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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

497TH PLENARY SESSION OF THE EESC ON 25 AND 26 MARCH 2014

Opinion of the European Economic and Social Committee on the Market-based instruments towards a resource efficient and low carbon economy in the EU (own-initiative opinion)

(2014/C 226/01)

Rapporteur: **Martin Siecker**

Co-rapporteur: **Lutz Ribbe**

On 18 September 2013 the European Economic and Social Committee decided, under Rule 29(2) of its Rules of Procedure, to draw up an own-initiative opinion on

Market-based instruments towards a resource efficient and low carbon economy in the EU.

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 3 March 2014.

At its 297th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 123 votes to 2 with 6 abstentions.

1. **Conclusions and recommendations**

1.1 Progress in the transition to a resource efficient and low carbon economy has not been vigorous enough. If the EU is to achieve its objectives for 2050 in a cost-effective and socially acceptable way, as agreed by Member States and supported by various EESC opinions, faster progress is needed. This can be achieved by a combination of a clear, effective, strong and efficient regulatory framework and predictable market-based instruments (MBIs). The carbon reduction objectives agreed by Member States are designed to slow down resource depletion and global warming and so avert a future environmental crisis. The medium term objective to achieve this end will have to include a major expansion of renewables, and a substantial phasing down of coal, unless carbon capture proves to be viable and socially acceptable.

1.2 The effect of the current financial and economic crisis has put energy pricing under the spotlight because of the impact of high energy prices on household energy costs in the context of austerity and on industrial competitiveness. Energy is seen to be a burden on the recovery rather than a part of the solution. While these real concerns must be addressed, it is essential that the energy sector in particular can work to a long-term transition programme where there is a commitment to both a clear direction and stability in the various policies and related support mechanisms. The importance of Market Based Instruments (MBIs) is that they must both advance the transition to a resource-efficient and low carbon economy and support economic recovery.

1.3 Environmental fiscal reform (EFR) aims to use market mechanisms to address negative externalities linked to the use of natural resources: this is done in a budgetary neutral way by lowering tax burdens on labour. At the same time, EFR implements the polluter-pays principle more systematically, through phasing out environmentally harmful subsidies and shifting taxation away from labour towards resource use. As a result, it can correct market failures, improve economic efficiency, help develop new industries that provide sustainable and local jobs, create a clear, predictable environment for eco-innovative investments and contribute to restoring fiscal stability after the recession by raising additional revenues.

1.4 Energy prices have risen in all sectors. This is creating a backlash from households and industry in many Member States. Detailed research is needed to define the origin of these higher prices (production, distribution, taxes), and determine where renewables contributed to higher electricity prices and where to stable or lower prices. The Committee encourages Member States to move forward sensitively with environmental fiscal reform, particularly in times of crisis, anticipating a more fundamental reform of their fiscal systems in due course. Ensuring adequate carbon prices in the EU and, consequently, also at an agreed global level must be a core element of this reform. The Committee urges the Commission to make EFR an integral and permanent part of the European Semester, with a particular emphasis on encouraging energy efficiency.

1.5 The use of MBIs in the EU at the moment is not sufficiently consistent and coherent. EU Member States do not fully exploit the opportunities the transition to a low-carbon economy offers for the innovation and modernisation of industry and boosting employment. The automotive sector is a good example of how the objective of reducing the use of hydrocarbon fuels has been successfully achieved using the right combination of regulatory and market-based instruments. We need to strengthen and enhance MBIs in a way that sends a strong signal to the markets. The Committee calls on the Member States to follow and implement the best practice principles adopted in the recent Commission Communication on internal energy markets and accompanying guidance ([1]). There can be no doubt that completion of a Single Market in energy would remove major price differences between Member States. Furthermore, the completion of interstate energy networks would reduce the cost of the transition to renewables by making standby plants more widely available.

1.6 In addition to energy-related policies, the Committee notes that further use of MBIs can be applied to other strategies for improving the efficient use of natural resources and reducing carbon emissions, such as recycling, more sustainable waste management and more sustainable agriculture.

1.7 Environmental tax reform (ETR) encourages a shift in tax burden from labour to resource use, thus facilitating the maintenance of existing jobs and the creation of new ones throughout many economic sectors. Alternatively, within a particular sector such as energy, it can tax the harmful CO_2 emissions produced by fossil fuels and use the proceeds to subsidise the introduction of cleaner new technologies, such as renewables, and energy efficiency, with the objective of achieving a much more sustainable energy mix, while keeping average energy prices or bills at more affordable levels. It can contribute to fiscal consolidation with less negative impact on economic growth and employment than other direct or indirect taxes. The European Commission should play a coordinating and driving role in promoting ETR.

1.8 For the Committee, it is unacceptable that unjustifiable environmentally harmful activities are still subsidised in the EU, directly by public budgets and indirectly as 'external costs' which are not internalised in product prices due to an insufficient implementation of the 'polluter pays principle'. Such subsidies distort market signals and hinder the transition to a resource efficient and low carbon economy. For years, the EU has been committed to phasing out environmentally harmful subsidies and the internalisation of external costs. Given the EU's objective of eliminating such subsidies by 2020, the Committee is concerned about the lack of sufficient activities. The Committee urges Member States to set up inventories and action plans to abolish environmentally harmful subsidies as foreseen in the objective. The Commission should be the coordinating and driving factor is this field as well, for instance by including it in the process of the European Semester.

([1]) SWD(2013) 439 final.

1.9 Solar and wind energy has considerably lower environmental impact than energy from fossil fuels. The best forms of clean energy production take into account social and environmental interests and the needs of future generations, keep production at home and reduce dependence on energy imports, as well as creating new jobs. Yet clean energy cannot compete on an equal footing in the market because fossil-based energy and nuclear-based energy have a greater extent of subsidy (direct and indirect) than energy from renewable sources. Clean energy needs a fair chance of development. That makes it essential to create a level playing field for energy production.

1.10 Although the general objective of transition to a low carbon economy is widely accepted, the speed of transition and methods chosen are still the subject of intense debate. There is concern about the failure to recognise the impact of the recession and debt crisis on the carrying capacity of Europe's economy. There is also unease that accelerating transition measures, in the short to medium term, will damage competitive ability. Finally, there is ongoing disagreement about the positive economic benefits that transition measures will bring and a feeling that negative effects are being disregarded. This Opinion acknowledges these concerns and recognises that they will be the subjects of ongoing discussion. Nevertheless the Committee calls on the EU and its Member States to increase the sense of urgency in the successful delivery of the low carbon future.

2. **Introduction**

2.1 European Member States have not been vigorous enough in adjusting their economies for climate change. There has been a comprehensive and fundamental debate in the EU on whether it is necessary to adapt society for sustainable development and climate change. The outcome was agreement on the sustainable development course of action, including the 'greening' of the economy. This policy direction is confirmed in several documents: the Sustainable Development Strategy of 2001, revised in 2006, the Seventh Environment Action Programme, the flagship initiative 'Resource Efficient Europe' under the Europe 2020 strategy, the Roadmap to a Resource Efficient Europe and the Roadmap for moving towards a competitive low carbon economy in 2050. The Committee has supported this ambition in various opinions.

2.2 Over the last five years, all Member States have faced, to a greater or lesser degree, challenges arising from the banking crisis and the sovereign debt crisis, both compounded by a most severe economic downturn. The evolution of domestic and industrial energy prices in the context of austerity and in the face of lower priced global competition have caused questions about the way in which the EU environment and energy policy is being implemented in view of its potential negative side effects. The situation is critical and needs to be addressed. Market-based instruments must be applied in such a way that they deliver both on greening the economy and on supporting economic recovery.

2.3 Though the debate has partly been triggered by climate change, the discussion is also about the economy and societal progress. Europe has much to gain by leading the transition to an inclusive, green economy. A recent Commission study confirmed that European industry has so far maintained its global market position thanks to relatively low energy intensity levels and high renewables penetration ([2]). The Committee has pointed out the opportunity the low carbon economy provides for new sustainable business models and industrial change ([3]). A successful, fast transition is not only a challenge; this green economic model also offers the Union its best opportunity to remain a world economic power. At the same time there is concern that, in the short-term, energy pricing is one of the factors leading to de-industrialisation and this concern must be addressed. In particular, high energy intensity industries are being affected by low gas prices in the USA and Russia. However, for the great majority of industry, energy costs remain a less significant factor in competitiveness than general productivity and labour costs. The Commission has made the shift to a resource efficient and low carbon economy a core element of its flagship initiative promoting a stronger industry for Europe, ([4]) but has now also pointed out that the transition must be done in a way which takes account of the prevailing economic and political realities ([5]).

([2]) European Commission, Energy Economic Developments in Europe, European Economy 1/2014.
([3]) EESC Opinion on *Sustainable growth business models, low-carbon and industrial change*, OJ C 133/8, 9.5.2013.
([4]) Communication 'A Stronger European Industry for Growth and Economic Recovery' (COM(2012) 582 final).
([5]) Communication 'A policy framework for climate and energy in the period from 2020 to 2030' [COM(2014) 15].

2.4 It is certain that a transition towards a low carbon economy would increase Europe's energy security. Nowadays Europe imports over EUR 500 billion worth of gas and oil, partly from politically unstable regions. Replacing fuel imports by low carbon energy generated in the EU would increase the resilience of the European economy and help keep value chains in Europe. If this transition happens in time, with a smart management of the rate of change and with the right balance between economic, ecological and social interests, it can play a key role in overcoming the crisis.

2.5 This transition cannot be at the expense of Europe's competitiveness and the basic requirement is a higher level of economic activity involving more businesses in more sectors employing more people. In this context, it is impossible to ignore the impact of cheap energy, mainly shale gas, that has seen a resurgence of US manufacturing. The EU economy is crying out for a comparable industrial renaissance to put people back to work and grow tax revenues. Part of such a resurgence will require greater certainty and responsiveness to global pressures by EU energy policy, while keeping up the general low carbon economy agenda.

2.6 The EU's objective is to reduce CO_2 emissions by 2050 by 80 to 95 % compared to 1990. The Commission estimates that every year an extra 1,5 % of European GDP should be invested in the transition to a low carbon economy in order to achieve that goal. If nothing is done, the Commission estimates the cost at EUR 50 billion per year. However, for the tens of millions of EU citizens now unemployed or suffering reduced living standards these 'future costs' are far less real than their present difficulties. Unless this apparent tension can be resolved, achieving the objective may cost considerably more time and money.

2.7 Ambition and regulations consist mainly of words; policy is founded upon deeds. In the context of the goals, there has not been enough action. There are many reasons for this: the financial crisis, lack of action by Member States, policy reversion by Member States and opposition from the Oil and Gas industry. But in addition there are genuine uncertainties and adjustments caused by the unforeseen impact of new developments or events, for example the rapid development of US shale gas and Fukushima. The resulting stop-and-go policies do not provide the necessary stable and predictable framework. To continue the transition process without delay we need to balance policy flexibility with the necessary commitment to long-term investment and a range of supporting MBIs. This requires an intensive dialogue between all the stakeholders in the energy chain; the European institutions, Member States, industry and the general public.

2.8 Like all markets the market for energy responds to price signals within the prevailing regulatory framework. If the energy market is not delivering the energy mix foreseen in the transition plan, the price signals are wrong. The signals can be changed but it must be ensured that economic and social stakeholders are not seriously disadvantaged.

2.9 The shift to a low carbon economy must take the social impacts into account, in particular on employment. The Commission stated that job growth in the green economy has been positive throughout the recession and is forecasted to remain quite strong. The energy efficiency and renewable energy sectors alone could create 5 million jobs by 2020 ([6]).

A just transition needs active employment policies in order to ensure decent jobs. Key to this is an economic renaissance with its associated requirements in terms of energy policy, infrastructure and markets. Impacts on low-income households and energy prices have to be carefully considered. Moreover, in the energy market, the true costs of the different energy sources are often not reflected correctly in energy prices. Unlike the cost of renewables, a lot of the costs of conventional power are not separately reported in power prices and paid in power bills; instead they are subsumed in governmental budgets in the form of subsidies and hidden in the form of the external costs of adverse effects on health and the environment.

([6]) Communication 'Towards a job rich recovery' (COM (2012) 173 final).

2.10 The complex area of energy prices and the impact of costs on both domestic and industrial consumers has been reviewed in the Commission communication on Energy Prices and Costs in Europe ([7]). One of the conclusions is that the measures financed by 'the energy policy levy and tax component of prices', the area which has seen the greatest rise in recent years, must be applied as cost-effectively as possible.

3. **Market-based instruments**

3.1 *General remarks*

3.1.1 Much EU regulation has been designed to achieve a reduction in carbon emissions. A regulatory framework alone does not do the trick; financial and economic incentives based on the carrot-and-stick principle are needed to underpin the transition. There is an important role in that process for market-based instruments (MBIs) such as environmental taxes, emissions trading and subsidy reform ([8]).

3.1.2 These instruments can modify the outcome of market activity because they improve the system of price signals by internalising external costs and offer more flexibility and support for businesses to achieve objectives and encourage efficiency and innovation.

3.1.3 The EU and the Member States have developed certain tools such as environmental tax reform, phasing out harmful subsidies, emissions trading, promoting renewable energy and green procurement. The available instruments can do the job in principle. The problem is the implementation into legislation, proper application, control and enforcement and doing this citizen support needs to be assured. If that chain is insufficiently developed there is a real risk of the instruments not working properly, leading to substandard results while inflicting excess costs on households and industry. As a measure of this incoherence, the differences in energy costs between Member States are striking.

3.1.4 If the EU wants to achieve its low carbon goals it must speed up the process and win over public opinion. We need to boost energy saving and replace fossil fuel-based energy supply with renewable energy — both key factors in the transition to a green economy. In the transition from carbon to renewable energy, provision must also be made for back up fuels and interim stages using, for example, gas or nuclear. The way the Member States apply the available instruments does not provide a sufficiently strong stimulus for the market to perform better. Important instruments such as environmental taxes are not used on an appropriate scale.

To a large extent this is because the energy mix available to each Member State varies considerably in line with geography, climate, natural resources and history. Member State action plans for CO_2 reduction and their use of MBIs vary accordingly.

3.1.5 In the view of the Committee, renewable energy must be part of the mix and prioritised in a way that ensures that energy policies support both economic development and the transition to a low carbon economy. Even so, although Member State circumstances differ, the EESC is anxious to see trans-European energy grids completed as soon as possible. These connections can add a valuable extra resource to every national strategy.

3.1.6 Environmental policy should be closely linked to other policy fields. Decentralised generation of electricity in rural areas can create many additional jobs. By linking environmental policy to regional policy, with their funds, the quality of life in rural areas can be improved significantly.

([7]) Communication 'Energy prices and costs in Europe' (COM (2014) 21 final).

([8]) Green Paper on market-based instruments for environment (COM(2007) 140 final).

3.2 *Environmental taxes*

3.2.1 The idea behind such taxes is to put a price on environmentally polluting economic activities to reveal the true costs of production and consumption not reflected in market prices, in accordance with the 'polluter-pays principle'. This is the case for instance in Poland, where polluting businesses have to pay into a National Fund for Environmental Protection and Water Management and out of this Fund incentives are paid for sustainability programs. The right to impose direct and indirect taxes in the EU rests with the Member States. Only a limited number of Member States have specific environmental taxes; there are some good examples (i.e. in Finland, Sweden, Denmark, the Netherlands, Germany, United Kingdom, Slovenia and Estonia). The scale of tax shifts varies between Member States; the total amount of money involved is estimated at over EUR 25 billion per year ([9]).

3.2.2 Despite the success of environmental taxes in some Member States, ETR does not live up to its full potential of bringing a broad change in fiscal policies. It should be stressed that ETR offers enormous opportunities, particularly as part of measures to recover employment. If Commissioner Hedegaard's motto 'Tax what you burn, not what you earn' is put into practice, and the tax burden shifts from labour to resource use, labour costs for employers will be reduced and the creation of new jobs will be facilitated, not only in 'green niches' but throughout many economic sectors. ETR should be a cornerstone of the necessary general restructuring of government finances aiming at fiscal consolidation. Of course a reform of this kind must not increase the overall tax burden and should be cost effective and eco efficient. Energy cost increases exceeding the scope for cost saving through efficiency should be avoided.

3.2.3 ETR can also help in recovery from fiscal deficits. Environmental taxes can contribute to fiscal consolidation while having a less negative impact on economic growth and employment than other direct or indirect taxes such as income tax or VAT ([10]). The Commission should step up its approach to consider the benefits of environmental tax reforms in the Annual Growth Survey and in the European Semester.

3.3 *Phasing out harmful subsidies*

3.3.1 The EU aims to phase out environmentally harmful subsidies (EHS) by 2020 ([11]). The Commission promised this in 2006 and in 2009. Also in 2009, the G-20 Summit agreed to start phasing out 'inefficient fossil fuel subsidies that encourage wasteful consumption'. This commitment has also been included in the framework of Asia-Pacific Economic Cooperation and in the Rio+20 conference outcome. Despite all these promises, not enough has been done.

3.3.2 On a global level the OECD has reported on EHS in member countries: direct budget support plus tax concessions for fossil fuels stands at a total of 55 to 90 billion dollars per year ([12]). The IEA calculates that subsidies for fossil fuels worldwide amount to USD 523 billion and calls these subsidies 'public enemy number one' ([13]). The World Bank estimates the annual subsidies for fossil fuels at up to USD 775 billion per year. If policies are not changed, subsidies for fossil fuel will rise sky high within a few years and cause a lot of extra problems. A gradual phasing out of subsidies to 2020 will reduce the demand for energy substantially and reduce CO_2 emissions by 1,7 gigatonnes, while raising additional revenues for governments.

([9]) Institute for European Environmental Policy (IEEP), Reforming environmental taxes and harmful subsidies: challenges and opportunities, p. 6.

([10]) Vivid Economics, Carbon taxation and fiscal consolidation: the potential of carbon pricing to reduce Europe's fiscal deficits, report prepared for the European Climate Foundation and Green Budget Europe, May 2012.

([11]) Decision 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020.

([12]) OECD, Fossil fuel subsidies: billions up in smoke?, 2013.

([13]) European Wind Energy Association, press release, 4.2.2013.

3.3.3 There are no comprehensive data on fossil fuel subsidies in the EU so far; figures from various sources differ. The general picture is that they are heavily subsidised. On the EU level fossil fuels are subsidised by up to EUR 68,8 billion annually, including EUR 26 billion in direct subsidies and up to 42,8 billion that Member States and citizens have to pay to compensate for the negative social and health impacts ([14]). Environmentally harmful subsidies were not put in place to deliberately harm health or the environment and had other positive goals such as the provision of cheap energy from local sources or creating employment. The EESC urges Member States to assess whether they still want to support those goals and if so, how that can be done in an environmentally friendly way. A starting point would be an EU inventory giving an overview of these subsidies.

3.3.4 On top of the direct subsidies from public budgets and external health costs, further costs of adverse effects of fossil fuel combustion on the environment have to be taken into account, such as follow-up costs of environmental damages and of heavy storms and flooding caused by climate warming. These 'external costs' are the consequence of an insufficient implementation of the 'polluter pays principle'. The German Federal Environmental Agency estimates the external environmental costs of carbon generation at EUR 80 per ton CO_2 emission ([15]) with an extra burden of € 290 billion based on the fact that 3,652 billion tonnes of CO_2 emissions are caused by fuel combustion activities ([16]). Nuclear power plants receive total subsidies of EUR 35 billion in the EU, not including the costs of covering accident risks and disposal of waste. Renewable energy receives EUR 30 billion in direct subsidies annually.

3.3.5 Despite these inequalities, renewable energy technology is developing quickly; the price of renewable energy has declined rapidly in recent years (the price of solar panels has fallen by 85 %) and the sector has created a lot of jobs while the price of fossil energy invariably remains high. In October 2013 vested interests in the energy sector called for a stop to the subsidising of renewable energy and for an increase in subsidies for nuclear power. If that happens, renewable energy will not be able to compete with other energy supply systems because of the absence of a level playing field.

3.3.6 Not all subsidies are harmful. In situations where new technologies need to be developed to support the more sustainable economy of the future, it can be helpful to provide subsidies to support initial research, development and infrastructure until the new technologies can hold their own in the market place. Such support has been crucial to the early stages of development of renewables and will need to be continued until renewables are fully established as competitive sources of energy for the future.

3.3.7 According to the Roadmap to a Resource Efficient Europe, Member States should have identified the most significant EHS by means of established methodologies by 2012 and prepared plans and timetables for phasing out EHS and reported on this as part of their National Reform Programmes. These steps have not been implemented sufficiently. A study by DG ENV in 2012 provides an overview of grants and other types of subsidy ([17]) awarded to EHS in the EU and proposes a roadmap for the review of such grants. The Commission should consider this tool in the current European Semester.

3.4 *Emissions Trading System*

3.4.1 The EU Emissions Trading System (EU ETS) is Europe's main economic instrument based on the cap-and-trade principle and aimed at reducing greenhouse gas emissions. The system is meant to give companies a strong incentive to invest in greenhouse gas prevention, leaving them the flexibility to do this in the most efficient way.

([14]) The figures on direct subsidies were drawn from OECD (2013), Inventory of Estimated Budgetary Support and Tax Expenditures for Fossil Fuels 2013, OECD and from IVM Institute for Environmental Studies (2013), 'Budgetary support and tax expenditures for fossil fuels: an inventory for six non-OECD EU countries'; the figures on health impacts were drawn from a report from HEAL (Health and Environment Alliance), The unpaid health bill — how coal power plants make us sick, Report published in 2013; see also article in Süddeutsche Zeitung from 14.10.13 http://www.sueddeutsche.de/wirtschaft/foerderung-der-energiebranche-oettinger-schoent-subventionsbericht-1.1793957.

([15]) Federal Environmental Agency, Schätzung der Umweltkosten in den Bereichen Energie und Verkehr, 2012.

([16]) Source: EU energy in figures — statistical pocketbook 2013.

([17]) Institute for European Environmental Policy, Study supporting the phasing-out of environmental harmful subsidies, October 2012.

3.4.2 The EU ETS currently faces a supply demand imbalance that results in a price incentive that is insufficient to the necessary investment in low carbon technologies. The surplus in the supply of emissions allowances is largely the result of the unexpectedly severe economic crisis and a large use of international credits. A structural reform of the ETS is urgently needed in order to make the ETS a strong incentive for low carbon investment. The surplus of allowances needs to be taken off the market and the remaining rights must be linked to future CO_2 emission reduction targets, which will be necessary to achieve the EU's goal of a low carbon economy in 2050. Such a reform should also take into account the technological feasibility and the economic viability for industries and carefully consider the potential for future unintended consequences.

3.5 *Border carbon adjustment*

3.5.1 Further steps have to be taken to deal with 'carbon leakage', such as border carbon adjustment, a system aimed at reducing CO_2 emissions while ensuring a level playing field. Under this system, the price of imported goods will be increased at the border on the basis of a calculation of the mass emissions for those goods. Models in a recent study ([18]) show that border carbon adjustment can reduce carbon leakage in relevant sectors substantially.

3.5.2 However, border carbon adjustments in the form currently being discussed are not welcomed by some of Europe's major trading partners. This issue has to be negotiated in the WTO. The treaty allows the consideration of such 'non-trade' issues. The difficulty of doing this in the absence of a global agreement on carbon pricing should not be underestimated. The concerns may be addressed through better BCA design. The bottom line is that border carbon tax adjustment is not an anti-dumping tool but a contribution to a worldwide sustainable climate policy, if well designed.

3.6 *Promoting sustainable energy*

3.6.1 Promoting renewable energy is one of the essential elements in the transition to a low carbon economy; MBIs can play an important role here. The introduction of these instruments is a matter for the Member States; a number of them have opted for different instruments for subsidising renewable power: investment support and operational support including a pricing system for return delivery. Experiences in several Member States show this latter system led to the highest increase in the production of renewable energy, often by providing guaranteed and generous rates of return on investment.

3.6.2 It is important, however, that feed-in tariffs to encourage the installation of renewable forms of energy should not be financed solely by increasing energy prices generally or they risk provoking a public backlash against the tariff and the renewables themselves. Unfortunately, however, this has happened in many places, and the backlash is very real. Urgent corrective action is needed to consolidate citizens' support for the green revolution.

3.6.3 The fact that the Member States have different support schemes contributes to the fragmentation of the European energy market. The Committee advocates the use of MBIs that favour the integration of national schemes in a European energy market. The use of cooperation mechanisms as defined in the Renewable Energy Directive 2009 is also paramount to making more use of the EU synergies through the electricity market ([19]).

3.7 *MBIs in the automotive sector*

3.7.1 In general, the automotive sector has been a good example of the successful application of MBIs. The transition goal is to reduce and finally eliminate the use of hydrocarbon fuels in the sector. The strategy comprises four elements: regulation, technology, infrastructure and MBIs. Regulation is used to improve the fuel efficiency and reduce the emissions of new internal combustion vehicles (ICVs). Technology makes it possible to comply with hydrocarbon regulations and develop electric vehicles (EVs). As EVs become more widely used, an infrastructure involving metered charging points, battery exchange, etc., will be needed to replicate and, finally, replace the existing hydrocarbon supply infrastructure. As regulation, technology and infrastructure progress, MBIs can play a decisive role in the transition.

([18]) Vivid Economics, Carbon taxation and fiscal consolidation: the potential of carbon pricing to reduce Europe's fiscal deficits, report prepared for the European Climate Foundation and Green Budget Europe, May 2012.

([19]) SWD(2012) 164 final.

3.7.2 The most obvious MBI application has been the escalation of taxes on hydrocarbon fuels. This has had the effect of moving ICV owners to smaller, more fuel efficient vehicles, to public transport and bicycles. ICV taxation has also been adapted to encourage the purchase and use of fuel-efficient vehicles, whether by taxes on purchase prices or by annual taxes on vehicle use. The same system of differential vehicle taxation is being used to favour EVs, although there remain many other barriers to widespread EV uptake.

3.8 *Green procurement*

3.8.1 With 16 % of the EU's GDP, public procurement is a big market player. Green public procurement is therefore an important instrument for promoting green products and services. With the Action Plan on sustainable production and consumption and a Communication on green public procurement, the Commission has in recent years worked towards a comprehensive system of guidance and support. On the basis of an evaluation of performance by the Member States, the Commission set the indicative goal that by 2010 50 % of all spending should be green. This goal is far from being achieved and should receive a higher priority in Member States' action plans.

3.9 *Investments by the private sector*

3.9.1 The transformation to a more sustainable pattern of production and consumption in the energy and other sectors implies a fundamental restructuring of the economy. Governments and Government policies alone cannot achieve this. It requires a society-wide engagement with the issues and a vast collaborative dialogue with all the interests involved, to build consensus and commitment to the changes that are needed. According to the Roadmap to a Low Carbon Economy, the private and the public sectors have to invest an additional EUR 270 billion per year for the next 4 decades. A third of these investments can be financed with public money; the rest must be raised by the private sector. These are long-term investments; the Commission sees this investment as a central challenge in order to move the EU in the direction of a smart, sustainable and inclusive economy again, for example through long-term European investment funds (ELTIFs) and the Connecting Europe Facility (CEF).

3.9.2 As recommended by the OECD in an Environment Working Paper from 2012, to enable investment in low carbon climate resilient infrastructure and green growth, governments should develop comprehensive strategic infrastructure plans, strongly coupled with national climate change goals. The Commission should also seek opportunities to create such an investment climate for ELTIFs in relation to a sustainable future. In this respect the investment priorities of the CEF and the ELTIFs should be consistent with the objectives of the EU 2050 Low Carbon and Energy Roadmaps, the Adaptation strategy and the 2030 climate and energy package under discussion.

3.9.3 Such funds could make this type of investment easier. Because the long-term maturity of assets to be financed is aligned with the liability of institutional investors, these kinds of funds can also be conductive to attracting resources from the capital market. The condition is of course that these investments are attractive because risks — particularly regulatory risks — are limited, because there is a prospect for a sufficient return and because the projects invested in are financially and technically sound.

3.9.4 Innovative funds and financial instruments to attract capital market resources are welcomed. However, the banking sector will keep financing a large part of the European economy with traditional debt instruments. Greening banking standards is therefore an essential requirement to shift private financing from conventional toward low carbon and climate resilient investments. To meet climate and energy objectives, innovative financial instruments need to catalyse private finance for investments that would not otherwise happen.

Brussels, 25 March 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the role and future of the liberal professions in European civil society 2020 (own-initiative opinion)

(2014/C 226/02)

Rapporteur: **Mr Metzler**

On 14 February 2013, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

The role and future of the liberal professions in European civil society 2020

(own-initiative opinion) ([1]).

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 10 February 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 210 votes to 8, with 11 abstentions:

1. **Conclusions and recommendations**

1.1. Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality 'social goods' such as healthcare, delivering public services, safeguarding civil rights and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP.

1.2. The term 'liberal professions' is not used in all Member States, but the concept, and the associated societal problems and solutions, can be found throughout the EU. Criticisms are sometimes raised regarding shortcomings in oversight and quality assurance; these can usually be traced back to enforcement problems rather than to failures in the system.

1.3. Both 'rules-based regulation' and 'principles-based regulation' are capable of achieving optimal regulation for the liberal professions.

1.4. Provision of services by the liberal professions is characterised by an asymmetry of information between service providers and their clients. The services relate to existential matters of life and health, legal issues, and vital economic questions, and service providers therefore need to meet particularly stringent professional and ethical requirements.

1.5. A number of countries have price regulation for certain professions, which can help to protect consumers. Price regulation needs to be properly justified, and should be designed to serve the public interest, not the interests of a particular group.

1.6. In all Member States, professional organisations or associations represent the interests of their profession and play an advisory — or sometimes formative — role in State regulation. Through ongoing active cooperation with the institutions, they safeguard the general interests of the public. Administrative simplification is a priority for members of the liberal professions, who devote both economic and human resources to it without receiving any form of compensation from State coffers.

1.7. EU Member States shape and monitor self-regulation in their own countries. In so doing, they must exclude the possibility of conflicts between regulatory powers and representation of interests, and ensure that consumers' expectations are met regarding the knowledge, ethics and character of service providers.

1.8. The contribution of the liberal professions to the proper functioning of the administrative, political and economic life of a Member State is recognised at national and European level because they contribute to the modernisation and efficiency of public administrations and of services to citizens and consumers.

([1]) In the framework of the elaboration of the opinion, the EESC committed the realization of a study to the Europäischen Zentrum für Freie Berufe der Universität zu Köln (The State of Liberal Professions Concerning their Functions and Relevance to European Civil Society EESC/COMM/05/2013) whose publication is being finalized.

1.9. The sector is vital because of the employment opportunities it offers young people who choose a future of free enterprise and of investment in their knowledge. Members of the liberal professions who run a professional practice or office must respect legislative provisions and/or collective agreements regarding persons for whom they act as employer and young people for whom they provide in-house vocational or specialist training or apprenticeships.

2. **From the 'artes liberales' to knowledge-based service provider**

2.1. The term 'liberal professions' refers back to the term '*artes liberales*', or 'liberal arts', used in classical antiquity for occupations such as teaching, law, construction, architecture, engineering and medicine. The 'artes liberales' were the preserve of free citizens and nobility.

2.2. Since the 19th century, the liberal professions have no longer been defined on the basis of the 'free birth' of a practitioner, but according to the activity performed.

2.3. By the early 1800s, certain liberal professions had become very closely connected with the State; this prevented them from operating independently, which resulted in them being held in low esteem by society. Lawyers were particularly affected by this, as the courts were involved in appointing and transferring them, and in some cases also held supervisory and disciplinary authority over them.

2.4. In the 19th century, under the influence of liberalism, the liberal professions in a number of EU countries developed a consciousness of their status and established professional organisations independent of the State. For example, the legal profession managed to free itself from State influence, and the academic medical profession likewise achieved a degree of freedom from State regulation and monitoring.

2.5. Activities surrounding authorisation to practise, codes of conduct and professional supervision were often taken over by professional organisations. Later on, regulatory power was transferred to the self-governance organisations/professional associations.

2.6. The current concept of the liberal professions is a sociological description.

2.7. A liberal profession is characterised by: provision of a valuable intangible service that is distinctly intellectual in nature, based on advanced (academic) training; a service that is in the public interest; substantive and economic independence in executing tasks; provision of services in a personal capacity, on the provider's own responsibility and in a professionally independent manner; a particular relationship of trust between the client and the service provider; a focus on providing the best possible service rather than on maximising profit; and compliance with precise, strict professional regulations and codes of professional ethics.

2.8. An activity may also be regarded as a liberal profession in the absence of some of these elements, provided the principal characteristics are met: for example, in many countries an activity undertaken as an employee may be regarded as a liberal profession if substantive independence is maintained. The EESC notes that the liberal professions and the organisations which regulate such activity in Europe have branched out. The new liberal professions, such as psychologists, social workers, tax advisors, bankruptcy advisors, surveyors and mediators, which are not classified as liberal professions in all countries, require an inclusive approach.

2.9. There are significant differences between Member States in the definition of the term 'liberal profession', and some do not use the term at all. In some countries, only a small group of occupations are regarded as liberal professions: medicine, advisory professions such as law, tax consultancy and auditing, employment consultancy and engineering and architecture. In other Member States artistic activities are also counted as liberal professions.

2.10. One objective that is common to all Member States is to ensure that the defining characteristic of the liberal professions — the asymmetry of information between service providers and their clients — is not abused. The services provided by the liberal professions are complex and require a high degree of expertise, which means that service recipients do not have enough information, specialist knowledge or experience to judge the quality of the service, either when choosing a provider or after the service has been provided.

2.11. Liberal professions are therefore based on trust. The asymmetry of information means that service recipients must be able to trust providers not to exploit this information deficit for their own benefit, but rather to provide the best possible service, tailored to the client's needs. Service recipients are thus making a leap of faith when they engage a service provider. Minimum professional standards and compliance with codes of professional ethics are appropriate ways of protecting service recipients' trust.

3. **Regulation and its objectives**

3.1. The Member States essentially use two different approaches to regulating the liberal professions: what is known as 'principles-based regulation', and a more proscriptive and prescriptive approach referred to as 'rules-based regulation'.

3.2. Regulation of the liberal professions summarises the moral conditions for practising the profession, and standards of professional ethics; it is an expression of the liberal professions' social responsibility. Standards of professional ethics as a whole may be referred to as deontology.

3.3. Principles-based regulation involves drafting abstract principles of professional law, which then need to be fleshed out in individual cases ('outcomes-based regulation'). It is left to the discretion of those subject to the rules to decide how to achieve those goals in specific cases. In contrast, rules-based regulation is case-based.

3.4. Each approach has its advantages and disadvantages, but both fulfil the fundamental principle of meeting society's concern to ensure people receive independent advice and support. The particular issues and solutions may change over time, requiring changes to the rules or the creation of new ones.

3.5. The regular reviews of the rules carried out by the EU are useful in this connection, and should also be established at national level. This would allow older liberal professions to be 'freed up' (e.g. in construction) and rules to be introduced, where appropriate, to cover new liberal professions (e.g. in intelligence gathering or banking).

4. **Economic aspects**

4.1. The liberal professions play a significant role in establishing and maintaining key social infrastructure. Approximately one in six self-employed people work in sectors dominated by liberal professions, and that figure is rising. The same is true of one in six employees.

4.2. The number and percentage of self-employed women working in sectors dominated by liberal professions increased over the reference period 2008-2012; the percentage of self-employed women in these sectors now stands at 45 %, significantly higher than the percentage in the economy as a whole (31,1 %).

4.3. More than one euro in 10 of gross value added comes from sectors dominated by liberal professions. The decline in value added during the crisis of 2009 was less marked in the liberal professions than in the economy as a whole. Figures for the EU are as follows: 600 000 undertakings in each of 'management consultancy' and 'engineering activities'; 550 000 undertakings in 'legal consultancy' and 'auditing'; 315 000 in 'architectural activities'; and 270 000 in 'marketing and market research'.

4.4. In view of the sector's growth potential and the proportion of jobs that it provides — largely stable, highly qualified jobs — the entrepreneurial aspect of the liberal professions must be acknowledged and supported. The Committee is pleased that the Commission recognises members of the liberal professions as fully-fledged entrepreneurs and seeks to support the sector by including them in programmes to boost SME development and competitiveness. This approach entails examining and improving the conditions of the entire liberal professions system, as in fact required by the directive on services in the internal market. The liberal professions cannot develop solely by means of single-member companies or through individual action. They must distance themselves from the problem of false self-employment.

5. **Ethics and the pursuit of profit**

5.1. In all Member States, the public interest is integral to the liberal professions. The medical, psychological and social professions maintain infrastructure to protect the health of the whole population.

In a democratic state under the rule of law, the work of legal and tax advisors constitutes an element of civil liberties; together with auditors, they also ensure that economic processes run smoothly. This means that these professions are also directly related to fundamental rights.

5.2. In addition, this public interest basis means that the liberal professions have a particular ethical responsibility. Legal and tax advisors and auditors help uphold the rule of law, as well as protecting the financial interests of their clients. Social workers and psychologists provide Europeans with an inclusive and safer environment as regards relationship, psychological and social matters. Architects and engineers protect the community from risks arising from structures and technical equipment, and promote society's capacity to innovate and people's quality of life by developing infrastructure and technical equipment and inventing new technologies. Artistic professions maintain and create culture. These circumstances, along with the asymmetry of information referred to above, necessitate advanced training and particularly stringent ethical requirements.

5.3. The particular public interest of the liberal professions, and the associated requirements for the services they provide, need to be safeguarded through binding professional regulations and a raft of generally recognised standards of ethical behaviour for each profession. All the Member States therefore already have a minimum level of regulation. The EESC recommends that all liberal profession organisations and associations should have codes of conduct and ethical standards as well as commissions of ethics within the profession.

5.4. Professional representative bodies should draft codes of professional ethics, where they do not currently exist, as non-binding professional guidelines for their respective Member States. In addition, the professional organisations and associations should draw up European codes of ethics highlighting and guaranteeing the rigorous requirements incumbent on the liberal professions throughout Europe. The drafting of codes of conduct is encouraged in Article 37 of the Services Directive ([2]). The fact that the services provided by the liberal professions are so important to their clients, together with the level of trust that these clients need to put in the service providers, means that it is essential for such services to be provided in a personal capacity.

5.5. The relationship of personal trust between the provider and recipient of services, and the highly personal nature of the legal interests involved, mean that it is indispensable for professionals and their colleagues to have statutory protection of their professional secrecy and a statutory right to refuse to testify, and to be prohibited from giving evidence. These are characteristics of a free state under the rule of law.

5.6. The services of liberal professions that relate to key elements of the public interest — such as medical care, psychological and social services, pharmaceutical services and legal advice — must be provided across the board, even in rural areas.

5.7. The requirements presuppose that members of the liberal professions will always give preference to service quality over the maximisation of profit, in accordance with the ethics by which they are bound.

5.8. Further development of the law pertaining to the liberal professions therefore cannot focus solely on economic considerations: each and every regulation must aim to ensure comprehensive and highly skilled services that meet the highest quality requirements. It will, in each case, be necessary to look into whether existing regulations can achieve those aims or whether, in reality, they serve other interests.

6. **Present and future requirements for the liberal professions and their profile**

6.1. A common EU-wide definition of 'liberal profession' should be developed, which simply sets out the general features of liberal professions and lists the categories of occupations covered. Any such definition must not prevent the creation of new liberal professions. The draft charter for the liberal professions drawn up by the various European professional organisations, led by the Council of European Dentists (CED), could be used as a model for this purpose.

([2]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ L 376, p. 36).

6.2. Alongside national joint professional organisations and European joint professional representative bodies, a professional organisation should be established in each Member State for each liberal profession, to compile, publish and further develop principles of professional ethics — where existing professional organisations do not already do so. These organisations should also be responsible for ensuring that the profession complies with these principles.

6.3. The stringent ethical requirements on the liberal professions will, in future, also need to be guaranteed through practical guidelines and clearly defined ethical principles. This could involve both standardised and enforceable professional regulations and codes of ethical professional conduct. This will increase consumer confidence.

6.4. As well as enforcing technical and ethical requirements for the provision of professional services, it is also necessary to maintain and strengthen the competitiveness of the liberal professions and their ability to innovate. The challenge they currently face is that of being able to deal with different national standards and to compete with colleagues from other EU countries in an increasingly integrated single market.

6.5. Professional regulations must be compatible with Europe's fundamental freedoms, in particular with freedom to provide services, freedom of establishment and freedom of movement. They must therefore be non-discriminatory, proportionate, and serve an imperative requirement in the general interest, and also be compatible with national law. This should tie certain activities to specific qualifications.

6.6. Activities in the liberal professions often involve a particular risk to highly personal legal interests of the client, and it is therefore necessary to regulate access to the professions and to impose strict requirements for authorisation to practise. As well as training, this involves other personal characteristics such as reputation, health checks, and undertaking not to carry out conflicting activities simultaneously. At EU level, this requirement is adequately covered by the Professional Qualifications Directive ([3]) and by specific regulations such as the directives for doctors and dentists and Services Directive for lawyers ([4]) or the Statutory Audit Directive ([5]).

6.7. In almost all Member States, professionals are required to undertake regular continuing professional development (CPD). There are differences regarding verification of CPD activities and the consequences for failure to undertake CPD. Given the increasingly complex knowledge requirements, ongoing developments in technical processes in medicine and technologies, and the constant expansion of national and international legal standards, it is the responsibility of the liberal professions to ensure that all professionals undertake proper CPD.

6.8. In most Member States, members of the liberal professions have practically no restrictions on cooperation with members of other professions. In some Member States, however, the group of partners or shareholders is restricted to specific liberal professions, certain majority requirements are imposed in respect of partners/shareholders, voting rights or managers, and third parties are prohibited from owning part of the business. Such provisions are one possible way of ensuring that the practice of a liberal profession is not guided purely by economic imperatives.

6.9. Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Such friction can be effectively avoided by restricting the group of permitted partners/shareholders.

([3]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, p. 22).

([4]) Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, p. 17), and Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, p. 36).

([5]) Directive 2006/43/EC of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, p. 87).

7. **Consumer protection and self-regulation**

7.1. All Member States regulate the liberal professions, through State or professional organisations or associations. In many Member States, the concept of self-regulation as an organisational principle is inextricably linked with the concept of a liberal profession.

7.2. The Member States take two different approaches to self-regulation. In one approach, professional organisations and associations represent the interests of their profession as a voluntary grouping, and play an advisory role in the (State) regulation of the profession. They also translate their members' views on standards of professional practice into codes of ethics. In the other approach, professional associations also undertake official duties such as authorisation to practise and professional supervision, as an indirect part of the public administration. Self-regulation does not stand in opposition to State regulation; rather, they both serve a common function.

7.3. Self-regulation of the liberal professions mediates between professionals' right to freedom from State interference in their activities and the State's right to lay down rules. Self-regulation by members of the liberal professions implements their right to freedom from State interference while at the same time safeguarding the general interest, and thus benefits service recipients and consumers.

7.4. Self-regulation of the liberal professions is in line with the subsidiarity principle, according to which a matter should always be handled by the body closest to it. Professionals are characterised by their particular subject knowledge, and are therefore the body in the best position to administer and regulate the liberal professions. This uses the principle of peer review.

7.5. Self-regulation does, for its part, restrict the activities of the members of professional associations. The regulations adopted are acts of indirect State administration, and require the transfer of State competences. All regulations adopted as part of self-regulation of the liberal professions are themselves subject to the fundamental freedoms, national law and European and national competition law.

7.6. For self-regulation to work, membership of professional associations must be compulsory in those countries where this is possible under current legislation. This restriction on the right to pursue a professional activity is justified by an overwhelming public interest.

7.7. The rules requiring membership of the professional associations must be designed to ensure that they do not prejudice freedom to provide services or freedom of establishment. Appropriate ways of doing this include recognising registration in another EU Member State, or registration (free of charge) for members of associations in another Member State.

7.8. It is safe to assume that, in 2020, there will still be tension between State and individual interests, and a need for independent advice and support. Therefore, the liberal professions are likely to remain viable as an institution, provided they are modernised in a timely manner, such that their essential nature, comparative edge in terms of knowledge, independence/transparency, and resulting trustworthiness, are not compromised.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

APPENDIX

to the opinion of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate (Rule 39(2) of the Rules of Procedure):

a) **Point 1.1**

Amend as follows:

1.1 *Provided certain social adjustments are made, the system of liberal professions has a significant contribution to make in the future to providing high-quality 'social goods' such as healthcare, psychological and social services, delivering public services, safeguarding civil rights and freedoms and increasing economic prosperity. The liberal professions are a component of any democratic society, and offer significant potential for growth in terms of employment and GDP and the capacity to keep adapting to Europeans' needs.*

Reason

To be given orally.

Voting

For:	56
Against:	128
Abstentions:	30

b) **Point 6.9**

Amend as follows:

6.9 *Professional cooperation with members of other professions may lead to conflicts regarding professional secrecy and the right to refuse to testify. It must be ensured that any professional cooperation engaged in does not compromise the protection of clients or patients. Confidentiality, as an ethical value, must be a priority for all liberal professions. Such friction can be effectively avoided by keeping to ethical values ~~restricting the group of permitted partners/shareholders~~.*

Reason

To be given orally.

Voting

For:	80
Against:	116
Abstentions:	27

Opinion of the European Economic and Social Committee on the Statute for a European Mutual Society: views, role and contribution of civil society (own-initiative opinion)

(2014/C 226/03)

Rapporteur working without a study group: **Mr CAMPLI**

On 22 January 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

Statute for a European Mutual Society: views, role and contribution of civil society (own-initiative opinion)

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 140 votes to one, with five abstentions.

1. **Conclusions and recommendations**

1.1 *Conclusions*

1.1.1 Like cooperatives, foundations and associations, mutual societies are a part of the European economic and social model. Irrespective of how enterprises are defined in national legislation, the diversity of forms of enterprise, including the spectrum of social economy enterprises, is a vital aspect of the European Union single market as well as being crucial in terms of supporting, investing in and developing the pluralism of Europe's business landscape.

1.1.2 Mutual societies are entitled to a European statute to enable them to respond to the need for risk coverage, in particular social and health protection for workers, businesses and individuals.

1.1.3 Mutual societies refuse to accept that demutualisation is inevitable and for its part, the EESC wishes value to be placed on maintaining diverse forms of enterprise, including social economy players, in order to preserve Europe's economic and social heritage. Nevertheless, useful though it may be, an information campaign is no substitute for the legal framework that is required.

1.1.4 There are many different types of mutual society in Europe (around 40 have been identified), but, looking beyond their diversity, 95 % operate according to the same principles.

1.2 *Recommendations*

1.2.1 In accordance with the commitments it made at the Strasbourg event on social entrepreneurship, the EESC urges the Commission to move quickly to introduce the legislative proposal on the draft regulation on the Statute for a European Mutual Society.

1.2.2 The EESC wishes the mutualist model to be recognised through a coherent European-level legal framework consistent with its economic weight and social role.

1.2.3 The EESC recommends that the statute should be concerned with governance rather than activities, in order to maintain the wide variety of mutual societies.

1.2.4 The EESC recommends that the statute should not aim to harmonise national laws and that it should be optional.

1.2.5 The EESC calls for a precise timetable for the presentation and adoption of the draft Statute for a European Mutual Society to be made public.

2. **Introduction**

2.1 The objective of this opinion is to urge the Commission to move as quickly as possible to present a proposal for a Regulation on the Statute for a European Mutual Society.

2.2 The perception of European civil society and the stakeholders involved is that without an appropriate legal basis, the activities of mutual societies — at European level — will, effectively, be discouraged. This would have grave consequences — on the social level, in the context of the shrinking role being played by the state; on the healthcare level (less equal access to healthcare for people in Europe); on the employment level (loss of job opportunities, including specialised jobs), and from the point of view of Europe's social cohesion and the process of European integration.

2.3 *We have been discussing, procrastinating about and failing to reach a decision on a European Statute for some time.*

2.3.1 The initiative of introducing a Statute for a European Mutual Society has a very long history, which goes back to 1993 and the European directives on insurance. In this context, the mutual societies asked for their original form of governance to be recognised in a European Statute.

2.3.2 The Commission withdrew a first draft proposal for a regulation in 2006 and, despite a 2003 Communication on company law, in which it undertook to introduce new European legal forms, in particular for mutual societies, a commitment that was reiterated in the 2006 Action Plan on the Modernisation of Company Law and Corporate Governance, it withdrew the draft Statute for a European Mutual Society from its agenda in 2006.

2.3.3 Another move to re-launch the proposal was initiated by the European associations representing mutual societies in 2007.

2.3.4 In March 2010, the European Parliament adopted a written declaration backing the idea of a Statute for a European Mutual Society and in 2010 it produced a report on the role of European mutual societies which concluded that there was a need for such a statute.

2.3.5 In March 2013, the European Parliament unanimously adopted Mr Berlinguer's own-initiative report on the feasibility of a statute for a European mutual society.

2.3.6 In parallel, in the framework of the Single Market Act, the Commission decided to finance a study (known as the Panteia study) on the situation and difficulties of mutuals in the Single Market. This major study, published on 12 October 2012 and led by the Commission, provided the first exhaustive picture of the legal, economic and social environment of mutual societies in the EU Member States ([1]).

2.3.7 In the wake of this, the Commission organised a public hearing on the conclusions of this study (the results of which were published in October 2013) ([2]). The success of this consultation (over 300 responses, two thirds of them positive) led the Commission to organise an impact assessment on the feasibility of a draft statute for a European mutual society.

2.4 In its opinion (October 2009) on *Diverse forms of enterprise* ([3]), the EESC stressed that '*The pluralism and diversity of the various forms of enterprise are recognised in the Treaty and borne out by reality, through the different legal statutes that have been approved or are currently under consideration.*' The Committee included mutual societies as one of the forms of social economy enterprise.

2.5 The appendix to the declaration given in Strasbourg at the social entrepreneurship event co-organised by the Commission and the EESC on 16 and 17 January 2014 states that, *'Many stakeholders consider that social entrepreneurship policies should encompass all social economy enterprises (cooperatives, mutuals, foundations, etc.). The EU should propose a European statute for mutual societies, in order for them to carry out cross-border activities, merge, and face the challenges of Solvency II, and propose a European Statute for associations.*' At this event, the Commissioner responsible for enterprises, Antonio Tajani, announced that the Commission was to start the procedure for a legislative proposal on the Statute.

3. **Description of mutual societies**

3.1 Mutual societies exist in a broad range of legal forms in the various EU countries. These various forms of mutual society and the role they play depend on the culture and history of the mutual movement in each particular country. Historically, mutual societies introduced Europe's very first forms of social security. Currently, within the EU, the primary aim of mutual societies is to serve their members in a context of general interest and to ensure that their members are covered against risks by offering them insurance, social, health and personal support services.

([1]) *Study on the current situation and prospects of mutuals in Europe* http://ec.europa.eu/enterprise/policies/sme/files/mutuals/prospects_mutuals_fin_en.pdf.

([2]) http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/index_en.htm.

([3]) OJ C 318, 23.12.2009, p. 22.

3.2 In total, almost **40 different types of mutual organisation** have been identified in the EU. Nearly 95 % of mutuals share the same five governing principles:

1. **the organisation must be a private law body**, in other words, independent from government and not subsidised by public funds,

2. the organisation must be a **group of persons** not capital,

3. the governance system must be democratic and based on the principle of **one person, one vote**,

4. the **principle of solidarity** between members must apply: membership must be open to all, with no selection criteria,

5. the profits must be used for the **benefit of members.**

3.3 The **average market share** of mutual organisations in Europe is 15.8 % (12.8 % for life underwriting, 20.5 % for non-life underwriting). In addition, it is estimated that mutual organisations provide **health and social services to almost 230 million** European citizens, around 100 million of whom rely on them for their compulsory health insurance. They employ around 350 000 people across Europe. It is widely agreed that the economy benefits from being made up of a **wide variety of different structures**, since this diversity enables it to **react more quickly** to market changes. Furthermore, in this period of crisis, the **long-term vision** of mutual organisations gives them an advantage over capital companies.

4. General issues concerning the draft Statute for a European Mutual Society (SEMS): *Why introduce a Statute for a European Mutual Society?*

4.1 As things stand in the European Union, European statutes only exist for public limited companies and cooperatives. For foundations, the proposal for a European statute is currently under consideration. For their part, mutuals do not have a European statute ([4]).

4.2 The process of European integration has resulted in greater mobility of workers, businesses and individuals. It is crucial to ensure that their health, social and other insurable risks can be covered throughout the EU, avoiding any breaks in their rights, entitlements and forms of protection.

4.3 The Commission and the Council are currently working on financial and insurance services (Basel III, Solvency II), and on the posting and mobility of workers; a new directive on cross-border healthcare has been applicable in the Member States since 1.1.2014. However, the only legal possibility open to mutual societies in the Member States wishing to participate in this process of European integration and the development of the internal market is to transform and adopt the status of a European cooperative or a European public limited company. The mutual societies themselves refuse to accept this fate and, for its part, the EESC wishes value to be placed on maintaining diverse forms of enterprise, including social economy players, in order to preserve Europe's economic and social heritage.

4.4 Furthermore, 'Solvency II', the prudential framework for insurers, provides additional support for a European statute for mutual societies, as it would allow them to access the so-called 'diversification benefit' and carry out reinsurance and asset management operations to reduce their costs for the benefit of their members.

4.5 As mutual societies do not have access to capital markets, they need tools for cooperation, including at European level, if they are not to disappear from what is an extremely competitive market.

4.6 Mutual societies which carry out activities at European level are not simply motivated by competition or a search for new markets, but rather, primarily, by the desire to improve the services they provide to their members.

4.7 Mutual societies in general need official recognition from the EU, which would give them a legal basis and legitimacy as stakeholders in the process of European integration.

([4]) EESC Opinions on:
— the Statute for a European Foundation, OJ C 351, 15.11.2012, p. 57;
— cooperative societies, OJ C 234, 22.9.2005, p. 1;
— the European company statute, OJ C 129, 27.04.1998, p. 1.

4.8 The introduction of a statute for a European mutual society would represent a recognition of the existence of mutual societies and their specific role in the area of risk management for individuals, particularly in the field of social protection and health.

4.9 To summarise, the EESC wishes the mutualist model to be recognised through a consistent European-level legal framework commensurate with its economic weight and social role. Moreover, this would cut unnecessary red tape, lead to economies of scale and allow the mutualist model to develop in all the EU Member States (including the four where it does not yet exist), making full use of the new statute, the freedom of establishment and the freedom to provide services.

5. **Specific issues relating to the SEMS initiative. *What form should a statute for a European mutual society take?***

5.1 There are many different types of mutual society in Europe (around 40 have been identified), but, looking beyond their diversity, 95 % operate according to the same principles. Accordingly, the EESC recommends that the statute should cover governance not activities.

5.2 Furthermore, the group aspect of the SEMS would enable the pluralistic and diverse fabric of Europe's mutual societies to be preserved in its original form, allowing the various structures to maintain their identities whilst making it possible to introduce economies of scale with this common tool (for example through joint purchases and products). So as to be able to retain the national diversity of structures, which hallmarks the legal form of mutual societies across Europe, the EESC recommends stipulating that a distinctive element thereof be as much freedom of statutes and structure as possible for members.

5.3 The statute should be optional rather than mandatory, to avoid impacting on national legislation.

5.4 It will be important to give mutual societies the possibility to group together and to encourage them to operate across borders to develop the European dimension of the mutualist model.

5.5 The draft Regulation must make it possible for a European mutual society to be established:

— by physical persons resident in different Member States or legal entities established under the laws of different Member States;

— by the cross-border merger of two or more existing mutual societies;

— by the conversion or transformation of a national mutual society into the new form without its first being wound up, where the society in question has its registered office and head office within one Member State and a branch or subsidiary in another Member State;

— and allow for the creation of a European mutual group.

5.6 Like national mutual societies, the European mutual society would continue to be bound by the general rules in force in the Member States, for example, on the involvement of employees in the decision-making process, labour law, social legislation, tax law, competition law, industrial and intellectual property rights, bankruptcy procedures and rules on cessation of payments. Special national provisions on the activity of mutual societies and on monitoring by supervisory authorities ought to apply fully to mutual societies. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

5.7 The rules on the involvement of employees in the European mutual society are established in the directives on the rights of workers which constitute an inseparable complement to this Regulation and are to be applied concomitantly.

5.8 It should be possible to make provision in the statute for a European mutual society for the general meeting to be made up of members or their delegates. As regards voting rights: as well as affording the same voting rights for every member ('one person one vote'), provision should be made for different, weighted voting.

Brussels, 25 March 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on 'The impact of social investment on employment and public budgets' (own-initiative opinion)

(2014/C 226/04)

Rapporteur: **Wolfgang GREIF**

On 19 September 2013, the European Economic and Social Committee, acting under Rule 29(2) of the Rules of Procedure, decided to draw up an own-initiative opinion on

The impact of social investment on employment and public budgets

(own-initiative opinion).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 2014.

At its 497th plenary session (meeting of 26 March), the European Economic and Social Committee adopted the following opinion by 205 votes to 6 with 3 abstentions:

1. Summary

1.1 The EESC welcomes the Commission's social investment package, and above all the declared paradigm change of no longer regarding social investment purely as a cost but rather as an investment in the future.

1.2 Building on this, the EESC will examine the multiple positive effects of social investment, particularly for the labour market and public finances, in the following areas:

— Social services and childcare

— Education and tackling youth unemployment

— Promoting employment

— Promoting good health and active ageing

— Construction of social housing and a barrier-free society

— Social entrepreneurship.

1.3 The opinion will explain positive causal relationships, demonstrating that:

— the expansion of social services throughout Europe has a significant impact on employment;

— well planned, effective and efficient social investment can permanently reduce pressure on public finances and is thus not incompatible with fiscal consolidation;

— failing to act in the social sphere also has a cost, and the long-term cost of a lack of social investment can often be much higher;

— investment in the welfare state not only brings social progress but is also worthwhile in economic and fiscal terms.

1.4 The better social investment is embedded within a credible macroeconomic and institutional framework, the higher the social, economic, fiscal and social benefits, i.e. the 'multiple dividends' of those investments will be.

1.5 The EESC believes that consistent and successful implementation of a broad-based social investment package is associated with the following key requirements:

— A credible change of course towards (preventive) social investment means rejecting one-sided strict austerity policies. The EESC underlines its call for a European stimulus and investment programme to the tune of 2 % of GDP.

— Without secure financing and the right conditions, it will not be possible to exploit the potential of social investment fully. With fiscal consolidation measures due, in addition to increasing the efficiency and effectiveness of public spending it is imperative that new sources of revenue be identified.

— Social investments must be fixtures in the Europe 2020 Strategy and the European Semester. They should be explicitly taken into account in the Annual Growth Surveys and country-specific recommendations.

— The EESC supports the debate taking place at the Commission on excluding social investments from the calculation of net government deficits under the EMU's fiscal rules, in line with the financial 'golden rule'.

— Efforts should be made to ensure methodical progress and the development of suitable tools to measure the (positive) effects of increased social investment and refinement of social indicators in the institutional framework of EMU.

— The EESC calls on the Commission to provide for a more ambitious and longer-term policy roadmap to implement the social investment package by at least 2020.

2. **Introduction**

2.1 The EESC takes the view that, particularly in times of crisis, there is an enormous need for social investment in order to counter the increasing risk of poverty; this also has significant Europe-wide employment potential, which must be mobilised by private and public investment ([1]).

2.2 The EESC has therefore welcomed the Commission's social investment package ([2]), which calls on the Member States to focus more strongly on social investment, and above all on the declared paradigm change of no longer regarding social investment purely as a cost but rather as an investment in the future ([3]).

2.3 The document also states that consistently implemented social investment, which is impact or results-driven, improves people's long-term employment opportunities and makes an important contribution to achieving the Europe 2020 employment policy goals.

2.4 The EESC therefore also called on the Commission to submit a specific implementation plan for the social investment package.

2.5 As the weak point of the Commission initiative, open questions regarding financing were identified, and it was pointed out that, without a change in the prevailing policy of one-sided expenditure cuts, successful implementation of the proposals for increased social investment was not realistic.

2.6 This opinion builds on this, focusing on the many positive effects of social investment, above all for the labour market and public finances, and highlighting specific requirements and recommendations for implementing the social investment package.

3. **General comments on the multiple dividend of social investment — social, economic, fiscal and societal benefits**

3.1 The Commission assigns three key roles to social policy ([4]): to support people in various risk situations, to stabilise the economy and to provide social investment. This distinction is not to be viewed as a reciprocal division; rather it shows the possibilities for active policy-making. In this connection, attention should be paid to the complementarity both of policy areas and (institutional) conditions, which ultimately will make social cohesion possible.

([1]) OJ C 11, 15.1.2013, p. 8.
([2]) COM (2013) 83 final.
([3]) OJ C 271, 19.9.2013.
([4]) COM(2013) 83 final, p. 3.

3.2 There is a growing recognition, not only at the EESC but also in research studies ([5]) and in EU policy, that investment in the welfare state not only brings social progress but is also worthwhile in economic and fiscal terms ([6]). At the same time, there is a lack of comparable standards which help to record and assess all the positive external effects of social investment.

3.3 However, it is beyond dispute that well planned, effective and efficient social investment — depending on its country-specific design and the scope of the measures — has multiple positive effects: existing social needs are met and employment opportunities created, equal opportunities — also between the sexes — are promoted, and rising employment and falling unemployment compensate for the costs to a great extent. In most cases, the investment aspect of social investment manifests itself in a positive impact over time (e.g. investment in education, childcare, health promotion, working conditions adapted to different stages of life), not necessarily in the expectation of immediate 'returns'.

3.4 The better social investment is embedded within a complementary, institutional and integrated political framework, the higher the 'multiple dividend' of that investment will be. Strategic planning and structured monitoring are needed, in line with the Europe 2020 objectives.

3.5 In view of the current dramatic level of unemployment, which is unlikely to show much improvement in the near future, emphasis on social investment can make an important contribution to more growth and employment. Making full use of existing employment potential requires consistent implementation of a policy that opens up opportunities for participation in the economy and society. Social, future-orientated investment, which is impact or results-driven, particularly the development of social services, to which much greater employment effects are ascribed than to any other use of public resources, has a key role to play here.

3.6 In addition to having positive effects on the labour market, social investment can reduce pressure on public finances in a way which is not incompatible with fiscal consolidation. The EESC has already pointed out that the attempt to achieve budgetary consolidation during a recession simply by cutting expenditure is widely seen as having failed ([7]). The advantage of a medium and long-term balance between revenue and expenditure is that structural problems are addressed by investment, thus in the long term increasing public budgetary room for manoeuvre once again. Current analyses show that the promotion of inclusive growth and increases in employment rates in line with the Europe 2020 objectives would create additional scope for national budgets EU-wide of up to EUR 1 trillion ([8]).

3.7 It should be borne in mind that failing to act particularly in the social sphere also has a cost, and the long-term cost of a lack of social investment can often be much higher. This idea, that cure is more expensive than prevention, is found in a number of Commission communications ([9]). Although social investment involves short-term costs, in the medium to long term it brings welfare gains for society and higher revenues for state budgets which significantly reduce future costs ([10]).

3.8 Not all social expenditure is social investment per se. In principle, some welfare benefits have an effect on consumption (e.g. pensions, unemployment benefit). The EESC has, however, always stressed the importance of investment in robust social security systems for supporting consumption and economic activity (especially at times of crisis) given that they act as an automatic stabiliser, supporting incomes and demand and thus contributing to Europe's emergence from the crisis ([11]).

([5]) Social and employment policies for a fair and competitive Europe — Background paper, Foundation Forum 2013, Eurofound, Dublin, p. 16.
([6]) see footnote 4.
([7]) see footnote 3.
([8]) EPC Issue Paper No. 72, Nov. 2012.
([9]) MEMO/03/58 v. 19.3.2003 or COM (2013) — IP/13/125.
([10]) inter alia COM(2013) 83 final, p. 2.
([11]) OJ C 133, 9.5.2013, p. 44, point 4.4.2.

4. **Examples of the effect of social investment**

4.1 **Investment in social services**: Greater investment in the provision and support of social infrastructure (including nursing care, care for the elderly, health, services for people with disabilities, sheltered housing, advice centres etc.) creates jobs at the same time as making an important contribution to boosting labour market participation rates ([12]). It also helps relieve pressure on public finances ([13]) over the medium and long term and stimulate the regional economy. According to Commission calculations, with an annual growth rate of 0,5 % for jobs in the health sector, employment growth of at least 1 million jobs can be expected in that sector by 2020 ([14]). The EESC has repeatedly pointed out that, in both the public and private sectors, these must be jobs with high-quality conditions of employment and fair pay ([15]).

4.2 **Investment in childcare:** Many studies have shown, using the example of childcare, that with targeted investment, social progress can be combined with increased competitiveness ([16]). New estimates show that public investment aimed at achieving the Barcelona childcare objectives, in addition to generating substantial employment effects, also boost government revenues significantly. For example, a study ([17]) for Austria shows that, even allowing for a weak economic outlook, after four years investment costs are lower than revenue generated. In the process, public finances benefit from complementary effects: cyclical and regional policy impulses, rising direct employment, falling unemployment benefit costs, etc. The EESC would welcome greater research activity and the more intensive exchange of best practice in this area too.

4.3 **Investment in children:** The Commission is calling for preventive measures in the form of early investment in improving children's opportunities for development and participation (not only those from disadvantaged socio-economic backgrounds) ([18]). In its Recommendation entitled Investing in children, the Commission shows that preventive investment in combating child poverty can be achieved by means of a range of measures. The positive effects of developing high-quality childcare facilities are highlighted: promoting talent, reducing the risk of dropping out of school, better employment opportunities for women in particular and an impetus to growth at regional level ([19]).

4.4 **Investment in education and combating youth unemployment:** a Europe which is prepared for the future can only succeed by having a higher level of education and reducing shortcomings in general and vocational education. Investment in education, which meets the needs of people and the economy, leads to higher productivity and higher tax and social security revenues. OECD estimates of the rate of return on public investment in education point to an average figure of 7,8 % ([20]). The promotion of youth employment must be a central plank of national social investment strategies. Member States are rightly being urged to develop effective measures for young people, especially those who are not in education, employment or training (NEETs). The economic losses arising from young people being excluded from the labour market or the education system are estimated by Eurofound at over EUR 150 billion annually, or 1,2 % of European GDP ([21]).

([12]) Drivers of Female Labour Force Participation in the OECD, OECD Social, Employment and Migration Working Papers 145, OECD Publishing, Thévenon, Olivier (2013).

([13]) 'Result of study: every euro invested in mobile services in 2010 creates the equivalent of EUR 3,70 (p. 9)'. *Studie zum gesellschaftlichen und ökonomischen Nutzen der mobilen Pflege- und Betreuungsdienste in Wien mittels einer SROI-Analyse* (Study on the social and economic benefits of mobile nursing and care services in Vienna using a SROI analysis), Schober, C. et al, Vienna (2012).

([14]) SWD (2012) 95 final.

([15]) OJ C 11, 15.1.2013, point 4.7.5.

([16]) *Zur ökonomischen Notwendigkeit eines investiven Sozialstaates* (Economic necessity of social investment), WIFO (Austrian Institute for Economic Research), Famira-Mühlberger, U (2014), Vienna.

([17]) *Investiver Sozialstaat Wachstum, Beschäftigung und finanzielle Nachhaltigkeit Volkswirtschaftliche und fiskalische Effekte des Ausbaus der Kinderbetreuung in Österreich*, (Social Investment Growth, Employment and Financial Sustainability Economic and Fiscal Effects of Improving Childcare in Austria) AK Europa (2013), Brussels and Eurofound (Ref.: EF1344).

([18]) See: The rate of return to the HighScope Perry Preschool Program, Journal of Public Economics, , Heckman, J.J., et al. (2010), Vol. 94 (1-2), p. 114-128.

([19]) COM(2013) 778 final.

([20]) see footnote 18.

([21]) Young people and NEETs in Europe: First findings, Eurofound (EF1172EN).

4.5 **Investment in promoting employment:** High unemployment — above all youth and long-term unemployment — not only places a significant burden on those who are affected and their relatives. For public finances too, the entrenchment of unemployment poses a major challenge, which must be met through measures to boost skills and promote employment ([22]). The longer unemployment lasts, the more difficult it is to achieve a suitable match between labour supply and demand. Particularly in a knowledge and technology-based economy, skills shortages and lack of work experience are a significant barrier to long-term success in the labour market.

4.6 **Investment in the management of demographic change and improving the employment opportunities of older people:** The EESC has repeatedly stated that the labour market is the key to getting to grips with demographic change. If the employment potential that exists is used more effectively, the balance between contributors and beneficiaries can largely be maintained despite the increase in the number of older people ([23]). Despite a foreseeable shift in the age structure, in many EU countries there has been insufficient investment in creating the conditions for workplaces that are adapted to workers as they grow older (creation of working conditions geared to different stages of life) and in improving labour market participation.

4.7 **Investment in preventive healthcare and rehabilitation:** Positive effects can also be achieved by promoting health in the workplace and throughout companies, as employability and the risk of unemployment are closely correlated with physical and mental health. If risks are not identified in time and action taken, this results not only in individual suffering but also heavy social costs. Greater investment in preventive measures is needed to ensure the long-term sustainability of public finances.

4.8 **Investment in construction of social housing:** Like the European Parliament and the Committee of the Regions, the EESC sees the construction of social housing as a key to social cohesion and calls for a European framework for this to be established ([24]). In this connection, the subsidiarity principle must be safeguarded so that the Member States can continue to set the criteria for construction of social housing themselves. This kind of investment meets a pressing social need (particularly in connection with combating poverty and social inclusion) while also creating jobs in the regions and thus stabilising the economy and, for example, helping to tackle climate change and energy poverty through investments to improve thermal efficiency) ([25]).

4.9 **Investment in a barrier-free society:** The EESC has repeatedly underlined the need to promote a barrier-free society ([26]). In this connection, social investment should be geared towards creating public spaces and housing which meet age-related needs and those of disabled people, relevant infrastructure to promote mobility and easily accessible, affordable and high-quality social services for disadvantaged groups in society.

4.10 **Investing in social entrepreneurship:** The EESC welcomes the fact that the Commission recognises the important role of the social economy in implementing the social investment package. It is often directly involved in implementation. To provide support for these tasks, public funds and private capital have to be made available in a simpler way, suitable for social enterprise business models. The Member States are to make more use of innovative approaches to financing in the form of private sector participation, for example, which could also lead to savings in public expenditure ([27]). However, the EESC stresses once again that this must on no account lead to a commercialisation of or a fragmented approach to social policy. The state must not shirk its responsibility for social policy ([28]).

5. **Policy recommendations**

5.1 *A change of course towards preventive social investment means rejecting one-sided strict austerity policies.*

5.1.1 As regards increasing employment, the expansion of social services has a greater effect, the EESC believes, than any other form of public expenditure. It therefore urges that the welfare state in Europe be developed further in a progressive and sustainable way so that it can fulfil its potential as an additional productive force for the European economy.

([22]) Why invest in employment? A study on the cost of unemployment, Brussels, Idea Consult (2012).
([23]) OJ C 376, 22.12.2011, p. 74.
([24]) EP Resolution of 11.6.2013 (2012/2293(INI)), OJ C 9, 11.1.2012, p. 4.
([25]) EP Resolution on the Commission communication on social investment (PE508.296v01-00).
([26]) See, inter alia, TEN/515 'Accessibility as a human right' (not yet published), and OJ C 44, 15.2.2013, p. 28.
([27]) see footnote 3.
([28]) OJ C 271, 19.9.2013, p. 91.

5.1.2 Successful implementation of a broad-based social investment package requires a credible macroeconomic and institutional basis. Without a change in the policy of one-sided expenditure reductions it will above all not be possible to achieve successful labour market integration and fair social and economic participation for the broadest possible sections of society.

5.1.3 In view of the social investment package and the challenges it entails, the EESC underlines its call for a European stimulus and investment programme to the tune of 2 % of GDP ([29]).

5.2 *Without secure financing it will not be possible to exploit the social and economic potential of social investment fully.*

5.2.1 A credible paradigm shift towards strategies of investment and prevention in central policy areas (including education, social, labour market and health policy) will only be achieved when secure financing is made available in both the EU budget and the budgets of the Member States.

5.2.2 The EESC reiterates its conviction that, in the context of forthcoming fiscal consolidation, attention should therefore not only be paid to the expenditure side, but new sources of revenue must be identified in conjunction with moves to increase efficiency and effectiveness of public spending ([30]). In this connection, the EESC believes that Member States' tax base will have to be broadened, not least by imposing financial transaction taxes, closing tax havens, ending tax competition and taking measures to tackle tax evasion. In addition, a general re-think of tax systems is needed, with due regard for questions of contributions from different kinds of income and assets ([31]).

5.2.3 The EESC agrees with the Commission that the European Social Fund (ESF) should be the main instrument for promoting social investment and 20 % of the ESF should be earmarked in each Member State for social integration and combating poverty. The Committee considers, however, that other EU funds should also be involved. Thus, substantial resources from the European Agricultural Fund for Rural Development (EAFRD) and the European Regional Development Fund (ERDF) should be used for social services such as childcare, long-term care and mobility in rural areas and be enshrined in the national agreements.

5.2.4 The EESC is extremely critical of conditionality in the framework of economic governance, the cuts in Cohesion Fund resources as a penalty for non-compliance with EU macroeconomic requirements. Not only does that restrict and have a pro-cyclical effect on economic development, it also impedes the necessary investment in the countries benefiting from the programmes. Instead of this, an impetus for growth and support must be provided and the European co-financing contribution should be increased further, especially in countries particularly affected by the economic crisis.

5.3 *Social investments must be fixtures in the Europe 2020 Strategy and the European Semester.*

5.3.1 The EESC calls for greater focus on social investment in the coordination process of the European Semester. This new focus must be explicitly taken into account in the Annual Growth Surveys and the country-specific recommendations. It must be made clear that greater social investment is compatible with growth-friendly fiscal consolidation.

5.3.2 In order to achieve this objective, the EESC supports the ongoing discussion in the European Commission on applying the financial 'golden rule', i.e. on excluding future-oriented public investments from the calculation of net public deficits under the EMU's fiscal rules. This will prevent investment which is profitable in the long term from being dropped. The EESC suggests discussing whether the 'golden rule' could also be applied to social investment supported by the EU Structural Funds.

5.3.3 The promotion of social investment must also be a key element of the revision of the integrated guidelines for growth and jobs in connection with the mid-term review of the Europe 2020 Strategy in 2014.

([29]) See: OJ C 133, 9.5.2013, p.77, point 3.2.4.
([30]) See: OJ C 143, 22.5.2012, p. 94, point 4.3.
([31]) See: OJ C 143, 22.5.2012, p. 23, point 6.1.3.1

5.3.4 For the EESC it is essential to consult and inform all actors responsible for social investment more than hitherto and to involve them in decision-making and monitoring at all levels.

5.4 *Improved methodology and more effective tools for measuring the success of strategy to increase social investment*

5.4.1 A higher-quality and more holistic basis is needed for decisions on the future direction of policy. In general, the aim should be an approach to social investment which is dynamic over time, life cycle-orientated and preventive, and which reflects costs more accurately than mere static cost-benefit analyses ([32]).

5.4.2 The complex relationship between different policy fields requires better methods of measuring success and greater transparency, e.g. in the form of cost-benefit relationships making use of a definition of the overall benefit to society or scenarios for various policy measures over time taking account of medium and long-term prospects.

5.4.3 A possible first step would be the methodical further development of existing standardised long-term projections in individual expenditure areas, including those related to population trends (e.g. education, care, health, pensions). The 2015 Ageing Report would be a suitable opportunity to determine the return of social investments required and budgeted for in accordance with national circumstances. This has in the past been neglected and has always led to distorted and exaggerated cost estimates.

5.4.4 Another open question is the importance that should be assigned to social indicators in the existing institutional framework of the EMU. If the indicators are to be assigned real importance in defining policy, they will need to be refined.

5.4.5 The EESC also considers interesting the Parliament's request ([33]) addressed to the Commission for a scoreboard of common social investment indicators with an alarm mechanism to monitor progress in the Member States, as well as the Parliament's call to the Member States to look at the possibility of signing a Social Investment Pact setting out investment objectives and establishing a control mechanism.

5.5 *Revising and fleshing out the policy roadmap for the implementation of the social investment package*

5.5.1 The EESC finds the Commission's proposed policy roadmap for implementing the social investment package too defensive and thus calls for a more detailed and longer-term roadmap (at least until 2020).

Brussels, 26 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

([32]) See European Commission, Social Agenda, May 2013, p. 15.
([33]) see footnote 27.

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

497TH PLENARY SESSION OF THE EESC ON 25 AND 26 MARCH 2014

Opinion of the European Economic and Social Committee on the communication from the Commission on 'Delivering the internal electricity market and making the most of public intervention' C(2013) 7243 final

(2014/C 226/05)

Rapporteur: **Mr COULON**

Co-rapporteur: **Mr IONIȚĂ**

On 5 August 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 on Delivering the internal electricity market and making the most of public intervention

C(2013) 7243 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 10 March 2014.

At its 497th plenary session, held on 25 and 26 March (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 135 votes to 1 with 1 abstention.

1. **Conclusions and recommendations**

1.1 The EESC welcomes the new communication aimed at providing Member States with guidance on how to make the most of public intervention. The EESC regards this as an opportunity to recalibrate policies in light of the experience acquired by the Member States and give a new impetus to the process of EU electricity market integration, by focusing more clearly on the benefits to the public (in particular the most vulnerable people) and the eradication of energy poverty in the EU.

1.2 The EESC recommends that the terms 'public intervention' and 'state aid' be clarified. Making the most of public intervention does not mean that intervention or aid should be systematically reduced or expanded, but rather that it should be optimised.

1.3 The EESC calls for a more coordinated approach to national and local public intervention across Europe to avoid any risk of it being counter-productive.

1.4 It advises the Commission to make sure that the communication's aims do not stand in the way of achieving the 2020 objectives.

1.5 A better integrated, deeper and fluid electricity market should benefit producers and consumers (including SMEs, artisans and other small-scale producers). However national borders continue to pose formidable obstacles in terms of regulations, transmission capacity and price structure, etc.

1.6 The EESC highlights the urgent need to develop transmission infrastructure and strengthen electricity interconnections.

1.7 The EESC supports the idea of 'Europeanising' aid schemes for renewables and urges the Commission to do more to facilitate cooperation mechanisms between Member States to promote cross-border aid.

1.8 The EESC agrees that support for new technologies should be reconsidered as they mature. It thinks the Commission should provide a clear definition of the term 'mature energy source' — a definition that can develop over time.

1.9 The EESC agrees that the internal electricity market is not an end in itself. It must be designed for the benefit of all consumers, in particular those who are most vulnerable. The EESC subscribes to the idea of developing European-level measures to empower users as key players in the European electricity market, so that they become "consumer-actors". It calls on the Commission to step up its action in this respect and come up with measures and initiatives aimed at making the best possible use of public intervention to eradicate energy poverty.

1.10 The EESC emphasises that electricity is an essential basic commodity and must be managed as such. For the benefit of the general economy, Member States may insist that electricity producers meet certain public service obligations. Universal access to energy should be at the heart of Europe's energy policy and should be enshrined in the Treaty. In the interests of competition, making the most of public intervention in the energy sector should not result in any reductions in or limitations on public service obligations which Member States have already decided to put in place. The EESC urges the Commission to be especially vigilant on this point and to take measures to provide better safeguards for public service obligations and further strengthen them, irrespective of current austerity constraints.

2. **Introduction**

2.1 In 2008 the European Union set itself ambitious climate and energy objectives (3x20). The EESC will be issuing an opinion on the new 2030 climate/energy policy framework published on 22 January 2014. Member States have made progress towards achieving the renewable energy objectives, largely as a result of public intervention.

2.2 Moreover, in February 2011 the EU heads of state and government stated that the goal was to complete the internal energy market by 2014. The Commission has since published a number of documents to this end. On 15 November 2012 it published a communication entitled 'Making the internal energy market work', with an initial assessment of the internal energy market and an action plan for its completion. The communication was followed by a public hearing on the internal energy market, energy generation capacity adequacy and capacity mechanisms.

2.3 On 5 November 2013 the Commission published another communication, 'Delivering the internal electricity market and making the most of public intervention', together with five documents produced by Commission departments containing guidance on capacity mechanisms, support mechanisms for renewable energy sources, cooperation arrangements between Member States in the area of renewables and demand-response solutions.

2.4 The Commission notes that the creation of the internal market and the pursuit of climate/energy objectives has given rise to new challenges calling for new forms of public intervention, mostly at national level: hence the drive to develop and support renewable sources of energy and ensure adequate production capacities, etc.

2.5 The purpose of the Commission's present communication is to provide Member States with guidance on how to make the most of public intervention, adjust existing intervention measures and design new ones. If public intervention is not well-designed, it could seriously disrupt the market and drive up energy prices for households and businesses alike. The Commission has therefore come up with a list of actions to be taken prior to any public intervention: identifying a specific problem and its cause, demonstrating that the market is unable to solve it; assessing interplay with other energy policy objectives and coordinating the various public policy instruments; evaluating alternative options; minimising impact on electricity systems; keeping intervention costs down; considering the costs to manufacturers and private individuals; monitoring, evaluating and phasing out these measures once the objective has been reached.

2.6 According to the Commission, the aim is to gradually build up a European energy market where supply and demand function properly, price signals are in line with the policy goals, players are placed on an equal footing and energy generation is efficient. As technologies mature, they should gradually become subject to market prices, with support measures eventually being terminated. In practice this will mean phasing out feed-in tariffs and moving towards feed-in premiums and other support instruments to encourage producers to respond to market trends. The Commission is also urging Member States to better coordinate their renewable energy strategies in order to reduce consumer costs in terms of energy prices and taxes. Support schemes should be more closely aligned to one another.

2.7 The communication, although not legally binding, defines the basic principles that the Commission will apply when evaluating public intervention relating to support schemes for renewables, mechanisms affecting capacity and measures to adjust consumer demand. These principles will therefore have an impact on how European Union rules on state aid are applied and how EU legislation on energy is implemented. The Commission also intends to propose legal instruments to ensure that these principles are implemented in full.

3. **EESC comments**

3.1 The EESC has consistently said that it sees the internal energy market as an opportunity and that every step must be taken to ensure that it works to the advantage of industrial and household consumers, closely involving civil society organisations, so as to prevent and combat energy poverty ([1]).

Towards a single market: eliminating borders

3.2 The EESC has always endorsed the Commission's initiatives aimed at completing the internal market in energy. The EESC also points out that to this end it supports the principle of establishing a European Energy Community (EEC). An EEC would make it possible to strengthen common governance of energy issues in an optimal way by promoting solidarity, cooperation and integration, particularly in matters pertaining to markets and infrastructure.

3.3 The internal market cannot exist as long as there are still 'national borders' for trading energy, and cross-border capacity should be treated in exactly the same way lines or pipes that do not cross borders. The communication should emphasise that access to cross-border capacity, and not only differences in national regulations, are still a major obstacle to the de facto elimination of barriers in the internal energy market. For example, the generalisation of 'entry-exit' pricing and capacity allocation methodology for transmission in all Member States might boost cross-border trade, being preferable to the 'point-to-point' model as it creates the incentives for TSOs (transmission system operators) to invest in eliminating power bottlenecks such as they exist across the borders of their service areas. This will benefit all market players, including those in the market in intermittent renewables. The Commission and ACER (Agency for the Cooperation of Energy Regulators), apart from ENTSO-E (European Network of Transmission System Operators for Electricity), must review allocation mechanisms and impose responsibilities on TSOs regarding power exchanges. A review is needed to ensure that there are no potential 'artificial bottlenecks' at national borders that may constrain energy flows among Member States. Such "artificial bottlenecks" may arise as a result of national protectionist policies aiming at introducing uniform domestic tariffs, or of potential commercial abuses of national TSOs that shift domestic power bottlenecks to their service area borders. Such rules would encourage TSOs to channel their investments into better cross-border interconnections of the transmission grids.

3.4 The EESC insists that stronger electricity interconnections are needed in order to complete the internal energy market. The EESC supports all initiatives to make electricity grids work more smoothly and efficiently, given the advances in the area of renewables; it therefore endorses coordinated initiatives such as Coreso, a fledgling European electricity dispatch service.

Renewables and generation adequacy

3.5 Moreover, the EESC has consistently championed increased use of renewable sources of energy ([2]). It supports the 2050 road map objectives.

([1]) OJ C 133 of 9.5.2013, pp. 27-29; OJ C 68 of 6.3.2012, pp. 15-20; OJ C 341 of 21.11.2013, pp. 21-26.
([2]) OJ C 77 of 31.3.2009, pp. 43-48; OJ C 44 of 15.2.2013, pp. 133-139; OJ C 229 of 31.7.2012, pp. 126-132.

3.6 The support arrangements for renewables were put in place at a time when the renewable share of energy was low and the technology in its infancy. Today, the renewables' share of the energy mix has grown considerably and will continue to do so in the long term. The EESC agrees with the Commission that public intervention must be evaluated, with due respect for the subsidiarity principle, in the light of the degree of maturity of energy sources and technologies. The EESC considers, however, that a clear definition of 'mature energy source' should be provided by the European Commission and revised in the light of future technological progress. The EESC would also point out that the evaluation and adjustment of support arrangements for renewables should be made in such a way as to ensure that consumers, and particularly the most vulnerable ones, can benefit fully from the European electricity market. The EESC recommends that care be taken to ensure that this adjustment of support does not make it more difficult to achieve the Europe 2020 objectives. The EESC recommends that the Commission pay attention to this aspect when drafting the new Union Guidelines on environmental and energy state aid.

3.7 Along the same lines, support for renewables should be phased out for maturing technologies, but also properly coordinated with the development of a functional emissions market. The EESC agrees with the Commission that support for renewables should be flexible, proportionate, regressive and competitive, allowing renewables to increasingly respond to market signals and compete with conventional units. Direct support for renewables should gradually be replaced by a well-functioning ETS (emissions trading system) market, and phased out accordingly.

3.8 The EESC welcomes the Commission's initiatives aimed at "Europeanising" support for renewables. The Commission should further facilitate mechanisms for cooperation between Member States in order to promote cross-border support, little used at present. "Europeanisation" of support is also unlikely to become a reality as long as Member States are able to develop individual policies, 'free riding' or imposing negative constraints on neighbouring countries (e.g. the support for fast development of renewables in Germany generates loop flows in Poland and the Czech Republic, which means additional electricity costs in these countries for balancing and security of supply). It is easier to tackle such problems now, while the system is still relatively young, rather than later, when path dependency effects become stronger.

3.9 One particular concern regarding the integration of renewables is the fact that their production is intermittent, requiring balancing, backup or reserve capacities. The communication highlights the risk that Member State support for backup capacities might in fact support inefficient power plants or subsidise fossil fuels. The problem should be mitigated first by the development of effective intraday, balancing and ancillary markets. If these are indeed effective, and work across borders, and with the right price signals, they might, in the end, regulate the market well enough to eliminate the need for an additional capacity mechanism. All reserves or capacity remuneration mechanisms must be 'market-based, technology-neutral, non-discriminatory and open for cross-border participation' ([3]).

3.10 Standards and mechanisms for ensuring generation adequacy currently vary from one Member State to another, as problems with the balance of supply and demand differ between them. Public intervention is necessary to ensure security of supply and build up reserves that are national in character. However, as markets are increasingly interconnected and interdependent, and in order to prevent the co-existence of different, fragmented systems, consultation and cooperation should be encouraged between countries, in particular within the Electricity Coordination Group, and the Commission should look at the feasibility of a market for European generating capacity based on positive experience to date.

Public intervention

3.11 The EESC agrees with the Commission that public intervention plays an important role in achieving European energy and climate policy objectives. It believes that making the most of public intervention should not necessarily mean reduction or expansion, but rather optimisation of public efforts. It considers that intervention of this kind ought to play an even greater role in efforts to combat energy poverty, feels that better use should be made of public intervention in this domain and calls on the Commission to put forward proposals and initiatives on these aspects.

3.12 It would, however, stress how important it is to take steps to ensure that public intervention at national, regional and local level is consistent across Europe; under certain circumstances such intervention can be counter-productive at European level.

([3]) Eurelectric, 17 January 2014.

3.13 At the same time, the EESC points out that the energy mix is part of national sovereignty, so long as it does not significantly distort competition and it complies with state aid rules. Since such interventions impact on other European countries, the EESC believes that coordination between Member States should be stepped up, particularly in the Electricity Coordination Group, in order to achieve greater consistency at European level.

3.14 The EESC points out in this connection that it would be appropriate for the Commission to make a clear distinction between public intervention and state aid.

3.15 Public intervention has an impact on electricity costs and prices. The Commission recognises that it is difficult to determine the cost of each energy technology on a comparable basis and thus to evaluate the level of public intervention needed. In a forthcoming opinion, the EESC will be taking a close look at the Commission's 22 January 2014 communication and report on energy prices and costs in Europe. The EESC reiterates its recommendation that the Commission provide in this report an analysis of energy poverty in the Union and a European strategy and roadmap for combating it.

3.16 The larger, deeper and more liquid the electricity market is, the more its stability will be assured and the need will diminish for various forms of ad hoc or temporary public intervention, which are currently creating coordination problems.

Competitiveness

3.17 The Commission quite properly pointed out issues such as security of supply or loss of price competitiveness for the EU economy which are not always compatible with the '20-20-20' objectives or with the 2050 targets. Thus, achieving the goals of the climate package increases energy costs for individuals and industry, hampering competitiveness. On the other hand, support for renewables may lead to excessively low wholesale electricity prices and distort investment signals in reserve capacities. The instruments to achieve the '20-20-20' objectives must be properly monitored to ensure that distortions do not outweigh the benefits.

3.18 At the same time, the Commission's proposal to promote long-term contracts to build new power plants, to be concluded between electricity producers and future end-consumers in order to ensure competitiveness of energy-intensive industries, raises additional concerns. The Commission recognises that there are risks of foreclosure of markets, and such contracts should be carefully examined to see whether the benefits outweigh the costs or whether in fact they actually hamper competition. In addition, energy-intensive consumers tend to be more interested in conventional fuel plants, which supply energy reliably. Support for these might defeat other EU policies, from support for renewables to compliance with the Industrial Emissions Directive. In extreme situations, it is particularly embarrassing for the decision-maker if the industrial consumer in the end decides to relocate, for whatever reason.

Empowering consumers/combating energy poverty

3.19 The EESC fully agrees that the internal electricity market is not an end in itself. The electricity market must benefit everyone, particularly the most vulnerable people. Efforts to complete it are needed because the market is at present too fragmented. This has a negative impact on European consumers' freedom of choice of suppliers and budgets (prices are too high), on the security of energy supply and on efforts to tackle climate change and energy transition. European energy policy should reinforce its efforts to eradicate energy poverty.

3.20 Demand-response and energy efficiency offer enormous potential in reducing consumption peaks. They remain under-exploited despite technological progress. The EESC strongly advocates encouraging consumers to be empowered in shaping their energy 'life' and to become 'consumer-actors'. Technologies such as smart meters must genuinely be designed for all consumers, including the most vulnerable, and be fully effective and useful by providing easily understood, transparent information without additional costs, thus facilitating smart adaptation of energy demand (and ensuring the safety/confidentiality of data). The EESC supports the promotion of research and development in the energy sector (mainly in smart tools and energy storage).

3.21 Public intervention is critical also because demand-side response (DSR)/demand-side management (DSM) tend to unduly burden vulnerable consumers. The type of support offered to vulnerable consumers must therefore be adapted to their particular situation and the criteria for eligibility should be fair and predictable.

3.22 The EESC considers that DSM/DSR technologies are not in themselves sufficient to adapt and reduce demand. The EESC has advocated stepping up citizens' awareness-raising and empowerment at European level through various initiatives supported by an energy solidarity fund ([4]). The EESC supports energy-efficiency improvements in buildings (with professional energy certification) to deal with buildings which 'leak' energy and to gradually phase out the practice of selling or renting out such buildings.

3.23 European energy consumers are among the most dissatisfied with the market. Major issues that must be addressed on the consumers' side to support the development of a well-functioning energy market include: access to energy; objective, reliable information on offers, including independent comparisons; transparency in contractual terms; protection against misleading and aggressive marketing practices; a single point of contact for information; understandable consumer information; effective implementation of the Energy Efficiency Directive; ease of switching; effective means of redress in the event of justified complaints ([5]) and measures to fight energy poverty. Independent monitoring of energy markets is also critical to ensure fair competition and to benefit the consumer. Progress on these dimensions may garner wider social and political support for EU energy policies.

3.24 The EESC supports local production of renewable energy by consumers ('prosumers' ([6])). This phenomenon is developing rapidly in many countries, particularly Germany and the UK. This is crucial for the energy balance in Europe, a cheaper energy supply and the reduction of CO_2 emissions. The prosumers' role in the energy market is linked to the fight against energy poverty. Thanks to smart grids and smart meters, a prosumer can provide an exchange of energy services generated by a small power plant. By the end of 2020 in the UK there will be approximately 8 million installations of this type producing about 40 GW of electricity. The number of people employed will exceed 100 000. Prosumers should receive public support for the removal of legislative obstacles and financial/operational support in the form of assembly and maintenance services, in particular in the investment field. Effective regulation must also be in place, however, to ensure that prosumers are properly accountable for any imbalances they may generate when they supply energy to the system, and to create market-based instruments and pricing mechanisms that incentivise them to reduce such imbalances.

3.25 Electricity is not a commodity like any other. It is an essential basic commodity and must be managed as such. For the benefit of the general economy, Member States may insist that electricity producers meet certain public service obligations. The EESC has repeatedly called for universal access to energy to be included among the goals of the EU's energy policy and to be enshrined in the Treaty. The EESC therefore stresses that care must be taken to ensure that, where they have been put in place under the terms of Directive 2009/72/EC, public service obligations relating to the general interest (in particular security, access to energy and to affordable energy, regularity, quality and price of electricity, as well as environmental protection, including energy efficiency and climate protection, as defined in Articles 3(2) and 3(3) of the directive) are not watered down in the process of rationalising public intervention, in accordance with the principle of competition. The EESC calls upon the Commission to exercise maximum vigilance here, and requests that it report annually on this essential aspect, including not only a more specific, detailed evaluation of Member States' compliance with public service obligations in its annual report on the internal market, but also specific initiatives so that these obligations are better safeguarded — and even strengthened — at European level.

([4]) OJ C 341 of 21.11.2013, pp. 21-26.

([5]) *Consumer rights in electricity and gas markets* — BEUC position paper, December 2013.

([6]) Prosumers are small, independent producers of electricity generated most often in small backyard installations (e.g. small wind turbines, solar panels and heat recovery using heat pumps, etc.). The defining characteristic of prosumers is that their production can be for their own use or for selling into the larger network.

Governance

3.26 Transparency and integrity in wholesale energy trading are in the end crucial for the protection of everyone's interests to avoid overcharging final consumers and support good governance of energy companies, whether these companies are state-owned or private. The Commission should evaluate the implementation of the REMIT Regulation and propose solutions if necessary. Transparency in wholesale trading would allow fast detection of issues such as market abuse or anti-competitive behaviour and support the intervention of competition authorities.

Brussels, 25 March 2014

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 seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC'

COM(2013) 798 final — 2013/0390 COD

(2014/C 226/06)

Rapporteur: **Mr POLYZOGOPOULOS**

On 19, 21 and 29 November 2013 respectively, the European Commission, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 153(2) 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 seafarers amending Directives 2008/94/EC, 2009/38/EC, 2002/14/EC, 98/59/EC and 2001/23/EC

COM(2013) 798 final — 2013/0390 (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 10 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 136 votes with 4 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC endorses the proposal for a directive aimed at improving the level of protection of rights enshrined in the EU Charter of Fundamental Rights and ensuring a level playing field for competition at EU level.

1.2 The EESC welcomes the proposal to address exclusions which may make it harder for seafarers to enjoy the same rights under European labour law as workers with shore-based jobs.

1.3 The EESC thinks that the proposed directive is a step in the right direction to encourage young people to take up professions in the maritime and fishery sectors and make seafaring careers viable, as it will make these sectors more attractive and, in terms of labour rights, place them on an equal footing with shore-based occupations.

1.4 The EESC notes that the Commission has opted for a flexible approach taking account of the specificities and needs of this vital sector: it looks into four distinct policy options and assesses on a case-by-case basis whether the characteristics of the sector can objectively justify a differentiated approach, thus steering clear of a 'one size fits all' type of solution.

1.5 The EESC considers that the proposed directive could help to promote employment in the maritime and fishery sectors and improve living and working conditions, social protection and dialogue between management and labour, consistent with the general policy aims envisaged under Article 151 TFEU.

1.6 The EESC notes that a preparatory study carried out for the Task Force on maritime employment and competitiveness has estimated that the gap between supply and demand in seafarers in the OECD countries may increase to 70 000 for officers and 221 000 for ratings ([1]). In order to maintain the equivalent 2010 situation regarding the proportion of European officers in the worldwide workforce, the number will have to increase by 10 % over the next ten years in western EU countries and by 20 % in the eastern ones ([2]).

([1]) Sulpice, Guy. 2011. *Study on Seafarers Employment: Final Report*. European Commission, DG for Mobility and Transport — Directorate C — Maritime transport (MOVE/C1/2010/148/SI2.588190). page 34.

([2]) Ibid., page 35.

1.7 The EESC also considers that the proposed directive could make for a more level playing field for competition in the European market by tackling a situation where certain companies are exempted from certain obligations, notably in terms of information and consultation, which are mandatory for competing companies based in other Member States. It points to the need to ensure a level playing field within the EU but also internationally, given the international nature of maritime activities and competition, and stresses the importance of actively discouraging social dumping and unfair competition. However, many land based activities are subject to international competition and the fact that it also exists in the maritime sector is no reason to exclude seafarers from important labour and social rights.

1.8 Nevertheless, the EESC notes that the proposed directive alone will not suffice to make the maritime sector more attractive. It will have to be accompanied by measures and initiatives already put forward by the EESC in the areas of training, education, research, health and safety promotion, entrepreneurship and innovation leading to the provision of safe, stable and competitive services of a high quality.

1.9 Given that broader consultations and assessments of the impact of doing away with the exceptions came several years before the proposal for a directive, the EESC would strongly recommend reducing the transition period of five years for implementing the directive (Article 8 of the proposed directive) to three years.

2. **Introduction**

2.1 Europe's maritime industry is a world leader, providing seafaring jobs for 345 455 people ([3]). Some 30 % of merchant vessels are registered in one of the EU Member States, whilst in terms of gross tonnage (GT), the EU accounts for 19,2 % of the global fleet ([4]).

2.2 Fishing and the processing of fish products provide jobs for more than 350 000 people, with five Member States (Denmark, Spain, France, the Netherlands and the United Kingdom) accounting for 60 % of EU production, whilst the fishing industry in the EU as a whole lands an annual catch of approximately 6.4 million tonnes of fish ([5]).

2.3 However, globalisation, particularly at the present time of crisis, has posed a serious challenge for jobs and competitiveness in the maritime sector, inevitably affecting various aspects of employment in terms of quality and quantity of jobs.

2.4 More generally, gradual deregulation in the maritime labour market since the early 1980s ([6]) has led to a decline in the number of European seafarers, a shortage of properly trained personnel and recruitment of crews from third countries. These trends can be attributed ([7]), amongst other things, to career constraints, isolation and distance from families and low job status, coupled with the impression that jobs in this sector are insecure and working conditions poor.

2.5 The causes of this decline can also be ascribed to supply and demand and to competitive pressures in the maritime sector which, at a difficult time of globalisation and structural, cyclical crisis, can also have the effect of driving wages down.

3. **The proposal for a Directive**

3.1 The present proposal introduces amendments to directives ([8]) which are already in force and either exempt Member States or allow them, without express justification, to exclude seagoing workers and/or fishermen from their scope. Decisions on the use of these exclusions have varied from Member State to Member State.

([3]) SWD(2013) 461 final.

([4]) ECSA (European Community Shipowners' Association), Annual Report 2011-2012.

([5]) Eurostat, Fishery statistics, September 2012.

([6]) Silos, J. M., Piniella, F., Monedero, J., & Walliser, J. (2012). *Trends in the global market for crews: A case study.* Marine Policy, 36(4), pp. 845–858.

([7]) COM(2006) 275 final Volume II — ANNEX, chapter 2.5.

([8]) Directives 2008/94/EC relating to the protection of employees in the event of the insolvency of their employer; 2009/38/EC on the establishment of a European Works Council; 2002/14/EC establishing a general framework for informing and consulting employees; 98/59/EC on collective redundancies; 2001/23/EC relating to the safeguarding of employees' rights in the event of transfers of undertakings; 96/71/EC concerning the posting of workers in the framework of the provision of services.

3.2 In particular, the proposal for a directive recognises an unconditional right to information and consultation of seagoing workers in all the directives which previously allowed for exclusions and derogations from this right.

3.3 Given that the best approach might vary from one directive to another and following an assessment of the impact, the scope and grounds for exclusion, the Commission has decided on a combination of the following four policy options:

— Policy option 1: no action (Posting of Workers Directive);

— Policy option 2: derogation subject to the guarantee of an equivalent level of protection (Information and Consultation Directive);

— Policy option 3: suppression of the exclusions (European Works Council and Insolvency Directives);

— Policy option 4: adaptation of rules (specific provisions) to the special characteristics of the sector (Collective Redundancies and Transfer of Undertakings Directives).

4. **Policy framework**

4.1 The Green Paper 'Towards a future Maritime Policy for the Union' ([9]) raised the issue of the exclusion of maritime sectors from European labour and social law and of their reassessment in close cooperation with the social partners, while also stressing the importance of maritime skills when it comes to competitiveness and sustainable maritime employment, given the falling number of European seafarers.

4.2 In its communication of 10 October 2007 ([10]), the Commission undertook to improve the legal framework for the maritime professions, noting that there is no reason to exclude workers from the scope of application of certain directives where it is not entirely justified.

4.3 In the Blue Paper on an integrated maritime policy (IMP) for the European Union, the Commission reiterated its commitment to re-examining, in close cooperation with the social partners, those areas of labour law from which the maritime professions are excluded ([11]); the purpose of IMP, meanwhile, is to generate more and better jobs and vocational qualifications in response to the worrying decline in employment levels in the maritime professions.

4.4 The European Parliament, meanwhile, has called in a resolution ([12]) for all workers to be granted access to the same level of protection without certain groups being automatically excluded from the current safety net, which is what often happens to seafarers, ship workers and/or off-shore workers, and for the law in force to apply to all, regardless of workplace.

4.5 The Commission recently reaffirmed its objective to increase the number and quality of jobs in the maritime sector in its Communication on Blue Growth ([13]), and again in the Limassol Declaration, endorsed by the European Ministers responsible for Integrated Maritime Policy ([14]).

5. **Comments**

5.1 The EESC would note that the proposed directive, which was published following wide-reaching specific and general consultations, stems directly from the above-mentioned policy framework. It is the logical culmination of clearly stated objectives, commitments and concerns regarding the future of the maritime professions and aims to provide an effective legislative framework that takes the global maritime context into account.

([9]) COM(2006) 275 final of 7.6.2006; Chapter 2.5.
([10]) COM(2007) 591 final of 10.10.2007.
([11]) COM(2007) 575 final of 10.10.2007.
([12]) 2007/2023(INI) of 11.7.2007.
([13]) COM(2012) 494 final of 13.9.2012.
([14]) Limassol Declaration, 7.10.2012.

5.2 The EESC considers the proposal for a directive to be consistent with other cross-cutting policies and objectives, such as the Europe 2020 strategy, especially with regard to employment, and the agenda for new skills and jobs ([15]), which contains basic measures to improve the quality of working conditions and, more specifically, revisits current legislation with a view to securing a smarter legal framework for employment, and health and safety at work.

5.3 The EESC has already drawn attention to the exclusion of seafarers and fishermen from European social law and the need to put an end to discrimination, regardless of the grounds, wherever this is deemed appropriate, and calls on the Commission to re-examine the exceptions in close cooperation with both sides of industry ([16]).

5.4 In previous opinions ([17]), the EESC has also made a number of important remarks and suggestions in connection with a series of issues relating to European maritime policy and has taken a detailed stance on general labour and social policy issues relating to the maritime professions and, more specifically, the issues of education/training/certification, recruitment and safety at sea, demonstrating the need to encourage and attract young people into maritime careers and retain them by ensuring a high level of know-how and specialisation within European maritime clusters.

5.5 The EESC's comments for instance on human resources, seamanship and maritime know-how, included in its opinion on strategic goals and recommendations for the EU's maritime transport policy until 2018, remain especially relevant, as do its suggestions regarding the fight against piracy ([18]) which, along with criminalisation of seafarers, has had a deterrent effect on the maritime professions.

5.6 The EESC would point out that the wide range of general and specific consultations highlighted conflicting opinions regarding whether and which exceptions were justified, but revealed a consensus regarding the need for a level playing field and the role that social legislation can play. The EESC regrets, however, that — in spite of the written consultations — the subject did not figure on the agenda of the social dialogue committee.

5.7 The EESC would underline the comment made by the Task Force on maritime employment and competitiveness ([19]) that developments in communications technology mean that exceptions based on the itinerant nature of ships and difficulties communicating with ships at sea can no longer be justified, particularly when it comes to information and consultation.

5.8 The EESC notes that information and communications technology (ICT) is gradually being introduced on board vessels, but in some instances it will be a while before it is fully operational owing to technical difficulties, particularly in the case of small and medium-sized enterprises. It would therefore urge the Commission to draw up a package of investment and training measures for this sector so that the proposed directive can be effectively implemented.

5.9 The EESC points out that the European Union is a world leader in the area of labour rights and calls on the Commission to spearhead efforts to upgrade international standards so that all the Member States ratify the ILO's Maritime Labour Convention (MLC, 2006) and to secure broad international cooperation with a view to achieving a more effective application system, compliance with minimum ILO standards by all countries that have ratified the MLC and ratification by a greater number of countries. It should be emphasised that although EESC supports the MLC, 2006, it is recognised that it does not provide the same rights as those afforded under the Directives in question.

([15]) COM(2010) 682 final of 23.11. 2010.

([16]) OJ C 168, 20.7.2007, pp. 55-56.

([17]) OJ C 158, 26. 5.1997, p. 11; OJ C 14, 16.1.2001, p. 41, OJ C 80, 3.4.2002, pp. 9-14; OJ C 133, 6.6.2003, pp. 23-25; OJ C 157, 28.6.2005, pp. 42-47; OJ C 157, 28.6.2005, pp. 53-55; OJ C 318, 23.12.2006, pp. 195-201,; OJ C 97, 28.4.2007, pp. 33-34; OJ C 168, 20.7. 2007, pp. 50-56; OJ C 211, 19.8.2008, pp. 31-36; OJ C 151, 19.8.2008, p. 35; OJ C 255, 22.9.2010, pp. 103-109; OJ C 107, 6.4.2011, pp. 64-67; OJ C 248, 25.8.2011, pp. 22-30, OJ C 24, 28.1.2012, pp. 146-153 , OJ C 76, 14.3.2013, pp. 15-19; OJ C 161, 6.6.2013, pp. 87-92; OJ C 43, 15.2.2012, pp. 69–72; OJ C 299, 4.10 2012, pp. 153-157 and TEN/533 of 16.6.2013 COM(2013) 510 final.

([18]) OJ C 255, 22.9.2010, pp. 103-109 and OJ C 76, 14.3.2013, pp. 15-19.

([19]) http://ec.europa.eu/transport/modes/maritime/seafarers/doc/2011-06-09-tfmec.pdf.

5.10 If the decline in maritime employment levels is to be reversed, measures are needed to carry through the institutional changes proposed with a view to securing well-designed maritime education and training in order to boost skill levels, thus guaranteeing greater employment opportunities and increasing professional mobility between sectors.

5.11 It also remains of paramount importance to bolster SMEs, as they form the backbone of the European maritime sector and have paid a high price during the crisis. Furthermore, joint projects must be promoted that can boost innovation and develop new business concepts and, more generally, offer robust support for private enterprise and EU maritime sector institutions.

5.12 Doing more to champion and harness the potential of maritime clusters, which are vitally important to the EU's economic and social interests, could help, not least, to secure alternative employment for fishermen and women.

5.13 The EESC would note the need for systematic data collection and the harmonisation of sources in relation to maritime sector employment as the figures of the various sources differ significantly; this would boost the credibility of future studies.

5.14 The EESC welcomes the removal of the possibility of excluding share-fishermen from the scope of the Insolvency Directive (Article 1 of the proposed directive).

5.15 As regards Directive 2001/23 (transfer of undertakings), the EESC points to the special features affecting transfers of vessels involving a change of flag and notes that seafarers could end up being employed under different or less favourable conditions because of variations in collective agreements. In view of this, it urges the Commission to draw up new provisions to ensure that this directive also applies to transfers of ships with a change of flag, otherwise it might have the opposite effect by eroding seafarers' rights. It would ask the European Commission to take account of the above comments.

5.16 The EESC notes that the Commission is endeavouring to take into consideration the special characteristics of maritime transport and maritime labour particularly in respect of Directive 1998/59 (collective redundancies) and stresses the need for legal certainty regarding employment contracts and to safeguard investments, as well as to prevent social dumping and unfair competition.

5.17 The EESC proposes the following amendment to Article 1(2) of Directive 2008/94/EC on the protection of employees in the event of employer insolvency:

Subject to the following proviso, Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this directive, by virtue of the existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this directive. The above provision must under no circumstances be understood to mean that seafarers or fishermen may be excluded.

5.18 The EESC considers that the review clause (Article 7 of the proposed directive) aimed at monitoring the implementation/application in the Member States of Articles 4 and 5, particularly concerning two key issues — the phenomenon of flagging out and the level of employment of EU seafarers — guarantees the application of the proposed regulations in a way that will take account of the sector's particularities.

5.19 The EESC underlines the key role of employers and employees in questions relating to labour law. It is convinced that the social partners will make a decisive contribution to broadening the dissemination of best practice and to attracting young people into maritime careers, while increasing opportunities for maritime employment in the EU and making full use of social dialogue in practice so as to ensure that this legislative initiative is introduced in a correct and productive manner.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States'

COM(2013) 814 final — 2013/0400 (CNS)

(2014/C 226/07)

Rapporteur: **Mr DANDEA**

On 16 December 2013, the Council of the European Union decided to consult the European Economic and Social Committee, under Article 115 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Directive amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

COM(2013) 814 final — 2013/0400 (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 13 March 2014 (rapporteur: Mr Dandea).

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 145 votes to 3, with 10 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the proposal for a directive ([1]) amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries (Parent-Subsidiary Directive), and considers that it is a major step forward in implementing the action plan to strengthen the fight against tax fraud and tax evasion ([2]).

1.2 Considering that every year the Member States lose billions of euros as a result of tax fraud and tax evasion, as well as aggressive tax planning which generally involves speculation on gaps and inconsistencies between national legislation, the Committee can only endorse the Commission proposal aiming to implement the general anti-abuse rule (GAAR) provided for in its recommendation ([3]).

1.3 The Committee supports the equal treatment of cross-border groups with regard to taxation of profits, as it is known that in some circumstances the provisions of the current directive give these groups scope to use hybrid financial instruments enabling them to obtain tax advantages which undermine competition within the single market.

1.4 As the GAAR is very broad, the Committee recommends that when implementing this directive, Member States take account of the Commission's recommendation on aggressive tax planning as well as the interpretation of the European Court of Justice establishing the principle whereby when combating abusive commercial practices the general principle of EU law must not be exceeded. The Committee recommends that the Commission draw up a recommendation which will help the Member States ensure that the transposition of the directive is legally correct.

1.5 The Committee asks that during the transposition process, the Member States should adhere to a very clear legal definition of the concepts set out in Article 1a(2) in order to ensure that the directive is implemented correctly, without creating complicated situations for businesses and tax administrations. Phrases such as 'artificial transaction', 'reasonable business conduct' or transactions which are 'circular in nature' therefore need to be transposed into clear legal language in order to avoid creating implementation problems for businesses, tax administrations or the legal system.

([1]) COM(2013) 814 final.
([2]) COM(2012) 722 final.
([3]) C(2012) 8806 final.

2. **The Commission proposal**

2.1 The Commission proposal aims to tackle the inconsistencies between national legislation as regards hybrid financial instruments within the remit of the Parent-Subsidiary Directive and to introduce a general anti-abuse rule in order to safeguard the functioning of the directive.

2.2 The proposal for a directive is based on Article 115 of the Treaty on the Functioning of the European Union, whereby the Council may issue directives for the approximation of the laws, regulations or administrative provisions of the Member States which directly affect the functioning of the internal market, as the Commission considers that this is the only means of implementing the GAAR.

2.3 The proposal is needed as individual action on the part of Member States in response to inconsistencies between hybrid financial instruments would not solve the problem which is largely the result of interaction between national legislation.

2.4 Although the Parent-Subsidiary Directive contains an anti-abuse clause, it is not sufficiently clear and could give rise to confusion. The inclusion of a GAAR, in accordance with the Commission recommendation, will do away with this lack of clarity and provide Member States with a more effective instrument.

3. **General and specific comments**

3.1 The Committee has endorsed ([4]) this amendment to the Parent-Subsidiary Directive and called on the Member States to ensure that the implementation process takes place within a reasonable timeframe.

3.2 The Committee has said that, as part of this review, it is important to introduce an obligation for multinational companies to draw up separate accounts for each country in which they operate, specifying production volumes and profits made. If accounts were presented in this way, it would be easier to identify companies misusing transfer pricing or pursuing aggressive tax planning. Moreover, the Committee has recommended introducing legislation on the taxation of corporate profits, based on a set of common rules. The Committee regrets that these aspects were not given sufficient weight when this proposal for a directive was drawn up.

3.3 The Committee recommends that the Commission provide the Member States with support when they implement this directive. To this end, the Commission should present a recommendation clarifying issues related to the transposition into legal terms of the concepts set out in the GAAR.

3.4 The Committee points out that implementing the directive using very broad definitions could create extremely difficult situations for businesses and tax administrations.

3.5 With regard to the implementation of Article 1a(2), a clear definition of the concept of 'artificial transaction' is needed. The Committee accordingly recommends that Member States make use of the OECD Guide ([5]), particularly the provisions on corporate restructuring. The Committee also recommends drawing on European Court of Justice case-law with regard to 'wholly artificial arrangements'. A transaction may be carried out in the most advantageous way possible for tax purposes without automatically constituting an artificial transaction.

3.6 With regard to the implementation of Article 1a(2)(b), the Committee considers that there is a need for a clear definition of the concept of 'reasonable business conduct'. Incorporating this expression into national legislation without any clear definition thereof will create complicated legal situations, with disputes centring on business conduct.

3.7 The Committee considers that with a view to implementation, it is necessary to clarify aspects relating to transactions which are 'circular in nature'. Circular transactions which have economic substance and comply with legal requirements are part of normal commercial practices. Such transactions should not come under the tax measures used to transpose this directive.

([4]) OJ C 67, 6.3.2014, p. 68.

([5]) OECD Model Tax Convention, Chapter C5, Articles 9181 and 9182.

3.8 The Committee recommends that the Member States should grasp the opportunity inherent in the transposition of this directive to simplify their national legislation on taxation of profits. This could be the first step towards EU-wide harmonisation of legislation in this area.

Brussels, 25 March 2014.

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 amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure'

COM(2013) 794 final — 2013/0403 (COD)

(2014/C 226/08)

Rapporteur: **Ms Mader**

On 9 December and 16 December 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 Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

COM(2013) 794 final — 2013/0403 (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 11 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 128 votes to two, with one abstention.

1. **Conclusions and recommendations**

1.1 The European Economic and Social Committee (EESC) takes good note of the proposal for a regulation, which is intended to improve access to justice in cross-border disputes and thus help to boost cross-border trade.

1.2 The Committee supports the proposal to extend the procedure's scope by raising the ceiling to EUR 10 000 and broadening the concept of 'cross-border disputes', which will make it easier for consumers and SMEs to use the procedure.

1.3 The EESC endorses the proposal to limit the costs of proceedings, as these costs present a real disincentive for consumers and small businesses when deciding whether or not to start proceedings. The Committee recommends, however, that the term 'costs of proceedings' be clearly defined, to ensure that the measure is effective.

1.4 The Committee is pleased to note that judgments remain enforceable under this regulation, with recourse to the exequatur procedure no longer being required.

1.5 The EESC believes that the success of the European small claims procedure will depend just as much on the simplification and straightforwardness of the measures entailed as on raising the ceiling.

1.6 The Committee highlights the Commission's desire to encourage the use of new technologies notwithstanding the fact that this is an approach which diverges from well-established practices and will have an impact on the workings of the courts; introducing it in all small claims courts may not be an easy matter.

1.7 However, the Committee considers that all ways and means of making procedures easier for the parties should be supported, provided that they do not jeopardise the effectiveness of the parties' rights of defence and the application of the fundamental principles of civil law recognised by all Member States. The Committee notes and welcomes the fact that these technologies may only be used with the agreement of the parties.

1.8 In this context, the Committee wonders about the means of redress available under the small claims regulation.

1.9 The Committee also stresses the need for vigilance as regards the security and confidentiality of electronic exchanges of documents relating to legal proceedings.

1.10 The Committee reiterates the need to provide for consumers and SMEs to have access to assistance throughout proceedings, especially since the services of a lawyer are not mandatory. Resources, especially financial resources, would need to be made available for this purpose.

1.11 On this point, the Committee considers that consumer associations, European consumer centres and business federations which have experience in this area, could play a useful role in providing such assistance and in informing people of the existence of this procedure.

1.12 The EESC draws attention to the fact that the stated aim of encouraging the regulation of small disputes will not be achieved unless appropriate information on its existence is made available by the different stakeholders concerned, by the courts and by institutions providing legal training ([1]).

1.13 The EESC considers, furthermore, that in order to be effective, the procedural forms must be clear and easy for everyone to understand. It is essential that the official language of the country of the parties be used, including for the proceedings and especially for the hearing. In order to comply with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union on the right to an effective remedy and the right of defence, this requirement should not be confined to the translation of forms.

1.14 The EESC notes that the arguments put forward concerning the principles of subsidiarity and proportionality make a useful contribution to the debate on establishing a European action group.

2. **Introduction**

2.1 The aim of the Commission proposal is to connect with the general public, consumers and SMEs by providing easier access to justice and boosting their confidence, encouraging them to take advantage of the opportunities offered by the single market.

2.2 It is one of the 12 practical measures outlined in the second EU Citizenship Report designed to strengthen the rights of Union citizens, in this instance by facilitating the settling of disputes regarding purchases made in another Member State.

2.3 The initiative is also recommended in the European Consumer Agenda and the Small Business Act as a means of improving enforcement of consumer and SME rights.

2.4 Building on the experience gained since the entry into force of Regulation (EC) No 861/2007 ([2]) complementing the usual national procedures for debt recovery, and after holding a number of consultations, the Commission proposes to simplify the procedure still further, making it less costly and more in tune with the needs of both consumers and small and medium-sized enterprises.

2.5 The European Small Claims Procedure established by Regulation (EC) No 861/2007 can be summarised in a few key points:

— it applies to border disputes not exceeding EUR 2 000 at the time the claim is received;

— the claimant must use a 'Type A' form and send it to the competent court by post or by any other means of communication acceptable to the Member State in which the procedure is launched;

— the form includes a description of any evidence and, where appropriate, supporting documents;

— this is, in principle, a written procedure, unless the court decides otherwise;

— the parties may have legal representation but this is not mandatory;

— the court should in principle give its judgment within 30 days of hearing the views of the parties at a hearing or of having received all the information it needs to take a decision.

2.6 The judgment given by the court is enforceable and automatically recognised in all Member States. At the request of one of the parties, the court shall issue a certificate confirming the judgment, at no extra cost.

([1]) Universities, law schools, judicial training institutes, etc.

([2]) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199 of 31.7.2007, p. 1).

2.6.1 As provided for by the 2007 regulation, the Commission carried out an evaluation before 1 January 2014, the initial results of which it deems encouraging, as it found that use of this procedure would reduce costs by 40 % and would shorten the average length of disputes from two years to five months ([3]).

2.7 The Commission takes the view, however, that the procedure would be even more effective if the ceiling were increased in order to enable SMEs to use it too.

3. **Commission proposal**

3.1 This provides for two main sets of measures: purely legal measures and more practical measures, all of which are aimed at reducing the cost of proceedings.

3.2 Legal measures

3.2.1 The first measure aims to raise the ceiling from EUR 2 000 to EUR 10 000 in order to enable SMEs to use this procedure, which is entirely optional.

3.2.2 The second measure concerns extending the definition of a cross-border dispute, thereby ensuring that the regulation applies to all claims with a cross-border component, including those involving third-country nationals.

3.3 Practical measures

3.3.1 In order to reduce costs, the Commission proposes that electronic exchanges of documents, videoconferencing or teleconferencing be commonly used when oral hearings are required.

3.3.2 It also wishes to cap judicial costs at a maximum of 10 % of the value of the claim, with an authorised threshold of EUR 35, the amount payable by bank transfer or online by credit or debit card.

4. **General comments on the proposal**

4.1 The EESC considers the proposal to be relevant, but notes that the procedure must be clear and transparent if it is to serve its purpose. This means that the forms must be suitable for all target groups.

4.1.1 Furthermore, claimants and courts must be provided with information on the proposed arrangements. In this respect, the EESC would point out that courts were informed very belatedly about the European order for payment procedure and the European small claims procedure by an information brochure produced by the European Judicial Network in civil and commercial matters ([4]).

4.1.2 Encouraging the use of electronic means of communication, including for the service of documents, and imposing on courts the obligation to use videoconferencing for hearings, unless one of the parties requests otherwise ([5]), represent an approach that diverges from well-established practices. This will have an impact on the workings of the courts. It will also require technical assistance for claimants, especially since the procedure may take place without the services of a lawyer.

4.2 With regard to the substance, the most important measure is that of raising the ceiling from EUR 2 000 to EUR 10 000.

4.2.1 The main beneficiaries of this change will be SMEs which, according to the Commission's figures, account for only 20 % of current claims, as detailed in the impact assessment, based on answers given by a sample group that the EESC considers to be rather limited.

4.2.2 While the Committee supports raising the ceiling to EUR 10 000, it thinks that this ceiling might be rather high, given the average amounts involved in consumer claims.

4.3 The stated aim is to restore confidence and boost trade within the internal market, while making justice more effective. This being the case, the EESC wonders about the remedies available under the small claims regulation.

([3]) Point 3.2 of the impact assessment.

([4]) Citizens' guide to cross-border civil litigation in the European Union.

([5]) Article 8 of the proposal for a regulation.

4.4 In the EESC's view, this aim is a welcome one, but highlights the numerous national differences in this area. It notes, for instance, that the proposal aims to limit the 'costs of proceedings', but this concept may be understood differently from one Member State to another, as seen in the data on the 26 Member States featured on the e-justice website, and in the European Commission Study on the Transparency of the Costs of Civil Judicial Proceedings in the EU ([6]).

4.5 The Committee thinks that the 10 % ceiling for costs of proceedings is high. It could have a negative impact in the Member States where costs do not reach this level.

4.6 By raising the ceiling for claims and by broadening the concept of what constitutes a 'cross-border dispute', the proposal is indicating to the public at large and SMEs that it is attentive to their very real concerns and is taking action to address them.

4.7 It also reflects the results of a Eurobarometer survey published in April 2013, in which 45 % of the businesses questioned stated that they did not take legal action because judicial costs were disproportionate to the value of their claim.

4.8 The proposed revision also entails an obligation to amend Regulation (EC) No 1896/2006 concerning the European order for payment procedure ([7]). This provides that a statement of opposition filed by the defendant should lead to an automatic transfer of the case to ordinary civil proceedings. Since the entry into force of Regulation (EC) No 861/2007, however, this restriction is no longer justified for small claims.

4.9 Regulation (EC) No 1896/2006, which ought already to have been revised, should stipulate that when a dispute is covered by the European small claims procedure, this procedure should also be open to a person or an undertaking involved in a European order for payment procedure and that has filed a statement of opposition to a European order for payment.

4.10 The EESC notes that the discussion on the principle of subsidiarity and proportionality makes a positive contribution to the implementation of European collective action.

5. **Specific comments on the proposal**

5.1 The use of videoconferencing systems is an interesting idea, although it does not yet appear to be something that all small claims courts can implement easily.

5.2 Many do not have a website and do not communicate by electronic means. It remains common practice to have to go in person to obtain the forms needed for bringing legal proceedings, as such proceedings are still paper-based. The Committee also stresses the need for vigilance as regards the security and confidentiality of electronic exchanges of documents relating to legal proceedings.

5.3 In this regard, the EESC stresses that the forms must be clear and easily understandable. The assistance envisaged by the proposal must therefore be adequate, which would require a significant financial investment by States at a difficult time.

5.4 Lastly, information for the claimant is the main issue that needs to be addressed in order to ensure effective justice. The claimant, in particular the consumer and SMEs, must have access to reliable and independent information, in order to be able to make an informed choice as to the course to adopt.

5.5 Experienced consumer associations, European consumer centres and business federations have a fundamental role to play in providing this high-quality information.

5.6 For example, the European Judicial Enforcement (EJE) project contains very practical files and factsheets that are primarily aimed at bailiffs, but which would be useful to a much wider audience, since they concern access to the law and the exercise of rights. Such sources of information are not widely available, however.

([6]) https://e-justice.europa.eu/; https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do?init=true (Demoulin, Brulard, Barthélémy, Hoche).

([7]) OJ L 399 of 30.12.2006, p. 1.

5.7 To conclude, the EESC reiterates the need to enable parties to have the entire procedure conducted in their official language. This requirement has its origins in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union concerning the right to an effective remedy and the right of defence, which should not be confined to simply translating forms.

Brussels, 25 March 2014.

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 protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

COM(2013) 813 final — 2013/0402 (COD)

(2014/C 226/09)

On 9 December and 13 December 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 Directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

COM(2013) 813 final — 2013/0402 (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 11 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 138 votes to 2 with 3 abstentions.

1. **Conclusions and recommendations**

1.1 In reality, trade secrets cover all information (technology, formulas, marketing information, etc.) with an economic value whose confidentiality should be protected. They are therefore part of businesses' intangible assets.

1.2 The protection of these intangible assets is as crucial for businesses, and especially SMEs, as it is for non-commercial research bodies, and is necessary for the EU's competitiveness, if only to promote innovation and the development of new ways of undertaking and encouraging collaborative research or cross-border cooperation.

1.3 There is no uniform definition or harmonised legal protection of the notion of trade secrets in the EU.

1.4 The Committee supports the objective of the Commission proposing that the legal protection of know-how and trade secrets be harmonised, since they are key elements in promoting businesses' capacity for innovation in general and their competitiveness, especially that of SMEs.

1.5 The Committee notes that protection of trade secrets against their unlawful acquisition and use as envisaged in the proposed directive is very close to what was introduced by EC Directive 2004/48 on the enforcement of intellectual property rights, such as copyright, trademarks, designs or patents, especially in the sense that it requires the Member States to ensure that the legitimate holder of a trade secret has access to effective civil redress.

1.6 The Committee welcomes the balanced approach of the proposed directive in that it seeks to guarantee greater legal certainty and enhance the value of innovations covered by the trade secrets by means of greater legislative convergence compatible with international law, including in particular the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

1.7 Although it is in line with the TRIPS agreement, the definition of trade secret does not appear to be precise enough to cover all categories of information which would be suitable for protection under this heading.

1.8 The Committee believes that the Commission could spell out in a recital that information with potential commercial value could also be protected under the heading of trade secrets.

1.9 The EESC urges the Commission to act on this subject without any further delay.

2. **Introduction**

2.1 Know-how and trade secrets (undisclosed business information) must be protected in order to promote businesses' capacity for innovation and their competitiveness.

2.2 In reality, the notion of trade secrets covers all information (technology, formulas, marketing information, etc.) with an economic value whose confidentiality should be protected.

2.3 They do not constitute exclusive intellectual property rights, but they often form their basis. For example, know-how or trade secrets based on research and development which has required significant financial and human investments often form the basis of patents.

2.4 The concept of trade secrets is itself not uniform across the European Union. The only harmonised definition of trade secrets can be found in the World Trade Organization's TRIPS Agreement and is based on three cumulative conditions:

— **the information must be secret**; i.e. the secret is generally unknown to stakeholders or difficult for them to access;

— **it must have commercial value**. In reality, this commercial value stems from its confidential nature;

— finally, the legitimate holder must have taken reasonable measures to keep the trade secret confidential.

2.5 In the absence of a uniform understanding of trade secrets in the EU, their legal protection is fragmented across the different legal systems of the Member States.

2.6 However, uniform Europe-wide legal protection of trade secrets makes all the more sense at a time when industrial espionage and the risks of computer hacking have reached worrying proportions, especially in sectors where research and development and financial investment play a major role (automotive, telecommunications, pharmaceutical, etc.).

2.7 The Committee supported the Commission's earlier efforts to deal with piracy and set out its thoughts on the subject ([1]).

3. **The Commission's proposal**

3.1 The proposal is the outcome of a consultation, on the basis of which the Commission identified discrepancies between Member States' national legislations specifically as regards the definition of trade secrets and remedies available to the trade secret holder.

3.2 The proposal is based on a twofold premise: the disparity between national legislations acts as a brake on cross-border collaborative research and it undermines the competitiveness of businesses whose trade secrets could be stolen in the Member States providing the least protection.

3.3 It therefore seeks to harmonise protection of these intangible assets which are not considered to be intellectual property rights.

3.4 *Definition of trade secret*

3.4.1 The Commission draws on the definition of trade secrets contained in the TRIPS Agreement, proposing that three cumulative conditions be met in order for information to be 'a protectable trade secret':

— it must be secret, i.e. it must not be known or be readily accessible to people in circles who normally deal with the kind of information in question;

— the information must be valuable because of the fact it is secret;

— the holder must have taken reasonable measures to keep the information secret.

3.5 *The notion of misappropriation*

3.5.1 In addition to unauthorised access to any medium containing a secret, theft, bribery, deception and breach of confidentiality agreement, Article 3 of the proposal introduces any conduct contrary to honest commercial practices.

3.5.2 It also stipulates that any subsequent use or disclosure is unlawful under the same circumstances or whenever a person, at the time of use or disclosure, could not have been unaware that their source of information had obtained the secret unlawfully.

([1]) OJ C 306, 16.12.2009, p. 7; OJ C 18, 19.1.2011, p. 105.

3.6 *Lawful acquisition, use and disclosure*

3.6.1 Article 4 of the proposed directive excludes a number of scenarios:

— independent discovery or creation;

— reverse engineering, i.e. a trade secret is no longer protected as soon as it can be revealed by the product that incorporates it;

— exercise of the right of workers' representatives to information and consultation, including information provided by workers to these representatives;

— freedom of expression and information;

— the activities of whistle-blowers if additional conditions are met: necessary use or disclosure and in the public interest;

— the practice conforms to honest commercial practices, fulfilment of a non-contractual obligation, protection of a legitimate interest.

3.6.2 The article safeguards innovation as it expressly clarifies that independent discovery and reverse engineering are legitimate means of acquiring information.

3.7 *Remedies available to a trade secret holder*

3.7.1 It is the responsibility of the Member States to provide for effective civil redress against unlawful acquisition of trade secrets.

3.7.2 In connection with the recurring debates on the abuse of the infringement seizure procedure, the proposed directive also asks the Member States to impose penalties on improper claims aimed at unfairly delaying or restricting the respondent's access to the market or to intimidate or harass them.

3.7.3 Article 8 of the proposal also draws on competition law, setting out a series of protection measures to prevent disclosure of trade secrets during legal proceedings: restricting access to any part of the document containing the trade secret, restricting access to hearings and removing passages containing trade secrets from the non-confidential version of the judicial decision.

3.7.4 In terms of interim measures, the trade secret holder who has been injured must be able to obtain a ban on disclosing or using the trade secret, a ban on producing, placing on the market or using infringing goods and be able to ensure the seizure or delivery of these goods.

3.7.5 The proposal provides for numerous other procedural guarantees. For example, the court must be able to order the respondent to lodge a guarantee to enable the holder to be compensated.

4. **General comments on the proposed directive**

4.1 The proposed directive provides a broad enough definition of trade secrets to cover, for example, formulas, research or studies which are not yet subject to intellectual property rights.

4.2 It seeks to boost the competitiveness of businesses and European research bodies which rely on know-how and trade secrets that cannot be protected by intellectual property rights as it is impossible for them to gain exclusive rights over such matters.

4.3 Traditional industrial property rights such as patents, trademarks, designs and models fail to take account of a significant proportion of the knowledge and information that is nonetheless necessary for the economic growth of businesses.

4.4 In fact, SMEs often resort to trade secrets to protect this vital information, in the absence of specialist human resources or adequate financial capacity to pursue, manage, defend and enforce their industrial property rights.

4.5 In order to overcome these obstacles, businesses often provide for non-disclosure agreements in their contracts with their employees or sub-contractors. The rules on the protection of trade secrets must not lead to restrictions on freedom of expression, on people's ability to blow the whistle on irregularities, or on employees' ability to change employers and still make use of the general knowledge and experience they have acquired.

4.6 The proposal can play its full role in this context, especially as current economic activity increasingly encourages the use of sub-contractors, meaning that service providers may have temporary access to all sorts of sensitive information.

4.7 In addition, the improvement of information and communication systems makes it easier to hack, misappropriate and divulge trade secrets, which increases the risk that they will be used in third countries to produce goods which then start to compete on the European market with the business that has been the victim of unlawful appropriation.

4.8 The EESC points out that the increasing stringency of reporting requirements, particularly for listed companies, is jeopardising business confidentiality. In practice, the information in these reports becomes public and is accessible to any investor, who may turn out to be — or may become — a competitor.

4.9 The EESC believes that the proposed directive should also take account of Article 4, the risk of disclosure of trade secrets associated with the reporting requirement imposed on members of boards of directors or supervisory boards of listed companies.

5. **Specific comments on the proposed directive**

5.1 This proposal provides for numerous procedural guarantees, including interim and precautionary measures, as well as corrective measures and remedies following a court ruling of a material disclosure of a trade secret, such as destruction of information held by the infringer, the recall and destruction of the products concerned, the calculation of damages which must take account of moral prejudice, and the publication of the decision.

5.2 The damages awarded at the request of the injured party will have to correspond to the prejudice actually suffered, taking account of material and moral aspects.

5.3 However, the judge may set a lump sum in 'appropriate cases', calculated for example on the basis of royalties or fees which would have been due had the use been authorised.

5.4 The Committee stresses that the criminal law concepts of 'theft', 'bribery' and 'deception' included in Article 3 of the proposed directive are used in order to make clear the notion of 'unlawful acquisition, use and disclosure of trade secrets'.

5.5 The Commission's intention is to harmonise civil law remedies with a view to enabling innovative enterprises to defend their trade secrets effectively across the EU. This is clear from Article 5 *General obligation* which stipulates that the Member States shall provide for the measures, procedures and remedies to ensure the availability of civil redress (the Committee stresses this aspect).

5.6 What is more, it would appear that the proposed directive likens trade secrets to a form of intellectual property, with the exception of exclusivity. The protection put in place is very similar to the procedures provided for under Directive EC 2004/48 on the enforcement of intellectual property rights, such as copyright and related rights, trademarks, designs or patents adopted in April 2004, the revision of which is also under consideration. With respect to Article 4, the EESC considers it very important for employees to be able to consult a trade union representative if they uncover an irregularity or other situation in a workplace, without infringing the rules in this respect. In the EESC's view, the directive should include protection from reprisals for employees who use the options provided for in Article 4.

5.7 In connection with the recurring debates on the abuse of the infringement seizure procedure ([2]) (ex parte procedure), the Committee welcomes the fact that the proposal nonetheless diverges from directive EC 2004/48, by stressing explicitly in Article 10(2) that the judicial authorities of the Member States will have to assess the proportionality of the interim and precautionary measures.

5.8 Likening trade secrets to a form of intellectual property goes as far as including the concept of 'honest commercial practices' in the proposed directive. This concept already exists in the TRIPS agreement.

([2]) Court of cassation, civil, commercial chamber, 12 February 2013, 11-26.361 'Société Vetrotech Saint-Gobain international'; 3rd chamber of the Paris civil affairs court 15 November 2011 'Sociétés JCB', commented on by Laurent Labatte, Marks & Clerk France, industrial property consultants.

5.9 The Court of Justice of the European Union has itself had the opportunity to interpret the notion of 'honest practice' ([3]) taken from Directive 89/104/EEC on the approximation of the laws of the Member States relating to trade marks.

5.10 Despite the notable progress made in the proposal, the adoption of the directive will not exempt businesses from introducing relevant preventative measures to protect their trade secrets, i.e. technical, organisational and contractual measures.

5.11 It therefore seems too simplistic to limit information which could be defined as trade secrets to information with an immediate commercial value, since some information of an economic, industrial, technical or scientific nature may not have direct but potential commercial value, especially when this information relates to technical or scientific research and development data.

5.12 The EESC proposes adding to the list in Article 4.1 a stipulation that the acquisition of trade secrets shall be considered lawful when obtained by means of:

e) performance of the reporting requirements imposed on members of boards of directors or supervisory boards of listed companies.

5.13 The EESC also proposes adding to the list in Article 4.2 the stipulation that the Member States must ensure that there is no entitlement to the application for the measures, procedures and remedies provided for in the directive when the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

f) disclosure of the trade secret in the performance of reporting obligations imposed on members of boards of directors or supervisory boards of listed companies.

Brussels, 25 March 2014.

The President
of the European Economic and Social Committee
Henri MALOSSE

([3]) See, *inter alia*, Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks and the case law of the Court of Justice on the interpretation of the notion 'honest practice', ECJ 15 March 2005, case C 228/03, the Gillette Company and Gillette Group Finland Oy v LA-Laboratories Oy.

APPENDIX

to the opinion of the European Economic and Social Committee

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

Point 4.5

4.5 *In order to overcome these obstacles, businesses often provide for non-disclosure agreements in their contracts with their employees or sub-contractors.*

Outcome of the vote on the amendment:

Votes in favour:	80
Votes against:	46
Abstentions:	10

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation establishing the Shift2Rail Joint Undertaking

COM(2013) 922 final — 2013/0445 (NLE)

(2014/C 226/10)

Rapporteur-general: **Mr Mendoza Castro**

On 11 February 2014 the Council decided to consult the European Economic and Social Committee, under Articles 187 and 188(2) of the Treaty on the Functioning of the European Union, on the

Proposal for a Council Regulation establishing the Shift2Rail Joint Undertaking

COM(2013) 922 final — 2013/0445 (NLE).

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Mendoza Castro as rapporteur-general at its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), and adopted the following opinion by 177 votes with 3 abstentions.

1. **Conclusions and recommendations**

1.1 The EESC supports the S2R initiative, which is an important contribution to the European rail industry.

1.2 The EESC emphasises the potential importance of S2R for employment, given that the entire rail system employs around three million workers.

1.3 In order to meet the long-term objectives set by the Union, the rail industry needs to change — not only technically but culturally.

1.4 The total planned budget for S2R is EUR 920 million, less than the investment required, which is estimated at EUR 1.4 billion; this will make it necessary to prioritise areas of research.

1.5 The EESC stresses the importance of S2R in enabling the European rail industry to compete in a global market valued at EUR 146 billion annually.

1.6 European companies are losing ground compared with their Asian competitors, who are investing massively in R+D. The global market is posing more and more challenges as a result of the growing number of participants in all products and segments.

1.7 The ERTMS signalling system demonstrates that the willingness to cooperate must overcome national interests.

1.8 The EESC considers that research must focus on activities connected with safety of persons, economic efficiency and information for rail users.

1.9 S2R's five innovation programmes (IPs) cover the main high-level areas and objectives.

1.10 The EESC considers it necessary to attribute ownership of the products of research. Intellectual property and patents are a key issue, which the Commission proposal does not address, however.

1.11 The industrial exploitation of the products of research financed by the Union should take place in Europe.

1.12 In contrast to the approach adopted by the Commission proposal, the European Railway Agency should have sole responsibility for laying down technical interoperability standards.

2. **Summary of the proposal for a regulation and its background**

2.1 The White Paper on transport policy ([1]) and the fourth railway package ([2]) create a framework for a single rail market ([3]).

2.2 One of the main aims of Horizon 2020 is to strengthen European industry through actions supporting research and innovation across a range of key industrial sectors.

2.3 The Shift2Rail Joint Undertaking (S2R), which will have the status of a 'Union body' (TFEU Article 187, Financial Regulation Article 209).

2.4 Moreover, S2R is necessary to tackle current serious problems: the dispersal of effort as a result of the diversity of national standards impedes the use of common industrial products on the railways and prevents the reciprocal authorisation of rail products; also the forced reduction of research activity in leading railway companies, the lack of public and private investment and increased financial risks.

2.5 The objectives of S2R are:

— support for the Railway Technical Strategy, published in February 2014 by the European Railway Agency;

— an overall reduction in life-cycle costs of up to 50 %;

— a 100 % increase in the capacity of the rail transport system;

— a 50 % increase in the reliability and punctuality of rail services;

— improvements in interoperability; and

— a reduction of negative factors such as noise.

2.5.1 A validation process shall be established in order to monitor quantitatively how upcoming deliverables of S2R precisely contribute to these high level objectives. Quality engineering and requirements management are state of the art approaches to enable a minimum progress monitoring on the objectives and therefore these approaches shall be established in S2R on a professional basis.

2.6 S2R activities will focus on four modes of rail transport:

— Interoperable, high-speed passenger transport.

— Interoperable regional passenger transport.

— Non-interoperable urban/suburban passenger transport.

— Interoperable freight transport.

2.7 Funding will be provided by the Union, with a maximum contribution of EUR 450 million, and by the other partners, who will have to provide at least EUR 470 million.

2.8 It is planned to last until 31 December 2024.

3. **General comments**

3.1 I*mportance of S2R*

The EESC strongly backs the S2R initiative, which it sees as an important contribution to European industry in the strategic railway sector. The EESC also welcomes the close involvement of the railway companies in the project.

([1]) *Roadmap to a Single European Transport Area — Towards a competitive and resource efficient transport system* COM(2011) 144 final.

([2]) *The Fourth Railway Package — Completing the single European railway area to foster European competitiveness and growth* COM(2013) 25 final.

([3]) OJ C 327, 12.11.2013, p. 122.

3.2 *Employment*

The EESC stresses the importance of S2R for employment. Throughout Europe an estimated 400 000 people are directly and indirectly employed by the supply industry. More than 1 350 000 others work for European infrastructure managers and railway operating companies. Employment on urban railways is probably of equal significance bringing the total number of jobs in the sector to around three million.

3.3 *A major challenge for the European railway industry*

The EESC would point out that in order to meet the long-term objectives set by the Union, a radical shift — not only technical but cultural — is required. As well as setting standards and adopting harmonisation measures, the EU must encourage a transnational framework for pooling efforts.

3.4 *Funding*

The EESC appreciates the financial effort involved in S2R. However, additional funds must be added to the planned overall budget — EUR 920 million — since S2R will require investment of an estimated total of EUR 1.4 billion. Otherwise, the various S2R activities will have to be ranked by priority.

3.5 *Additional activities*

Included in the total budget, there is a prevision of EUR 120 million concerning the contributions for 'additional activities'. These are activities that the Joint Undertaking (JU) members will put on top of their R&D investment supported by EU funds. That amount will therefore not be funded by the European Union.

3.6 *The global railway industry market*

The EESC highlights the importance of S2R to maintaining the competitiveness of the European industry, which still produces more than 50 % of the world total of railway equipment and services (in Europe, 80 %). The market is estimated to have a total volume of EUR 146 billion annually, although the 'accessible' part of this market amounts to EUR 106 billion annually ([4]).

3.7 *Europe is losing ground*

It is well known that Asian countries are investing massively in R&D for their national rail industries. European companies are now under strong pressure from their Asian competitors. The world market is becoming increasingly challenging for the European rail industry as there are more and more actors in all products and segments. Whilst it is very difficult to compete with Asian companies on price, the European rail industry is still playing a big role in terms of research and innovation.

3.8 *Role of SMEs*

3.8.1 In order to bring innovation into the rail market the products have to be industrialised, hence the need of the world leaders/industrial giants — that will commercialise the innovative solution developed in S2R.

3.8.2 However, the EESC appreciates that SMEs will also play a key role in S2R in three possible ways:

— By forming 'clusters' and applying for an associate member position, committing 2,5 % of the value of an IP (funded at 47,6 %).

— By open calls for proposal (EUR 135 million available for this and funded at 100 %).

— By becoming sub-contractors of one of the Joint Undertaking (JU) members (founding members or associated members). These activities will also have a 100 % funding rate.

([4]) Roland Berger 'World Rail Market Study, forecast 2012-2017'.

3.9 *The example of ERTMS*

The ERTMS signalling system — set up with European Commission backing — demonstrates that the willingness to cooperate must come before national interests. ERTMS probably represents the greatest challenge to the success of the rail industry, as it has become the most widely-used system on railways not only in Europe but in many countries around the world, with the potential for full interoperability. Major investment will therefore be needed in order to achieve the objectives of full interoperability and increased capacity, along with lower costs of implementation.

3.10 *In short, S2R is a step in the right direction*

For the first time, major companies of the European rail industry (which compete with each other) have decided to cooperate and work on a common research agenda.

4. **Specific comments**

4.1 *Research and development (R+D)*

4.1.1 Mirroring the structure of the Interoperability Directive ([5]), the proposed R+D programme covers freight and passenger rolling stock, infrastructure, control-command and signalling.

4.1.2 The EESC suggests that the programmes should give priority to activities designed to increase the safety of persons and the economic efficiency of the railways. The new technologies must also improve information for rail users.

4.2 *Innovation programmes*

The EESC notes that S2R comprises five innovation programmes identified by experts whose work was coordinated by UNIFE. These innovation programmes (IPs) are:

4.2.1 (IP1) Energy & Mass Efficient Technologies for High Capacity Trains

4.2.1.1 The proposal is to create a future generation of lighter, more energy-efficient trains that cause less track damage and have less impact on the environment. The new technologies will include: traction drives, train control and monitoring systems (TCMS), car body shells with lighter materials, rolling stock, braking systems and doors.

4.2.1.2 High-level objectives of IP1 are:

— Increase the physical capacity of vehicles and promote the enhancement of transport capacity of railway lines.

— Reduce the travel disruptions for passengers by increasing operational reliability and availability of vehicles, either through the use of fundamentally more reliable components or system/subsystem architectures.

— Reduce the life cycle cost of the vehicle (reduction of maintenance, energy consumption etc.) and of other subsystems interfacing with the vehicle (reduction of track damage etc.).

— Increase the energy efficiency of the vehicle and reduce vehicle mass.

— Increase the coupling capacity of units for greater operational flexibility.

([5]) OJ L 191, 18.7.2008, p. 1.

4.2.2 (IP2) Advanced Traffic Management & Control Systems

4.2.2.1 The rail market historically has different mainline national solutions for signalling. In the signalling market, there are different solutions in order to respond to the urban needs (CBTC solutions) and S2R will investigate the possibility and capacity for a greater interoperability/standardisation/integration into ERTMS for those needs.

4.2.2.2 The high-level objectives for IP2 are:

— Developing a new generation of signalling and control systems to enable intelligent traffic management with automatically driven trains and increase capacity, reliability and dramatically reduce the Life Cycle Costs for RUs and IMs.

— Maintaining the dominance of ERTMS as a solution for railway signalling and control systems across the world by means of professional open specification methods aimed at full interoperability at an attractive price.

— Extending synergies and interoperability with the urban and mass transit railway sectors.

— Reducing travel disruptions for passengers by increasing operational reliability and availability of rail transport, either through the use of fundamentally more reliable components or system/subsystem architectures.

4.2.3 (IP3) Cost Efficient-High Capacity Infrastructure

4.2.3.1 There are four areas of research:

— New Switches & Crossings (S&C): Improvement of existing S&C and new concept of train direction changing (Mechatronic S&C) to reduce the noise, the number of delays attributable to failures in such equipment and the maintenance costs.

— Radically Innovative Tracks. Optimisation of the entire track: New design of the entire track in order to optimise the response of it to traffic loads and development/implementation of new technologies.

— Smart and Intelligent Infrastructure Maintenance: New solutions for Rail Asset Registers, cutting edge measuring and monitoring tools, use based maintenance instead of condition based (maintenance engineering) and maintainability by design will further contribute to minimise cost, increase capacity and reduce noise.

— Energy Efficiency: Innovative integration of regenerated energy, wayside energy storage devices, efficient usage of renewable energy, as well as the smart interaction with the electricity grid, will bring rail at the forefront of this technology.

4.2.4 (IP4) IT Solutions for a Seamless Attractive Railways

4.2.4.1 There are no intentions to develop a common platform, but an interoperability framework where anyone who wishes could simply 'plug-in' their developments, based on open interfaces, thus avoiding dependence on the Global Distribution System (GDS). This way the travel experience becomes the product. Current rail research and development activities will have to be integrated into the project.

4.2.5 (IP5) Technologies for Sustainable & Attractive European Freight

4.2.5.1 Main challenge of IP5: to define all technological and process breakthroughs necessary to contribute to the realisation of one of the key goals from the White Paper: 30 % of road traffic switching to rail and inland waterways by 2030 and 50 % by 2050. The EESC recommends — to increase the level of public support, particularly for rail freight — that research into noise reduction also be included in IP5.

4.3 *System platform demonstrations (SPD)*

4.3.1 The EESC notes that S2R goal is not only to produce prototypes but fully operational products for use in railway systems. The new technologies and innovations developed within the S2R Innovation Programme will be showcased in real and/or simulated operational conditions by means of Integrated Technology Demonstrators (ITDs). The System Platform Demonstrations of S2R propose to develop and demonstrate these technologies, bringing them to a technology maturity level for a new generation of railway systems.

4.3.2 The place where the ITDs will be installed it is not yet defined as it will be towards the end of S2R. In addition, this should be defined within the future JU Members (Founding Members and Associated members) and the European Commission. The SPDs virtual or physical assessment will mostly depend on the definition and results of the ITDs.

4.4 *Patents*

4.4.1 In the light of the multiple, composite financing system that has been set up and of the significant volume of Community resources involved, the EESC believes that it would be appropriate to define the use and allocation of the end products of the research to be initiated by Shift2Rail precisely. The question of intellectual property and patents is key in this connection. Their content and mode of operation should be the subject of an article in the operative part of the regulation. The failure to do this, and the attendant risks, were pinpointed by the EESC in its opinions on the Innovative Medicines, Clean Sky, ENIAC and Fuel Cells Joint Undertakings. In this JTI, this shortcoming could prove even more sensitive, insofar as the end product of the research will interest companies directly competing on the market (see point 3.10 of this opinion).

4.4.2 In any case, the EESC points out that inventions paid with public money should be preserved for the public interest. To this end, thought should be given to mechanisms conducive to generating a return on Community investment, and it should be ensured that the results of the research of the Joint Undertaking are exploited industrially in the EU.

4.5 *Establishment of interoperability standards*

4.5.1 The Statutes of the Shift2Rail Joint Undertaking (Annex I, point 2(h)) require that it: *'pool user requirements and define interoperability standards to guide investment in research and innovation towards operational and marketable solutions'*. The explanatory memorandum to the proposal for a regulation confirms this (see explanatory memorandum, point 3.3).

4.5.2 This should be rejected, as:

— the establishment of standards cannot be outsourced to bodies set up on the basis of PPP with a very limited number of participants. The minimum requirement for technical specifications or standards is that they be established in cooperation between all interested stakeholders and with their consensus or general approval. The Statutes of Shift2Rail fundamentally contravene this principle.

— the existing interoperability directive (Directive 2008/57/EC) already provides for a legal framework at EU level governing the establishment of Technical Specifications for Interoperability (TSI). Draft TSIs are drawn up by the European Railway Agency on the basis of an examination of subsystems, in cooperation with industry associations and the social partners.

— the European Railway Agency only has observer status (point 11, Annex). It is involved in a number of coordination bodies, but in effect the Commission and the eight founding rail industry partners have the final say. The rationale for overlapping institutional responsibilities at EU level is not clear.

4.5.3 Consequently, responsibility for establishing Technical Specifications for Interoperability can only lie with the European Railway Agency.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the Proposal for a Decision of the European Parliament and of the Council on the participation of the European Union in the capital increase of the European Investment Fund

COM(2014) 66 final — 2014/0034 (COD)

(2014/C 226/11)

Rapporteur-General: **Michael Smyth**

On 18 February and on 24 February 2014 respectively, the Council and the European Parliament decided to consult the European Economic and Social Committee, under Article 173(3) of the Treaty on the Functioning of the European Union, on the

Proposal for a Decision of the European Parliament and of the Council on the participation of the European Union in the capital increase of the European Investment Fund

COM(2014) 66 final — 2014/0034 (COD).

On 25 February 2014 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 Smyth as rapporteur-general at its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March 2014), and adopted the following opinion by 133 votes to one with three abstentions.

1. **Introduction**

1.1 The EESC supports the move to recapitalise the European Investment Fund (EIF) to allow it to expand its roles as provider of risk capital to high growth and innovative small and medium sized enterprises (SMEs).

1.2 The decision to increase the EIF's subscribed capital by up to EUR 1,5 billion represents a significant boost to EIF investment potential in the context of the economic crisis and the stagnation of the European economy, it is right to pose the question as to whether even this increase is too small?

1.3 Recent surveys and data on SME finance and bank lending show that access to finance (both investment and working capital) is the most pressing problem facing SMEs. The growth in bank lending to business has fallen in each of the last three months. While the EIF remit is specific to innovation business and high growth, is there not a case for an even larger recapitalisation of the Fund to enable it to do even more?

1.4 The EESC restates its call for the EIF to be substantially recapitalised to fulfil the role originally envisaged for it — namely as a European venture capital fund and a special remit to finance high-tech start-ups.

1.5 The EESC proposes that 20 % of net profit be paid out in dividends and used to cover part of the costs of the capital increase. The EESC supports the endeavour to balance the financial and political yields of the EIF and to enlist suitable financial institutions in increasing its subscribed capital.

2. **The proposal**

2.1 The European Investment Fund (EIF) fulfils two main roles:

— venture capital provision to improve the supply of risk capital for rapidly growing and innovative small and medium sized enterprises (SMEs);

— provision of guarantees and other risk-sharing initiatives to enhance the lending capacity of financial institutions to SMEs.

2.2 The Fund utilises its own funds and it also manages a number of EU programmes, such as Horizon 2020 and COSME, over the coming years. The EIF expects to double its guarantee and venture capital risk exposure and so an increase in the Fund's capital is essential. At present the EIF is majority owned by the European Investment Bank (EIB) (62,1 %). The other shareholders are the European Union (30 %) and 24 public and private financial institutions (7,9 %).

2.3 The proposal is to increase the Funds subscribed capital from EUR 3 billion to EUR 4,5 billion, of which 20 % will be paid in. This capital increase will increase the EIF's capacity for credit enhancement activity and stimulate between EUR 11 billion and EUR 20 billion of lending to SMEs in 2014 and 2015.

3. **Comments on the proposal**

3.1 On the face of it, the re-capitalisation of the EIF is an unambiguously positive development. Data from the ECB show that total lending to business fell in each of the last three months to January 2014. The most recent survey of bank lending showed that access to finance was the single most pressing problem faced by euro area SMEs, although the geographical distribution was variable. The main factors affecting SMEs need for external financing were working capital and fixed investment needs. The EIF recapitalisation will address some of this problem but the scale of need is huge.

3.2 The EESC welcomes the recapitalisation of the EIF. It notes that the December European Council called upon the Commission and the EIB to further expand the capital of the EIF and awaits the outcome of this proposal. The Committee has raised concerns about the role of the EIF in previous opinions and now re-iterated them ([1]).

3.3 Increasing the capital of the EIF will help to achieve the goal of creating enough capital investment capacity to support the innovation, research and technological development of all the Member States' companies. In order to meet this goal with minimal budget expenditure, the EESC recommends that the 2014 EIF annual meeting take a decision to pay 20 % of net profit in dividends. The EESC thinks that it will be helpful if annual dividends to be applied in the years 2014 to 2017 for the Union's participation in the fund were considered external assigned revenue and used to cover part of the costs for the capital increase. The EESC supports the endeavour to balance the financial and political yields of the EIF and to fully maintain its tripartite structure. In this connection, it calls for more similarly minded financial institutions to be accepted as new shareholders.

3.4 When originally designed in 1993 it was recommended that the EIF should support businesses not only by equity guarantees and loans but also by establishing a European venture capital fund of up to EUR 60 billion. The aim was to compensate for the lack of private venture capital in Europe relative to North America and to reduce reliance on fixed interest borrowing which penalises new and early stage ventures. When the EIF was founded in 1994, the venture capital role was somewhat downplayed and the loan guarantee role dominated.

3.5 The EESC believes that the EIF should have a stronger venture capital remit as originally envisaged.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

([1]) OJ C 143, 22.5.2012, p. 10.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

COM(2013) 821 final — 2013/0407 (COD)

Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

COM(2013) 822 final — 2013/0408 (COD)

Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

COM(2013) 824 final — 2013/0409 (COD)

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Making progress on the European Union Agenda on Procedural Safeguards for Suspects or Accused Persons — Strengthening the Foundation of the European Area of Criminal Justice

COM(2013) 820 final

(2014/C 226/12)

Rapporteur: **Mr Xavier Verboven**

On 13 and 22 January 2014 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 Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings

COM(2013) 821 final — 2013/0407 (COD)

Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

COM(2013) 822 final 2013/0408 (COD)

Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

COM(2013) 824 final — 2013/0409 (COD).

On 27 November 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 — Making progress on the European Union Agenda on Procedural Safeguards for Suspects or Accused Persons — Strengthening the Foundation of the European Area of Criminal Justice

COM(2013) 820 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 12 March 2014.

At its 497th plenary session, held on 25 and 26 March (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 139 votes to one with nine abstentions.

1. **Conclusions and recommendations**

The Committee welcomes and endorses the Commission proposals for directives and recommendations on presumption of innocence, procedural safeguards for children and vulnerable groups, and provisional legal aid.

1.1 It does, however, have a number of reservations and concomitant suggestions for strengthening the baselines and goals of these proposals.

1.2 On the presumption of innocence, the Committee would emphasise that no-one is guilty before the final verdict is reached, and that this is an inviolable right. It would underline that public confidence in the legal system requires judges to be immune to pressure or influence of any type, including from the media. In this connection the media, albeit without prejudice to the constitutionally protected freedom of the press, should be careful not to assume the role of the courts.

1.3 On procedural safeguards for children in criminal proceedings, the Committee would point out that children are in a most vulnerable position when they are deprived of their liberty, given the risks that this entails for their mental and physical wellbeing. Here, the Committee would also stress that priority must be given to initiatives which help integrate children facing criminal proceedings as swiftly as possible into society and everyday life.

1.4 On provisional legal aid, it welcomes the fact that these principles also apply to people subject to a European arrest warrant. The Committee likewise endorses the recommendation that seeks to further harmonise the criteria for decisions about the right to legal aid in criminal proceedings. It would point out that legal aid in such proceedings must not be jeopardised because of the budgetary difficulties facing some Member States, and it wonders to what extent resources could be made available at European level, say in the form of a European fund.

1.5 It notes that the proposed directives on the presumption of innocence and safeguards for children only apply in the framework of criminal proceedings. The Committee holds the view that the term 'criminal proceedings', along the lines of European Court of Human Rights case-law in this domain, should be able to be interpreted in European law independently of its classification in Member States' laws. So as to best guarantee this possibility of independent interpretation, the Committee recommends that the statement in the recitals of the proposals for directives, to the effect that the safeguards should not apply to administrative proceedings leading to sanctions, be deleted.

1.6 On the proceedings in absentia referred to in Article 8 of the proposed directive on the presumption of innocence, the Committee notes that this provision states that criminal proceedings may only be held in the absence of the accused person if it has been unequivocally established that the person concerned is aware of the scheduled trial. Since this can give rise to practical difficulties when the accused person has no known place of residence, the Committee recommends that Member States be expressly allowed to provide for a special means of serving the summons to people with no known place of residence (such as at police stations).

2. **Gist of the Commission's proposals**

2.1 On 27 November 2013, the European Commission published a package of new measures relating to procedural safeguards in criminal proceedings.

2.2 This package continues a legislative programme on procedural safeguards in criminal proceedings, which includes Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings, and Directive 2013/48/EU on the right of access to a lawyer and the right to have a third party informed upon deprivation of liberty.

2.3 By introducing minimum procedural safeguards in criminal proceedings, the legislative programme aims firstly to guarantee EU citizens the right to a fair trial anywhere in the Union, and secondly to boost Member States' confidence in each other's justice systems so as to help improve mutual recognition of each other's decisions in criminal matters.

2.4 The package currently on the table contains three proposals for directives. These relate to the presumption of innocence, procedural safeguards for children during criminal proceedings and the right to provisional legal aid.

2.4.1 Proposed directive on the presumption of innocence

2.4.1.1 The fact that an accused party in criminal proceedings must be deemed innocent until proven guilty according to law is one of the most important principles of criminal procedure and lies at the heart of the right to a fair trial. What the principle of the presumption of innocence actually means in practice has been developed in the case-law of the European Court of Human Rights.

2.4.1.2 The purpose of the proposal is to incorporate certain aspects of this presumption of innocence in a directive, so as to be able to ensure optimal application thereof within the European Union.

2.4.1.3 Aspects of the presumption of innocence dealt with in the directive include the following: (1) prohibition of public statements and official decisions by public authorities presenting accused persons as if they had already been convicted; (2) the fact that the burden of proof of guilt is on the prosecution and that, in the event of any doubt, the accused must be acquitted; (3) the right not to incriminate oneself and the right not to cooperate; (4) the right to remain silent; and (5) the right of the accused to be present at their trial.

2.4.2 Proposed directive on procedural safeguards for children in criminal proceedings

2.4.2.1 Directive 2010/64/EU was adopted to guarantee a fair trial for those who do not speak or understand the language of the proceedings. Circumstances other than language barriers may also mean that an accused person is unable to follow or take part in criminal proceedings properly, such as where the accused is a minor or has an intellectual disability.

2.4.2.2 With a view to protecting the right of children to a fair trial, the Commission has drafted a proposal for a directive covering: (1) the right of the child and of the holder of parental responsibility to obtain information regarding the complementary children's rights deriving from this directive or its implementation in national law; (2) greater assistance from a lawyer; (3) the right to an individual assessment; (4) the right to a medical examination if the child is deprived of liberty; (5) the obligation to make audio-visual recordings when a child is being questioned; (6) the fact that the deprivation of liberty of children should be a measure of last resort; (7) special treatment in the case of deprivation of liberty; (8) the right to timely and diligent treatment of cases; (9) judgement taking place in the absence of the public; (10) the right of the child and of the holder of parental responsibility to be present at the trial; and (11) the right to legal aid.

2.4.2.3 Similar safeguards have been provided for vulnerable adults but, given the difficulty of defining 'adults in a vulnerable position', the Commission opted for placing this safeguard in a recommendation rather than in a directive.

2.4.3 Proposed directive on provisional legal aid

2.4.3.1 Directive 2013/48/EU lays down the right to legal assistance from a lawyer. For this right also to apply in reality for everyone requires that legal aid be made available to people who do not have sufficient financial means to cover the costs of a lawyer themselves.

2.4.3.2 The Commission is also submitting a recommendation on the criteria for access to legal aid and for safeguarding the quality and effectiveness thereof. The Commission chose to issue only a recommendation due to the cost that this could entail for Member States and the concomitant principle of proportionality of Union action.

2.4.3.3 The Commission is, however, proposing a directive on provisional legal aid so that a lawyer's assistance can be guaranteed in those cases where it is most needed. In particular, the proposed directive stipulates that Member States are obliged to provide for legal aid immediately — before the competent bodies of the Member State concerned have taken any definitive decision on the granting (or refusal) of legal aid — in two cases, namely for people who are: (1) deprived of liberty or (2) subject to a European arrest warrant and who are deprived of liberty in the executing Member State.

3. **Comments**

3.1 The Committee welcomes and endorses the European Commission's proposals and considers them to be most positive.

3.2 However, the EESC has a number of reservations regarding the texts of both a general and legal-technical nature, which are set out below. These comments do not detract from the Committee's support for the baselines and goals of these proposals, but rather they aim to strengthen them.

3.3 *General comments*

3.3.1 Presumption of innocence

3.3.1.1 The Committee wholeheartedly endorses the move to enhance the presumption of innocence, as set out in the proposed directive on strengthening certain aspects of this concept.

3.3.1.2 The Committee would emphasise here that no-one is guilty before the final verdict is reached, and that this is an inviolable right. It would underline that public confidence in the legal system requires judges to be immune to pressure or influence of any type, including from the media. In this connection the media, albeit without prejudice to the constitutionally protected freedom of the press, should be careful not to assume the role of the courts.

3.3.2 Procedural safeguards for children and vulnerable people

3.3.2.1 The Committee likewise fully supports the steps to strengthen the rights of vulnerable people in criminal proceedings, especially those of children, as set out in the proposed directive on crucial safeguards for children and in the proposed recommendation which ensures that vulnerable people are recognised as such and that their requirements are taken into account.

3.3.2.2 Children who, often because of their social circumstances or environment, resort to crime are in a most vulnerable position when they are deprived of their liberty, given the risks that this entails for their physical, mental and social development.

3.3.2.3 Moreover, the Committee would stress that priority must be given to initiatives which help integrate children facing criminal proceedings as swiftly as possible into society and everyday life.

3.3.2.4 In application of the provision whereby a child's right to mandatory assistance from a lawyer also applies in criminal procedures likely to result in final dismissal of the case, the Committee feels it would be appropriate to clarify that this right also applies as part of alternatives to prosecution.

3.3.3 Provisional legal aid

3.3.3.1 The Committee agrees with the principles set out in the proposed directive, whereby 'provisional legal aid' is guaranteed when access to a lawyer is most needed.

3.3.3.2 It welcomes the fact that these principles also apply to people subject to a European arrest warrant. Lastly, the Committee endorses the recommendation that seeks to further harmonise the criteria for decisions about the right to legal aid in criminal proceedings.

3.3.3.3 The Committee would point out that legal aid in such proceedings must not be jeopardised because of the budgetary difficulties facing some Member States, and it wonders to what extent resources could be made available at European level, say in the form of a European fund.

3.4 *Legal-technical reservations*

3.4.1 Scope of the proposed directives on the presumption of innocence and safeguards for children in criminal proceedings

3.4.2 In both the proposed directive on strengthening certain aspects of the presumption of innocence and the one on procedural safeguards for children in criminal proceedings, it is stipulated in the definition of the scope that this protection clearly only applies in the context of criminal proceedings.

3.4.3 The text of the proposal does not define in detail exactly what is meant by 'criminal proceedings'. The question therefore arises as to whether this means only those proceedings which the Member State concerned would classify as 'criminal proceedings', or whether the term is understood in the directives as having a broader meaning, and can, for instance, include administrative proceedings leading to sanctions.

3.4.4 According to established case-law of the European Court of Human Rights, the question of whether or not proceedings are deemed to be criminal in nature is assessed using the 'Engel criteria', namely (1) classification of the offence in the law of the state concerned, (2) the nature of the offence and (3) the nature and severity of the sanction. Therefore, for the purposes of the implementation of the right to a fair trial in the European Convention on Human Rights (ECHR), many administrative proceedings are deemed to be criminal proceedings. This case-law aims to prevent states from avoiding having to provide the fundamental safeguards set out in the Convention, simply by means of the classification they allocate to proceedings.

3.4.5 It is therefore appropriate that the Court of Justice at least be allowed to interpret the term 'criminal proceedings', independently of the classification in national laws. Otherwise there is a real risk that the safeguards specified in the directives will not achieve their goal.

3.4.6 In the sixth recital of the proposed directive on strengthening certain aspects of the presumption of innocence, it is nonetheless very clearly stated that the directive applies only to criminal proceedings and that administrative proceedings leading to sanctions are not covered.

3.4.7 This recital prevents a broad interpretation of the term 'criminal proceedings', as advocated and deemed necessary by the European Court of Human Rights, in the context of securing the rights and principles that are the subject of these directives. The Committee is therefore of the opinion that it would be better if this recital were deleted.

3.4.8 Proceedings *in absentia* referred to in Article 8 of the proposed directive on the presumption of innocence

3.4.9 Article 8 of this directive stipulates that Member States may only provide for a possibility whereby the criminal court may reach a decision in the absence of the accused person, if this person, 'in due time', 'either was summoned in person and thereby informed of the scheduled date and place of the trial, or by other means actually received official information of the scheduled date and place of that trial ***in such a manner that it was unequivocally established*** that he or she was aware of the scheduled trial'.

3.4.10 This does not provide for the possibility for the proceedings to go ahead (*in absentia*) when the person concerned has no known place of residence and cannot therefore be summoned. One option might be to serve the summons at the police station.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

Opinion of the European Economic and Social Committee on the Proposal for a Council Regulation laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency

COM(2013) 943 final — 2013/0451 NLE

(2014/C 226/13)

On 12 February 2014 the Council decided to consult the European Economic and Social Committee, under Article 31 and 32 of the EURATOM Treaty, on the

Proposal for a Council Regulation laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency

COM(2013) 943 final — 2013/0451 NLE.

Since the Committee has already set out its views on the content of the proposal in question in its opinion CES-6207-2013_00_00_TRA_AC, adopted on 16 October 2013* (*), it decided, at its 497th plenary session of 25 and 26 March 2014 (meeting of 25 March), by 127 votes to 7 with 13 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, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

(*) * EESC opinion NAT/621 on the Draft proposal for a Council Regulation laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, OJ 2014/C 67/39, page 183 of 6 March 2014.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council amending Directives 89/608/EEC, 90/425/EEC and 91/496/EEC as regards references to zootechnical legislation

COM(2014) 4 final — 2014/0033 COD

(2014/C 226/14)

On 25 February 2014 the European Parliament and on 19 March 2014 the Council decided to consult the European Economic and Social Committee, under Article 42 and 43(2) of the TFEU, on the

Proposal for a Directive of the European Parliament and of the Council amending Directives 89/608/EEC, 90/425/EEC and 91/496/EEC as regards references to zootechnical legislation

COM(2014) 4 final — 2014/0033 COD.

Since the Committee has already set out its views on the content of the proposal in question in its opinions CES4014-2013_00_00_TRA_AC, adopted on 16 October 2013* (*) and CES 1331/88, adopted on 14 December 1988* (**), it decided, at its 497th plenary session of 25 and 26 March 2014 (meeting of 25 March), by 139 votes to 3 with 17 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned documents.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

(*) * EESC opinion NAT/611 on the Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, 1829/2003, 1831/2003, 1/2005, 396/2005, 834/2007, 1099/2009, 1069/2009, 1107/2009, Regulations (EU) No 1151/2012, [….]/2013, and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC (Official controls Regulation) and the Proposal for a Regulation of the European Parliament and of the Council laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005, Directive 2009/128/EC and Regulation (EC) No 1107/2009 and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC, OJ 2014/C 67/34, page 166 of 6 March 2014.

(**) * ESC opinion AGR/326 on the Proposal for a Council Regulation (EEC) concerning veterinary checks in intra-Community trade with a view to the completion of the internal market, on the Proposal for a Council Regulation (EEC) on intensifying controls on the application of the veterinary rules, and on the Proposal for a Council Regulation (EEC) amending Regulation (EEC) No 1468/81 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters, OJ 1989/C 56, page 20 of 6 March 1989.

Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on the zootechnical and genealogical conditions for trade in and imports into the Union of breeding animals and their germinal products

COM(2014) 5 final — 2014/0032 COD

(2014/C 226/15)

On 25 February 2014 the European Parliament and on 19 March the Council decided to consult the European Economic and Social Committee, under Article 42 and 43(2) of the TFEU, on the

Proposal for a Regulation of the European Parliament and of the Council on the zootechnical and genealogical conditions for trade in and imports into the Union of breeding animals and their germinal products

COM(2014)5 final — 2014/0032 COD.

Since the Committee has already set out its views on the content of the proposal in question in its opinions CES 4014-2013_00_00_AC, adopted on 16 October 2013* (*) and CES 1334/88 adopted on 14 December 1988* (**), it decided, at its 497th plenary session of 25 and 26 March 2014 (meeting of 25 March), by 135 votes to 3 with 17 abstentions, not to draw up a new opinion on the subject, but to refer to the position it had taken in the above-mentioned documents.

Brussels, 25 March 2014

The President
of the European Economic and Social Committee
Henri MALOSSE

(*) * EESC opinion NAT/611 on the Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, 1829/2003, 1831/2003, 1/2005, 396/2005, 834/2007, 1099/2009, 1069/2009, 1107/2009, Regulations (EU) No 1151/2012, [….]/2013, and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC (Official controls Regulation) and the Proposal for a Regulation of the European Parliament and of the Council laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005, Directive 2009/128/EC and Regulation (EC) No 1107/2009 and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC, OJ 2014/C 67/34, page 166 of 6 March 2014.

(**) * ESC opinion AGR/337 on the Proposal for a Council Regulation (EEC) laying down zootechnical and pedigree requirements for the marketing of purebred animals, OJ 89/C 56/10, page 25 of 6 March 1989.

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