefit analysis to cover the possible disadvantages of the proposed alternative technologies.

1.6 The Commission and Member States need to step up support for industrial research and innovation, especially with regard to developing alternative technologies to F-gases.

1.7 Companies and Member States all need to make a substantial effort to implement a socially just transition within the policies undertaken to reduce the use and production of F-gases.

1.8 It may be necessary to develop appropriate training programmes to prepare workers for alternative technologies to F-gases but the specific situation of SMEs needs to be taken into consideration. The financial and administrative burden of certification and training needs to be contained.

1.9 Upstream action needs to be taken to the use of F-gases and, therefore, to prevent leaks by strengthening requirements for the design of installations containing these substances.

1.10 The Member States should develop separate collection systems for end-of-life appliances that contain fluorinated substances, in line with the principles of Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE).

1.11 All undertakings carrying out activities associated with the production, distribution or installation of appliances containing F-gases should be concerned by these training programmes, which should cover alternative technologies to facilitate technological transition.

1.12 The EESC believes that it would be more appropriate to distinguish between technologies in order to organise a phasing-out rather than a phasing-down, at least in cases where this is technically feasible and financially realistic.

1.13 Restrictions placed on European producers should also be placed on products imported to the EU.

1.14 The Commission will have the main responsibility for implementing the quota system and should contain its cost while also preserving its environmental integrity.

1.15 The Commission should be granted powers of control, verification and compliance in relation to this regulation.

1.16 The EESC endorses the choice of environmental protection for the legal basis, but stresses the need to ensure that the implementation of the regulation is not prejudicial to the integrity of the single market.

2. Introduction

2.1 In 2004, the EESC drew up an opinion⁽¹⁾ on the Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases (current Regulation (EC) No 842/2006), which emphasised that human activity had increased the concentration of greenhouse gases (GHGs) and that unless these trends, and associated global warming, could be restrained or reversed, they would lead to permanent and potentially harmful climate change. While supporting the Commission's objective and general approach, the 2004 opinion raised a number of issues presented by the draft regulation. A certain number of these criticisms still seem to apply and are reiterated in this opinion.

2.2 F-gases are powerful GHGs generated by human activity. At present, they are covered by two international agreements, depending on whether they contain properties which deplete the stratospheric ozone layer. On the one hand, the 1987 Montreal Protocol – which resulted from the Vienna Convention – sets out measures for controlling the production and use of these substances with a view to phasing them out completely. This protocol has continued to evolve in order to include new gases and applications within its scope. On the other hand, the Kyoto Protocol includes F-gas emissions that do not have an impact on the ozone layer in the GHG reduction effort, which this agreement implements. The Climate and Clean Air Coalition, which since 2012 has

sought to tackle short-lived pollutants, has also put hydrofluorocarbon (HFC) emissions at the top of its agenda.

2.3 The EU is part of the vanguard in the fight against F-gases. In 2009, 2010, 2011 and 2012, several signatories to the Montreal Protocol, including the United States, presented proposals aimed at limiting the global production and consumption of HFCs. These initiatives were supported by 108 countries.

2.4 However, there has been little progress since China, Brazil, India and the Persian Gulf States, among others, refuse to discuss this issue within the framework of the Montreal Protocol, arguing that F-gases covered by the Kyoto Protocol have no impact on the stratospheric ozone layer.

2.5 In 2009, the EU set itself GHG emissions reduction targets for 2020 and 2050. The EU committed to cutting its GHG emissions by 20 % by 2020, compared with 1990 levels, and by 30 % if an international agreement was concluded, binding the other major economies to comparable targets.

2.6 The EU has adopted a set of innovative instruments in order to achieve these goals, the most important of which are the directives on the GHG emission allowance trading scheme (Directive 2009/29/EC), the use of energy from renewable sources (Directive 2009/28/EC), and energy efficiency (Directive 2012/27/EU), and the decision on the shared effort of Member States (Decision No 406/2009/EC). The EU has acknowledged that developed countries will have to achieve 80-95 % emissions reductions by 2050 vis-à-vis 1990 levels in order to keep global warming below the target limit of 2 degrees Celsius.

2.7 The European Commission's *Roadmap for moving to a competitive low carbon economy in 2050* establishes that the most economically efficient scenarios involve emissions cuts of 25 % by 2020 and 40 % by 2030 compared with 1990 levels, and of 60 % between now and 2040.

2.8 In view of their global warming potential, F-gases are an integral part of the EU framework for fighting climate change. There are two key EU legislative acts on F-gases:

— Regulation (EC) No 842/2006 mainly establishes a system for preventing leakage during the use of stationary equipment and at the end of its life and a set of restrictions for certain applications.

⁽¹⁾ OJ C 108, 30.4.2004, p. 62.

— Directive 2006/40/EC on mobile air-conditioning systems.

2.9 While the EU's strengthened commitment to fighting climate change and becoming a low-carbon economy is welcome, it must be backed by a credible social programme and the necessary funds to support the sectors and regions that would feel the negative employment effects generated if the other large economies made no progress. The international economic and energy situation has made competitiveness a very sensitive issue, especially for the energy-intensive export sectors. Efforts to decarbonise the European economy must centre more around a reindustrialisation strategy based primarily on resource efficiency, including for energy, and sustainable and innovative technologies.

3. Summary and background to the Commission proposal

3.1 *This Commission proposal aims to:*

3.1.1 replace Regulation (EC) No 842/2006 on certain fluorinated greenhouse gases, in order to ensure a more cost-efficient contribution to achieving the EU's climate objectives by discouraging the use of F-gases with a high impact on the climate in favour of energy-efficient and safe alternatives, and further improving the containment and end-of-life treatment of equipment and products that contain F-gases;

3.1.2 enhance sustainable growth, stimulate innovation and develop green technologies by improving market opportunities for alternative technologies and gases with a low impact on the climate;

3.1.3 bring the EU into line with the latest scientific findings at international level, as described in the Fourth Assessment Report of the UN's IPCC, e.g. with regard to the substances covered by this regulation and the calculation of their global warming potential (GWP);

3.1.4 help to bring about a consensus on an international agreement to phase down HFCs, the most relevant group of F-gases, under the Montreal Protocol;

3.1.5 simplify and clarify Regulation (EC) No 842/2006, so as to reduce the administrative burden in line with the Commission's commitment to better regulation.

4. General comments

4.1 The EESC firmly supports the Commission's efforts to strengthen legislation on F-gases. In view of their considerable global warming potential, it is vital to step up efforts to restrict emissions of these gases in the EU, in terms of production as well as use.

4.2 Although the existing rules are in fact well-designed, there have been numerous difficulties with their implementation, most of which the EESC had identified in its 2004 opinion. The EESC calls on the Member States to step up their efforts to enforce their own decisions.

4.3 While endorsing the EU's initiatives, the EESC would stress the urgent need to draw up an international agreement on the control of F-gases that subjects all the world's economies to identical rules.

4.4 Since technically feasible and economically viable alternative technologies exist, legislation will be strengthened on the basis of a good cost-efficiency ratio so that the general macro-economic impact will be very slight, except in certain specific sectors. Nevertheless, the cost of implementing the law could be offset partly by energy-efficiency gains and partly by the strategic market positioning of innovative enterprises. Although the cost-effectiveness of the proposed measures has been carefully studied, the EESC stresses the need to keep the cost of implementing the draft regulation's provisions as low as possible. Furthermore, the EESC calls for more thought to be given to life-cycle energy consumption and for the cost-benefit analysis to cover the possible disadvantages of the proposed alternative technologies (flammable, explosive and toxic properties and pressurisation hazards). Additionally, the levels of safety required in certain sectors such as railways may prevent the use of alternative substances even if they have been successfully developed. It is therefore necessary to push ahead with the development of alternative solutions, for these sectors, which are ecologically and economically feasible.

4.5 The EESC also calls on the Commission and the Member States to strengthen support for industrial research and innovation, especially with respect to developing alternative technologies to F-gases. Given the ongoing economic crisis in the EU, support for innovation will play a decisive role in a reindustrialisation strategy. Nevertheless, we must also consider that there is no certainty that substances or technologies capable of fulfilling functions that are essential to a developed society, e.g. refrigeration, can be developed at a reasonable cost.

4.6 The EESC welcomes the fact that the proposal includes an article on training and certification, which should enhance the law's effectiveness and promote the development of synergies with EU legislation on the health and safety of workers, mainly by addressing the risks of alternative technologies. Nevertheless, the EESC notes that the lack of adequate staff training is often a significant obstacle to the implementation of legislation. Companies and Member States both need to make a substantial effort to develop the training programmes needed to prepare workers for alternative technologies to F-gases. The specific situation of SMEs needs to be taken into consideration and the financial and administrative burden involved in certification and training needs to be contained.

4.7 The EESC emphasises the need to draw on the good practices of certain Member States in order to address the question of F-gases.

5. Specific comments

5.1 Since the cost of containment measures (i.e. checking for leakage, leakage detection, record keeping etc.) is very substantial for end users, who are often SMEs, the EESC is concerned about the financial burden that legislation on F-gases entails for this economic sector, which has already been weakened by the economic crisis. The EESC stresses the need to take action prior to the use of F-gases and therefore calls for leaks to be prevented by strengthening requirements for the design of installations containing these substances.

5.2 In a number of cases, recovery requirements under Article 7(4) concern household use (air-conditioning, heat pumps). It would make more sense to get Member States to develop separate collection systems for end-of-life appliances that contain fluorinated substances, in line with the principles of the WEEE Directive.

5.3 Training and certification (Article 8)

5.3.1 The obligation to establish training programmes applies only to undertakings carrying out the activities set out in Article 8(1) for third parties. The EESC believes that all undertakings carrying out activities associated with the production, distribution or installation of appliances containing F-gases should be concerned by these training programmes. The EESC stresses the need for these programmes to cover alternative technologies in order to facilitate technological transition.

5.3.2 Since the training programmes mainly concern substances and processes which can affect the health and safety of workers, the social partners should be involved in their establishment by the Member States. Involving the social partners in the development of these programmes would facilitate the proposal's alignment with the general principles of EU legislation on the health and safety of workers.

5.3.3 Since it is unclear when this proposal for a regulation is to be adopted, the date given as a deadline for Member States to notify the Commission of their training and certification programmes should be replaced with a period of time following the regulation's entry into force.

5.4 Placing on the market and control of use

5.4.1 Despite the restrictions set out in Articles 9, 11 and 12, the proposal for a regulation generally gives preference to phasing down rather than phasing out by 2030. Indeed, Article 13 provides for the reduction of the placing on the market of hydrofluorocarbons through progressive quota reductions that do not distinguish between the different technologies covered by the proposal for a regulation.

5.4.2 The EESC believes that it would be more appropriate to distinguish between these technologies in order to organise a phasing-out rather than a phasing-down, at least in cases where this is technically feasible and financially realistic. There should be a long-term objective for a ban that is compatible with the EU's 2050 targets for GHG emissions reductions, and with the development of alternative technologies. For some sectors, e.g. commercial refrigerators or large industrial refrigerating systems, the ban on placing new HFC equipment on the market could come into force as of 2025. Similarly, non-reusable F-gas containers (sprays or aerosols) should be banned, with possible derogations for certain essential uses (e.g. in medicine) where no plausible alternatives present themselves.

5.4.3 In addition to the obvious environmental advantages of the wholesale replacement of technologies that produce particularly potent greenhouse gases, and despite the cost involved, a more systematic substitution would promote innovation and give innovative undertakings a competitive edge on the markets that will be created by legislation currently under preparation.

5.5 Labelling provides workers handling equipment covered by this draft regulation and end consumers with vital information on the risks associated with the technologies they use. Where workers are concerned, technical notices must be exhaustive, clear and rigorous, covering all the information required so that installation, maintenance and dismantling operations can be carried out with a minimum of risk to the environment.

5.6 In order to maximise the impact of the message and bearing in mind the area's technical complexity, the emphasis should be on providing simple information that is clear to the average person. As a result, synergies must be created with the system in force under Directive 2005/32/EC on ecodesign, in order to promote, where technically feasible, a harmonised eco-labelling system throughout Europe.

5.7 Restrictions placed on European producers should also be placed on products imported to the EU. The ban on the pre-charging of equipment is an environmentally and economically efficient way to regulate the importation of F-gases. The EESC nevertheless wonders whether charging equipment at the industrial site would not provide better reliability guarantees since it is carried out with specifically adapted material and by specifically trained staff. The EESC therefore recommends that the regulation should state explicitly that the ban on pre-charging does not apply to equipment intended for export. Similarly, the EESC calls for the development of a system of derogations from the ban on pre-charging, applicable to equipment for which pre-charging has been shown to be justified for reasons of reliability, safety or environmental performance.

5.8 All producers and importers of F-gases will be subject to quotas. These obligations do not apply to consumers or equipment operators. In order to ease the administrative burden, the threshold is set at one metric tonne or 1 000 tonnes of CO₂ equivalent of F-gases. Exported quantities do not count against the placing on the market quota. Quotas will be allocated through 'grandfathering' (i.e. on the basis of past emissions). The auctioning option was abandoned because of the small number of operators on the market (i.e. not

enough to create an efficient market) and because it would have increased the administrative costs. Five percent will be reserved for 'new entrants'. The allocation of quotas will be based on data provided for 2008-2011. It is important to keep registration and reporting requirements manageable, in order to avoid placing an excessive administrative burden on companies, especially SMEs. Generally speaking, it is worth raising the question of the quota system's cost-effectiveness.

5.9 The EESC urges the Commission to publish regular reports on the data gathered in line with Articles 17 and 18 of the proposed regulation. These reports must not however breach the confidentiality of the data obtained from companies concerning industrial processes protected by intellectual property rights. The Commission should also take care to contain the administrative costs involved in gathering data from the companies concerned, as well as from the Member States.

5.10 Article 21 provides for the establishment of a committee to assist the Commission in the exercise of its powers to adopt delegated acts. This committee should comprise representatives of all the parties concerned, including the social partners.

5.11 The EESC regrets that Article 22 does not grant the Commission any powers regarding control, verification and compliance. Although implementing measures are a prerogative of the Member States, it would have been appropriate to empower the Commission to establish minimum requirements, along the same lines as the provisions set out in Articles 8 and 18.

5.12 The EESC endorses the Commission's decision to base the regulation on fluorinated greenhouse gases on Article 192(1) of the Treaty on the Functioning of the European Union, given that the regulation's primary aim is to guarantee a high level of environmental protection, particularly by combating climate change. However, the EESC stresses the need to ensure that the implementation of the regulation is not prejudicial to the integrity of the single market.

Brussels, 23 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council on fixing an adjustment rate to direct payments provided for in Regulation (EC) No 73/2009 in respect of calendar year 2013’

COM(2013) 159 final — 2013/0087 (COD)

(2013/C 271/27)

Rapporteur-General: **Dilyana SLAVOVA**

On 8 April and 16 April 2013 the Council and the European Parliament respectively 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 of the European Parliament and of the Council on fixing an adjustment rate to direct payments provided for in Regulation (EC) No 73/2009 in respect of calendar year 2013

COM(2013) 159 final — 2013/0087 (COD).

On 16 April 2013, the Bureau of the European Economic and Social Committee instructed the Section for Agriculture, Rural Development and the Environment to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Ms SLAVOVA as rapporteur-general at its 490th plenary session, held on 22 and 23 May 2013 (meeting of 22 May), and adopted the following opinion by 124 votes with 4 abstentions.

1. Conclusions and recommendations

1.1 The EESC supports setting the 2013 adjustment rate of the financial discipline mechanism according to Article 11 of Regulation (EC) No 73/2009 ⁽¹⁾. However, it notices that the Commission proposal, based on the Multiannual Financial Framework (MFF) agreed by the European Council on 8 February 2013 ⁽²⁾, has no legal validity without the agreement of the European Parliament.

1.2 The EESC considers that the Commission and the Parliament could explore the possibilities for the future reserve for crisis not to drain resources from the CAP budget. If the reserve were to be included under heading 2 of the MFF, it should be secured with additional financing. As a consequence, the adjustment rate for direct payments could result in a lower percentage than the one proposed by the Commission, to the benefit of farmers.

1.3 The Committee urges the Council, the Parliament and the Commission to make any effort needed in order to reach a final compromise within a short delay, thus providing not only farmers but all operators in every sector of the EU economy with the required legal certainty for their own financial planning.

2. Background to the opinion

2.1 With a view to ensuring that the amounts for the financing of the Common Agricultural Policy (CAP) comply with the MFF, a financial discipline mechanism adjusts the level of direct payments when the forecasts indicate that the annual sub-ceilings for market related expenditure and direct payments under heading 2 of the MFF will be exceeded.

2.2 As a rule, farmers submitting an aid application for direct payments for one calendar year (N) are paid within a fixed payment period falling under the financial year (N+1). In respect of calendar year 2013, this means that the payment period will fall under the MFF 2014-2020, which has not yet been adopted.

3. General comments

3.1 Taking into account the implications of the unequal distribution of direct payments between small and large beneficiaries, the EESC attaches great importance to the fact that the reduction continues to be applied in the future only for amounts in excess of EUR 5 000.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

⁽²⁾ EUCO 37/13.

Opinion of the European Economic and Social Committee on the ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A Decent Life for All: ending poverty and giving the world a sustainable future’

COM(2013) 92 final

(2013/C 271/28)

Rapporteur: **Ms PICHENOT**

On 18 March 2013 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

A Decent Life for All: Ending poverty and giving the world a sustainable future

COM(2013) 92 final.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 25 April 2013.

At its 490th plenary session, held on 22 and 23 May 2013 (meeting of 23 May 2013), the European Economic and Social Committee adopted the following opinion by 103 votes with 6 abstentions.

1. Conclusions and recommendations

1.1 Achieving MDG/SDG convergence

1.1.1 For **the first time in its history** humanity has the knowledge, the economic resources and the technical means to eradicate poverty at global level by 2030. This is an immense source of hope for more than one billion human beings who are still the victims of extreme poverty. For the first time too, states will be accountable, in the period up to 2050, for together better managing the planet's natural capital as a limited resource, to be protected and shared with future generations.

1.1.2 The focal point of the September 2013 UN negotiations is to decide upon a universal definition of the Sustainable Development Goals (SDG) with a view to reconciling, over the long term, the fight against poverty, sustainable production and consumption, and preserving natural resources. To integrate the review of the Millennium Development Goals (MDG) scheduled for 2015, this process has to be inclusive and convergent. Civil society actors, international institutions and the UN Member States are already gearing up to prepare and support this international negotiation. Since the Rio+20 Conference ⁽¹⁾, the EESC has been part of this debate in order to help define the role of civil society in facing up to these challenges. It will be continuing its activity up to 2015 with other opinions ⁽²⁾ and initiatives.

1.1.3 The Committee subscribes to the Commission's approach in launching a European debate on the need to seek a convergence between the MDG and the SDG processes and on **increasing the responsibility of nation states** by means of a Communication on *A Decent Life for All: Ending poverty and*

giving the world a sustainable future. Whilst recognising that the MDGs have brought progress on social objectives, it is still too early to define globally acceptable environmental objectives and economic objectives. The Committee believes that we need a better understanding of how these **three dimensions of sustainable development interact in order to identify fair, moderate and effective solutions**.

1.2 Recommendations for a convergent and inclusive process

1.2.1 In the process of establishing a common European position with a view to the UN General Assembly, the Committee considers that the European Commission's communication **constitutes an important milestone, contributing to the debate** in the institutions and in the Member States. The Committee welcomes the **cooperation** between the Environment and DEVCO ⁽³⁾ DGs, evidence of a coherent approach to the preparation of this communication, which also includes a contribution from the European External Action Service on the security aspect; the communication would, however, have gained from better integration of trade and agricultural policy. The Committee particularly welcomes the concerted work being done by the European Council, and encourages the latter to produce a **single conclusions document** at the Foreign Affairs Council of May/June 2013.

1.2.2 The Committee notes that this choice of **a single global framework** the objectives of which must be applied in each country, deserves a broad internal consensus so that it can be presented to the other partner countries in the international community as a partnership of equals, particularly vis-à-vis the poorest countries and the hundred or so **medium-income countries, including the emerging countries**, which

⁽¹⁾ EESC conference February 2012, *Go sustainable, be responsible! European civil society on the road to Rio+20*.

⁽²⁾ EESC opinion on Rio+20: *current situation and future prospects* (additional opinion) OJ C 44, 15.2.2013, pp. 64-67.

⁽³⁾ Development and cooperation – EuropeAid.

now have a leading role in the international negotiations. It is because of the complexity of the negotiations that the Committee considers the European position to be a **milestone in this diplomatic process** which goes beyond the old distinction between developed and developing countries.

1.2.3 The Committee calls on the EU to make its voice heard in international forums on the basis of this **framework for convergence of the MDGs/SDGs**, also through the Member States in the UN. Each country, with the participation of civil society, will need to draw up an **inclusive national development strategy**, taking account of its starting level, thus participating in the achievement of the common SDGs. The Committee considers that this will require procedures for assessing and monitoring national commitments, which should be recorded in a **global register**, with improved statistical indicators complementing GDP.

1.2.4 The EU has its values, practice of consensus and other assets which should enable it, if there is a political will, to make a determined commitment to the transition to sustainable development, thus leading the way for its international partners. As the specific commitments set out in the very important **appendix** to this communication demonstrate, the European Union remains a **benchmark** when it comes to environmental policy, respect for human rights, internal transfers to promote territorial cohesion and redistribution in the interests of social protection. The appendix sets up a framework for monitoring the Rio+20 commitments at European and international level.

1.2.5 Designed as universal objectives, the SDGs must be translated into European policies and national reform programmes in the Member States. The Committee recommends that this aspect be included in the preparation of the **mid-term review of the Europe 2020 strategy in accordance with the follow-up to the Rio+20 commitments**. It is anticipated that the growing environmental dimension of the European Semester will generate new impetus⁽⁴⁾. The Committee considers that this involves merging the EU 2020 strategy with the **sustainable development strategy** and taking account of a **social union**⁽⁵⁾ closely tied in with European economic and monetary union.

1.2.6 One distinctive feature of the new SDGs is that they are intended to be universal, applying to all countries, and to take account of planetary boundaries. Given the finite physical

limits of land, fresh water, forests and many other natural resources in the world the SDGs need to include goals for using these resources more efficiently and sharing them more fairly. Similarly the SDGs need to establish equitably-based targets to reduce the burden of greenhouse gas emissions and other forms of pollution. Such goals should quantify and set timetables for the long-agreed global objective of moving to more sustainable patterns of production and consumption. Unless this transition to a more sustainable global economy is achieved throughout the world it may well prove impossible to achieve the MDG type of development objectives for the developing countries, since at present improvement on some traditional development objectives is frequently undermined by the growing world-wide problems of resource depletion, climate change and other forms of pollution.

1.2.7 Developed and emerging countries are responsible for the largest part of the growing problems of over-consumption, waste and depletion of natural resources and pollution. So the SDGs referring to more sustainable patterns of consumption and production will be particularly relevant to them and should set demanding and challenging targets for improvement over the next 15 years. The European Union has always been active in this area and should put itself at the forefront in identifying appropriate SDG targets for the developed world.

1.3 Recommendations for a participatory process open to civil society

1.3.1 The Committee points out that all the opinions cited constitute a **hard core** of recommendations concerning **the role of civil society in good governance**, support for a transition towards a new economic model, protection for the poorest and most vulnerable and measures to assist workers in coping with change, in addition to taking account of the fight against climate change and of the planet's limited resources. The Committee also considers that a strong and autonomous civil society supported by a **legal system** ensuring its independence together form the foundation for democratisation and the rule of law, contributing to the stability needed for investment and sustainable growth⁽⁶⁾.

1.3.2 The Committee calls on the Commission and the Member States to involve **civil society throughout the process of drafting**, and then implementation and monitoring, particularly with regard to the SDGs, where their participation is still inadequate. In 2013 and 2014 national debates, not least within the economic, social and environmental councils and/or sustainable development councils including all parts of civil society, together with debates between European civil societies and those of partner countries, should contribute to this process. These national debates will be part of the preparations

⁽⁴⁾ EESC opinion on *The green economy – promoting sustainable development in Europe*, 2013 (See page 18 of this Official Journal).

⁽⁵⁾ EESC opinion on *For a social dimension of European Economic and Monetary Union*, (See page 1 of this Official Journal).

⁽⁶⁾ EESC opinion *Towards a comprehensive European international investment policy*, rapporteur Mr Peel, OJ C 318, 29.10.2011, pp. 150-154.

for the **European Year for Cooperation and Sustainable Development in 2015** with the aim of building a shared vision of a future world and make the purpose of European external action clearer to the public (7). The Committee invites the European Commission to make sufficient resources available for this European Year, to ensure the active involvement of civil society, to focus support on existing initiatives undertaken by the partners as part of this Year and to encourage wide-ranging debate on the subjects addressed in this EESC opinion.

1.3.3 Civil societies have a **role to play in putting the case for a new economic model** to national politicians and international diplomats, with the aim of decoupling the level of economic activity from that of human development and of the environmental impact. The Committee recommends sharing expertise and know-how, especially during thematic year 2015, with other civil societies in partner regions and countries, as this is an area in which the EESC has a rich fund of experience.

1.3.4 The Committee calls on civil society organisations to participate in, and take on board the findings of, the international, national and thematic **consultations**, particularly that on environmental sustainability currently being conducted by UNDP and UNEP, which can be accessed on www.worldwewant2015.org/sustainability

1.3.5 The Committee recommends that the post-2015 agenda rely more systematically on **impact studies**, follow-up carried out with the assistance of civil society organisations among others (on human rights, eco-systems and working conditions, for instance). Similarly, **the integration of social dialogue between the social partners**, an indicator of respect for human rights at work, is an essential instrument for implementing, monitoring and assessing the MDGs/SDGs.

1.3.6 Civil society will therefore have a major role to play in **planning, monitoring and assessment**. European civil society will need to access the relevant information so that it can act through mechanisms for monitoring the internal coherence of European development policies, a principle which is enshrined in the Lisbon Treaty. The Committee recommends involving civil society in the selection of indicators complementing GDP, the fight against corruption, negotiations concerning

peace processes and the drawing up of national strategic plans, and advocates giving greater weight to the social innovations which are thrown up by practice.

1.3.7 With a view to supporting the role of European leadership in moving towards another economic model, the Committee recommends setting up a **multi-stakeholder consultative forum** (8). It would be dedicated to promoting sustainable production and consumption in the EU. Each branch must set out the steps towards a negotiated transition with flanking measures for sectors, companies, territories and the workers concerned.

1.3.8 In implementing this future agenda, the Committee recommends an approach based on strengthened partnerships between actors, on gender equality, for instance. **Cooperation based on voluntary objective-related contracts between actors which are binding** at all territorial levels could be encouraged. For example, synergy-based initiatives between public or private actors or associations who jointly undertake to achieve specific objectives in a city or region. These innovative approaches appear essential in order to take account of the **multi-dimensional aspect of poverty**. Such forms of contract would also encourage South/South cooperation with financial support from the North.

1.4 Recommendations for the future prospects of a post-2015 agenda

1.4.1 The post-2015 agenda represents a change in mind-set which moves beyond international aid and cooperation. It must be seen as a process which commits all countries to the **transition to an inclusive and green economic model** which sets us on the path towards a decarbonated economy. The Committee endorses the communication's analysis and the statement that 'progress towards an inclusive green economy through sustainable consumption and production patterns and resource efficiency, including in particular low emission energy systems, is therefore essential'.

1.4.2 **Consistency between financial policy and economic and migration policy**. Beyond the economic aspects, it is crucial that other policies, which significantly influence a change of course towards sustainable development, be implemented in keeping with the principle of **consistency**. These policies include a carbon emissions tax, all incentives designed to mitigate climate change, arrangements encouraging temporary or circular migration from poor countries, the strict control of arms sales to developing countries and financial regulation to curb money-laundering and eliminate tax evasion.

(7) Beyond 2015 is an international platform of development associations which is campaigning to raise awareness of what is at stake in this debate and is collecting contributions on its website www.beyond2015.org

(8) EESC exploratory opinion on *The promotion of sustainable production and consumption in the EU*, rapporteur Ms Le Nouail Marlière, OJ L 191 29.6.2012, p. 6–10.

1.4.3 A definition of SDGs must take account of the **tension** between questions of individual and collective development and those relating to the preservation of the Earth's environmental balances. The Committee considers that resolving this tension and striking a balance between the three dimensions of sustainable development requires that **global public goods be preserved by global public policies**, managed by an international community of sovereign states. This is the great challenge facing the future agenda.

1.4.4 The question of global public goods, identified as a **major post-2015 challenge**, requires **greater coherence between international institutions** and global policies. The European Union must play its part in this. In a number of opinions the EESC has sketched out responses on how to approach global public goods, for example with regard to food security⁽⁹⁾, basic social protection and multilateral regulation of trade and investment, climate and biodiversity.

1.4.5 The Committee regrets the oblique references to this issue in the communication on *A Decent Life for All* and considers that the forthcoming communication on financial resources scheduled for mid-2013 should include this question in order to ensure that **adequate sources of financing will be made available**. Public development aid must continue to be targeted at combating poverty. A large part of the consultation process of the European financial transaction tax to be put in place in 2013, with eleven countries initially participating, should be devoted to global comments.

1.4.6 Under no circumstances must the wait for an international agreement on the definition of the SDGs serve as a pretext for delaying or reducing financial aid commitments made by developed countries. The Committee is particularly concerned by the risk of interruption in the implementation of development policies should there be no agreement be finalised in 2015. To reduce this risk, it urges that sufficient funding be provided for **the revised MDGs** by this date⁽¹⁰⁾. Even at this time of budgetary difficulty, the Committee urges the Union and the Member States to maintain their commitments and to ensure that **the 0.7 % average target is reached** when the new phase begins.

1.4.7 The Millennium goals need to be brought up-to-date and tailored to the challenges of the 21st century, taking stock of the experience gained so far. The EESC believes that at least

three new goals should be added, such as access to **energy for all**⁽¹¹⁾, **the right to food and water and the establishment of basic social protection**⁽¹²⁾. **Decent work**, incorporated under the 2006 revision, must also be re-affirmed as a priority, as must the absolute necessity for **agricultural development** once again to be placed at the heart of the fight against poverty.

Convergence between the two agendas could emerge from this revision, which will be no more than the first stage of a future global agenda. It has to be recognised that there is currently a tension and uncertainty between an 'ideal' agenda and the recognition of what is realistically 'possible'.

1.4.8 During this revision of the MDGs the Committee suggests developing a **specific development approach for fragile states or states affected by conflicts**, prioritising the institutional rebuilding among the objectives for these countries in order to ensure **security and justice at local level** from the outset.

2. Drawing lessons from the Millennium goals

2.1 **Permanence of the Millennium Declaration.** This declaration retains its full political and symbolic scope as a **pact defining a commitment to 2015 and beyond** between all countries, rich and poor. It must remain a basis for the future agenda and set out the major challenges and fundamental values which must underpin twenty-first century international relations: peace, security and disarmament, protecting the environment we all share, human rights, democracy and good governance, protection of vulnerable groups, the response to Africa's special needs, the right to development and the need to create an environment conducive to development. Mirroring the 1992 Rio Declaration, this declaration has already established clear linkage between the various dimensions of sustainable development.

2.2 Despite a **mixed record**, the simplicity and directness of the MDGs have made an undeniable contribution to raising awareness and mobilising public opinion in developed countries. What is less clear is whether this support from public opinion has actually been translated into increased aid by combating corruption effectively, a new focus on those countries lagging behind the most, and whether it has been adapted to countries at war or weakened by internal conflicts.

⁽⁹⁾ EESC opinion on *Trade and Food Security*, rapporteur Mr Campli, co-rapporteur Mr Peel, OJ C 255, 22.9.2010, pp. 1–9.

⁽¹⁰⁾ European Development Report 2013: *After 2015: global action for an inclusive and sustainable future*.

⁽¹¹⁾ EESC opinion on *Getting EU energy islands connected: growth, competitiveness, solidarity and sustainability in the EU internal energy market*, rapporteur Mr Coulon, OJ C 44, 15.2.2013, pp. 9–15.

⁽¹²⁾ EESC Opinion on *Social protection in European Union development cooperation*, rapporteur Mr Zufiaur, OJ C 161, 6.6.2013, p. 82–86.

2.3 Regions, inequalities and types of poverty. With regard to the poverty index, the Committee has reservations about using income below USD 1.25 a day to assess the reduction in extreme poverty and regarding the use of national averages. These tools mask both deep **internal inequalities** in national societies and **regional disparities**, particularly to the detriment of rural populations which ought to be able to support themselves in the countryside and accommodate part of the population growth expected over the coming decades through **rural development**. Moreover, **poorly managed urban development** accentuates and contributes to growing urban poverty and requires more qualitative analyses.

2.4 Gender equality is key to any change, not only because of the situation of women but because it is at the heart of all other forms of inequality and exacerbates their consequences⁽¹³⁾. Responses to non-discrimination, i.e. **women's rights** are essential to our societies' transition. Women's contributions to peace, development, economic activity and security are major assets for a future agenda. These values must be recognised by all, men and women.

2.5 Quantitative outcomes and methodological tools. The updated road map must be translated into more relevant objectives and progress indicators. Regularly published follow-up reports on the MDGs have identified some significant results and some shortcomings. **Assessment quality is a key achievement of this governance by objectives method.** The future agenda will require improved and harmonised national statistical tools – particularly concerning gender-specific data and people with disabilities. To this end public records need to be improved and **qualitative surveys** carried out, e.g. in relation to education.

2.6 Beyond GDP. In the post-2015 agenda, sustainable development indicators⁽¹⁴⁾ defining well-being should comprise a **limited table of economic, social and environmental indicators**, rather than a single aggregate indicator. Adding other indicators to GDP is possible at international level and has already been done in developing a definition of LDCs (least developed countries) which includes the criteria of lagging behind on human development and economic vulnerability, or the human development indicator and more recently the inequality indicator developed by UNDP.

To bridge the gap between economic policies, well-being and social progress, **indicators complementing GDP** should be used. A new approach is needed identifying the components of progress and including the social and environmental

dimensions in national accounting, using composite indicators and creating key indicators. The missing link in the chain is the **development of indicators to measure effectiveness and accountability**, which are necessary in order to link policy and budgetary choices with the performance of indicators. Measuring well-being and progress is not an exclusively technical problem. The very concept of well-being reveals the collective preferences and fundamental values of a society. One way of making progress in selecting indicators is to involve the public and civil society organisations in the academic work, in order to define the indicators and assess their operation.

2.7 It is up to the public authorities, central government and local authorities to guarantee an effective level of **basic social protection** to deal with major problems in areas such as health and disability, retirement and unemployment. Civil society organisations (trade unions, NGOs, foundations, mutual societies, cooperatives, SMEs, family or consumer associations) can enter into contracts with public authorities in order to play a decisive part in planning, monitoring and providing services and benefit from public aid, particularly in LDCs.

3. Human rights, involvement of civil society, democratisation and contractualisation/partnership between actors - at the heart of the post-2015 agenda

3.1 Democratisation and human rights, foundation for the transition to inclusive societies and sustainable economies. Ongoing support for efforts to achieve greater democracy remains the best route towards open, transparent societies which are accountable to their citizens. In the open societies of the 21st century no major change can be achieved without the **participation, ownership, support and shared responsibility of the stakeholders concerned**. In the context of the financing instrument for the promotion of democracy and human rights and the communication on the role of civil society in development, the Committee welcomes the greater importance attached to the emergence of an independent civil society⁽¹⁵⁾, which will make it possible to **combat corruption whatever its origin**, guarantee public accountability, involve economic operators in impact assessments and the monitoring of trade agreements, and consolidate the reaction capacity of defenders of women's rights and support defenders of the environment.

3.2 Transparency and accountability in partner countries, the building blocks of the future agenda. The MDGs and then the resulting **Aid Effectiveness Agenda** (Paris, Accra and Busan principles) have helped to strengthen accountability in partner countries and to increase awareness of special

⁽¹³⁾ Gender equality in the EU's development policy 2010-2015 plan.

⁽¹⁴⁾ EESC opinion on GDP and beyond — the involvement of civil society in choosing complementary indicators, rapporteur Mr Palmieri, OJ C 181, 21.6.2012, pp. 14–20.

⁽¹⁵⁾ EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a financing instrument for the promotion of democracy and human rights worldwide, rapporteur Mr Iuliano, OJ C 11, 15.1.2013, pp. 81–83.

conditions in fragile states. However, in order to correct the major shortcomings of cooperation, the future agenda must enable the beneficiary countries to become stakeholders on an equal footing with donor countries. Above all, specific account must be taken of **situations involving internal conflicts or war and fragility linked to natural disasters** by formulating **specific responses** for these countries with prior, priority objectives for the re-establishment of institutions and guarantees of security, policing and justice.

3.3 Cooperation between societies in promoting the numerous exchanges of stakeholders and international networks. The multi-actor approach encourages development partners in the North and the South to go beyond the traditional diplomatic framework of intergovernmental commitments. A more inclusive vision of civil society is based on contracts or formal partnership involving a **contract of objectives and means between different actors**. This requires that greater account be taken of the initiatives of **cities** and local authorities (Green City Networks, transition town movements) and those of civil society organisations (non-governmental diplomacy such as the Rio People's Summit) and all forms of **business** (business world, e.g. Responsible Business Networks and the social economy), international **trade union confederations**, (key actors for the objective of decent work) as well as universities and **research centres**, when establishing objectives, as well as during their implementation and monitoring. The Committee recommends that the future agenda recognise and give greater weight to contractual agreements between private, public and associative partners, without neglecting the large number of international solidarity-based initiatives emanating from the public. **Involving these diverse actors on an equal footing** is an important precondition for more effective and inclusive governance which listens to the voice of the poorest members of society.

3.4 In order to achieve this, the Committee, like many other observers, advocates **essential improvements in good governance and democratic institutions** in order to strengthen the partner countries' ownership of their own national development strategies. The MDGs have enabled **certain civil societies in the developing countries** to strengthen their position as actors and to challenge their governments with regard to investment choices and public expenditure. In the future, more inclusive agenda they will have to become more involved in drawing up these strategic documents on poverty reduction and bring to light innovative solutions for decent work and social protection, while **gaining know-how and planning** skills which contribute to better governance in the states. The Committee advocates a partial direction of aid to trade to strengthen **the capacity of the social partners and civil society organisations** in trade issues so that they can help integrate trade and food security into their national development strategies.

4. Rebuilding a broad consensus for a change of course towards sustainable development

4.1 Global governance and public environmental, social and economic goods. Because they concern the whole planet, public goods such as air, water, oceans, ecosystems, decent work, social protection, food security and trade rules are recognised in the communication as basic 'pillars of life' and are presented in the annex. Global public goods⁽¹⁶⁾ must be integrated into the post-2015 agenda by global public policies on the three dimensions of sustainable development. They need to be tackled in a coordinated global framework but must above all be supported by international commitments, financing and national action, broken down into a large number of local collective and individual activities.

4.2 Diversity of worldwide funding geared to a change of course in the period to 2050. The United Nations estimates that an amount of EUR 800 bn, i.e. 1.5 % of global GDP, would be needed each year to tackle poverty and environmental challenges sustainably. **Public development aid can cover only 10 % to 15 %** of this international funding requirement. Other domestic and international sources of financing are thus essential. The future communication on sources of financing will need to address seriously the question of the **international fiscal resources** which will be needed to mobilise the necessary funding for poverty eradication, conservation of the environment and management of global public goods, with transparency and predictability. Innovative financing and the financial transaction tax, the preconditions for a policy of this kind, should be assigned as a matter of priority to these global challenges. Moreover, the mobilisation of domestic fiscal resources and the channelling of **migrant remittances** into productive activity are also essential if progress is to be made towards locally defined objectives.

4.3 More jobs in an inclusive green economy. The impact of the current economic slow-down on jobs and business poses a serious threat to the achievement of the MDGs in 2015. The crisis could, however, offer an opportunity to mobilise more strongly in favour of a green economy, leading to a change of course towards sustainable development. In this respect, the **ILO's Global Jobs Pact** is a new instrument designed to boost an employment-rich recovery by stimulating demand for labour and skills, establishing a basic level of social protection globally and integrating the informal sector via a national plan for decent work.

4.4 World agriculture has been particularly neglected by the international financial institutions during the Millennium exercise. There is an urgent need to rebalance job-creating investment towards family and organic farming.

⁽¹⁶⁾ The annex to the communication sets out the main types of global public goods.

4.5 **The role of business in the transition to an annual sustainability report.** The private sector is represented at the United Nations by the United Nations Global Compact, established in 2000, which makes **corporate social responsibility (CSR) a tool for the attainment of the MDGs**. It brings together 8 700 businesses from 130 countries which have made a commitment to labour and human rights, the environment and the fight against corruption. Voluntary commitments, as a reflection of sustainable development at the business level, can play a major role in sub-contracting chains. The Committee considers eco-design, eco-production, fair trade and resource-efficient initiatives to be innovative solutions for achieving the SDGs ⁽¹⁷⁾. The Committee therefore advocates the implementation of the recommendation set out in the Rio+20 declaration, which calls for companies to produce an annual Corporate Sustainability Report in the same way as their annual report.

5. Sustainable economic development: developing the role and responsibility of private actors

5.1 In spite of the temptations of a return to protectionism when the crisis began, the international system has generally prevented the return of restrictive commercial practices. However, the lack of progress in the **multilateral negotiations on development** has created an unhealthy climate of differences of interest vis-à-vis the developing countries. Although this accentuates internal inequality, except in a few countries like Brazil thanks to redistributive policies and action to combat poverty, **emerging countries** are the major beneficiaries of the growth in trade.

5.2 However, the opening up of trade has not yielded the expected results in a number of developing countries rich in agricultural products and commodities, for lack of diversification, processing and **infrastructure**. The Committee deplores the slow progress on the Economic Partnership Agreements with the ACP countries. The Committee stresses that EU **preferential access** ⁽¹⁸⁾ granted to the LDCs, on the other hand, produces only very modest results as does their use of **trade aid**, which is an increasingly important form of multi-lateral cooperation. The EESC recommends that the **trade facilitation** in their favour already agreed at the WTO be adopted, **and** that the large-scale opening up of trade free of duties or quotas of the emerging countries markets be promoted among the LDCs.

5.3 The EESC recommends that the EU build the principles of **the right to food** ⁽¹⁹⁾ into its trade practices and launch an appropriate consultation process in the WTO and involving its other major trade partners to ensure that these principles become an integral part of multilateral and bilateral trade policies. The EESC also calls for liberalisation of environmental goods and services separately from any Doha agreement and facilitation of green technology transfers in bilateral trade agreements ⁽²⁰⁾.

5.4 Economic actors and infrastructure must be clearly focused on sustainable development. In this connection, the **establishment of infrastructure** ⁽²¹⁾ and **exchange networks** are a lever for attracting foreign investment and supporting the development of SMEs, promoting commodity processing industries and developing e-commerce.

Brussels, 23 May 2013.

*The President
of the European Economic and Social Committee*
Henri MALOSSE

⁽¹⁷⁾ Concord study: The private sector in development, December 2012.

⁽¹⁸⁾ EESC opinion on the Proposal for a Regulation of the European Parliament and of the Council applying a scheme of generalised tariff preferences, rapporteur Mr Peel, OJ C 43, 15.2.2012, pp. 82–88.

⁽¹⁹⁾ EESC opinion on *Trade and Food Security*, rapporteur Mr Campli, co-rapporteur Mr Peel, OJ C 255, 22.9.2010, pp. 1–9.

⁽²⁰⁾ EESC opinion on *International trade and climate change*, rapporteur Ms Pichenot, OJ C 21, 21.1.2011, pp. 15–20.

⁽²¹⁾ EESC opinion on the *EU-Africa Strategy*, rapporteur Mr Dantin, OJ C 77, 31.3.2009, pp. 148–156.

Opinion of the European Economic and Social Committee on the ‘Amended proposal for a directive of the European Parliament and of the Council on the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems’

COM(2013) 168 final — 2012/0035 (COD)

(2013/C 271/29)

On 8 April 2013 and 16 April 2013, respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Amended proposal for a Directive of the European Parliament and of the Council on the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems

COM(2013) 168 final – 2012/0035 (COD).

Since the Committee has already set out its views on the content of the proposal in question in its opinion CESE 1573/2012, adopted on 12 July 2012 (*), it decided, at its 490th plenary session of 22 and 23 May 2013 (meeting of 22 May), by 161 votes to two with five abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned document.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

(*) EESC opinion on the Proposal for a Directive of the European Parliament and of the Council relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems, OJ C 299 of 4.10.2012, p. 81.

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 450/2008 laying down the Community Customs Code (Modernised Customs Code) as regards the date of its application’

COM(2013) 193 final — 2013/0104 (COD)

(2013/C 271/30)

On 15 April 2013 and 18 April 2013, respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 114 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 450/2008 laying down the Community Customs Code (Modernised Customs Code) as regards the date of its application

COM(2013) 193 final – 2013/0104 (COD).

Since the Committee endorses the content of the proposal and has already set out its views on the subject in its earlier opinion CESE 1294/2012, adopted on 23 May 2012 (*), it decided, at its 490th plenary session of 22 and 23 May 2013 (meeting of 22 May), by 161 votes to 2 with 5 abstentions, to issue an opinion endorsing the proposed text and to refer to the position it had taken in the above-mentioned document.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

(*) OJ C 229, 31 Juli 2012, p. 68.

Opinion of the European Economic and Social Committee on the ‘Proposal for a regulation of the European Parliament and of the Council concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and replacing Council Regulation (EU, Euratom) No 617/2010’

COM(2013) 153 *final*

(2013/C 271/31)

On 20 March, 15 April and 16 April 2013, the European Commission, the Council and the European Parliament respectively 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 regulation of the European Parliament and of the Council concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and replacing Council Regulation (EU, Euratom) No 617/2010

COM(2013) 153 *final*.

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 490th plenary session of 22 and 23 May 2013 (meeting of 22 May), by 161 votes to 2 with 5 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the ‘Amended proposal for a regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund repealing Council Regulation (EC) No 1198/2006 and Council Regulation (EC) No 861/2006 and Council Regulation (EU) No XXX/2011 on integrated maritime policy’

COM(2013)245 final — 2011/0380 COD

and on the ‘Amended proposal for a regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006’

COM(2013)246 final — 2011/0276 COD

(2013/C 271/32)

On 7 May 2013, the Council decided to consult the European Economic and Social Committee, under Article 42, Article 43(2), Article 91(1), Article 100(2), Article 173(3), Article 175, Article 188, Article 192(1), Article 194(2) and Article 195(2) of the Treaty on the Functioning of the European Union, on the

Amended proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund [repealing Council Regulation (EC) No 1198/2006 and Council Regulation (EC) No 861/2006 and Council Regulation No XXX/2011 on integrated maritime policy]

COM(2013)245 final – 2011/0380 COD

and on the

Amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006

COM(2013)246 final – 2011/0276 COD.

Since the Committee endorses the content of the proposal, which is an alignment of the EMFF with the existing set of rules for cohesion policy, and feels that it requires no comments on its part, it decided, at its 490th plenary session of 22 and 23 May 2013 (meeting of 22 May 2013), by 161 votes to 2 with 5 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 22 May 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE

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