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EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

527th EESC plenary session of 5 and 6 July 2017

([1]) Text with relevance for the EEA and Switzerland.

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(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

527TH EESC PLENARY SESSION OF 5 AND 6 JULY 2017

Resolution of 'The European Economic and Social Committee's contribution to the Commission's 2018 work programme'

(2017/C 345/01)

At its plenary session of 5 and 6 July 2017 (meeting of 5 July), the European Economic and Social Committee adopted the following resolution by 191 votes to 6 with 16 abstentions.

1. **Creating a positive narrative for the EU**

1.1. The European Economic and Social Committee (EESC) stresses the importance of the year 2018 as the last fully operational year for the current Commission — as well as the European Parliament. Therefore the EESC calls on the Commission to draw up its work programme in an ambitious, yet pragmatic manner, in order to address properly the challenges entailed in the European Union being at a crossroads. Given the uncertainties about Brexit and global developments, a wide-ranging, participatory and structured debate on the future of Europe is now more necessary than ever. It is important to go back to our roots and recall the original project and fundamental values and objectives of the Union as they are enshrined in the EU Treaties.

1.2. We should build on the positive outcomes achieved so far. However, the appearance of nationalistic, protectionist, authoritarian and populist attitudes and movements should be seen as a wake-up call for the leaders of the EU institutions and Member States, to the effect that we need to examine what has to be done to regain public confidence and safeguard a successful future for the European project.

1.3. To this end, the EESC calls on the Commission to strive for a strong, solid and cohesive Union that is able to generate sustainable growth, quality jobs, well-being and equal opportunities for all the people of Europe, based on a shared vision and positive narrative rooted in public involvement and participation. A united, cohesive Union, built on Member States' commitment to the cause, is sorely needed so as to respond to the economic, social and environmental challenges the EU is facing. Internal cohesion is also a prerequisite for the EU to act as a strong global player in areas such as international trade, security, energy, climate policy, and the promotion of human rights.

1.4. The EESC recognises that the Brexit negotiations will make 2018 a challenging year. However, it is important that the Commission continue to implement measures already agreed upon, especially those relating to single market initiatives. At the same time, it is necessary to prepare for the long term future of the EU. The EESC would refer here to its views on the White Paper on the Future of Europe. The EESC will also submit opinions on the associated reflection documents; for this reason, these topics are only referred to briefly in this contribution.

1.5. As there is a strong link between the economy, employment, people's welfare and the environment, the EESC calls on the Commission to adopt sustainable development as an overarching approach to its work programme. The EESC thus frames its contribution in terms of the three 'pillars' of sustainability, as follows:

(a) Strengthening the economic foundations of Europe;

(b) Fostering its social dimension; and

(c) Facilitating the transition towards a low-carbon and circular economy.

1.6. The EESC emphasises that the pillars are universal, indivisible and interdependent. The EU should be ambitious and strive for policies and initiatives that bring about win-win-win solutions in terms of economic, social and environmental benefits.

1.7. To this end, the EESC urges the Commission to develop its policies in an integrated manner and apply a coherent, consistent approach, involving all parts of the Commission and breaking down the silos in policy- and law-making. The EESC also calls on the Commission to continue — in accordance with the better regulation principles — to improve the quality of EU law-making and the simplification and clarification of legislation, with the aim of creating practical benefits for all players.

1.8. Furthermore, the EESC reiterates its call for an overarching strategy to be devised to mainstream the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda into all relevant EU policies and it invites the Commission to prepare a long-term vision and strategy on sustainability, building on the upcoming EESC opinion on 'The transition towards a more sustainable European future — a strategy for 2050'.

1.9. The EESC underlines the crucial importance of civil society's structured participation in designing, implementing and monitoring EU policies, programmes and other initiatives in order to achieve tangible results, gain public acceptance and promote cohesion in society. The social partners have a specific role to play in devising and implementing policies directly or indirectly affecting employment and labour markets.

1.10. While the proposals for action are presented in more detail in sections 2.-5., the EESC summarises its **key policy priorities** for the Commission's 2018 work programme as follows:

— The EESC calls on the Commission to continue implementation of the strategies and programmes aimed at the further development of the single market, taking into account its economic and social dimensions in the framework of sustainable development. While recognising that the EMU is the core of the single market, measures are particularly needed in the fields of capital markets, as well as digital, energy and transport markets. Furthermore, the EESC calls for an active trade policy, taking into account the need for transparency and the close involvement of civil society.

— The Commission should adopt a comprehensive strategy for the promotion of entrepreneurship, innovation and industrial development, including the opportunities and challenges brought about by global megatrends such as rapid progress in digitalisation and the internet of Things, and the transition towards a low-carbon and circular economy.

— The EESC calls on the Commission to develop the social dimension of the EU with the aim of fostering quality job creation, improving skills and competences, increasing social investments and the development of the social economy, as well as preventing poverty, inequalities, discrimination and social exclusion, with special emphasis on the inclusion of young people in society. Furthermore, particular attention should be paid to responding to the profound changes caused by digitalisation for the whole society.

— The EESC calls for measures for focusing the public financial resources efficiently and responding to future challenges caused by Brexit and the need for sustainable growth, innovation, employment and cohesion. In addition to public investment, encouragement of private investment is likewise needed to respond to the substantial investment needs.

— The Commission should continue implementing measures, including the effective control of external borders, to protect Europeans against security threats. It should also strengthen measures for the EU to be a more effective player on the world stage by means of multilateral cooperation and active conflict prevention. The EESC furthermore considers it necessary to strengthen cooperation on defence.

— The EESC calls on the Commission, and offers its support, to develop a strategy that aims to bring about structured civil dialogue that is organised efficiently and on a permanent basis.

2. **Strengthening the economic foundations of Europe**

2.1. ***The European Semester and EMU***

2.1.1. The European Semester process should reinforce the Commission's coordination role in order to ensure Member States' compliance with the targets and recommendations of the Europe 2020 strategy and implementation of the structural reforms needed for long-term sustainable economic growth, quality job creation and social progress. Closer involvement of the social partners and other representative organisations of civil society and increased ownership for them in the formulation and implementation of reform programmes is a key factor for success in this process, recognising that the social partners have a specific role to play, in view of their exclusive competences, responsibilities and tasks.

2.1.2. The EESC calls for symmetrical macroeconomic adjustment in the euro area, shared by both Member States with deficits and those with surpluses. This includes an aggregate positive fiscal stance for the euro area as a whole.

2.1.3. Economic and Monetary Union is a core element of the European integration. The EESC would refer to its previous positions and calls for initiatives for completing the EMU, including the development of its governance, democratic control and macroeconomic dialogue.

2.2. ***Financial resources and investment***

2.2.1. With the next Multiannual Financial Framework (MFF), the Commission should pave the way for focusing resources efficiently and responding to future challenges caused by Brexit and the need for sustainable growth, competitiveness, innovation, employment and social cohesion, by deploying a performance- and result-oriented approach. The EESC calls on the Commission to align the duration of the next MFF with the political cycle of the Commission and the Parliament. It also calls for preparations to be made for the introduction of new types of EU own resources.

2.2.2. The EESC welcomes the second phase of the EFSI (European Fund for Strategic Investments) for boosting investment by involving ever more private capital, together with public capital from both national and regional sources. To this end, the scope of the EFSI should also cover other branches of finance in addition to banks.

2.2.3. The EESC emphasises the need for effective and efficient use of European funds. Investment in innovation, entrepreneurship, skills development, active labour market policies, and digital, energy and transport systems needs to be prioritised, ensuring that funding will be adequately allocated for projects with a high social impact.

2.2.4. The EESC stresses that further implementation of the Capital Markets Union is needed to improve access to private finance, with special emphasis on the needs of SMEs. Greater use of equity and capital market funding should also be promoted.

2.2.5. As for completion of the Banking Union, the EESC emphasises that further risk-sharing has to be accompanied by further proposals on risk reduction. In upcoming reforms of the banking regulation, the Commission should pay due attention to the specific features and possibilities of small and non-complex banks.

2.2.6. The EESC calls for steps to curb tax fraud, tax evasion and aggressive tax planning. The existing bias in tax systems that favours debt financing of business should be changed. As regards VAT, the EESC reiterates its recommendation to move away from the current transitional system towards a definitive VAT regime tailored to a European single market.

2.3. ***Digital, energy and transport systems***

2.3.1. The EESC highlights the importance of the digital single market for the whole of society. Digital skills, an enabling business environment and consumer confidence are among the most critical conditions for making use of the potential of

digitalisation. As data is a production factor and a raw material for creating added economic value, the accessibility and free flow of data are of extreme importance. At the same time, adequate protection of private and commercial data needs to be ensured, with special attention paid to data generated by individual businesses. The EESC also urges the Commission to continue its efforts to increase cybersecurity capabilities and cooperation. Furthermore, the EESC calls for international cooperation in the digital field, for example within the framework of the OECD.

2.3.2. Development of the digital infrastructure has to be continued, including broadband and wireless connections, digital energy and transport systems, and 'smart' buildings and communities. The use of digitalisation needs to be promoted correspondingly in the education, health and social sectors. Full use of digitalisation should also be promoted to make administrative processes smoother. Special emphasis should be placed on providing cover for remote areas and minimum digital access for everyone, also enhancing the inclusion of vulnerable groups of society.

2.3.3. The EESC has been a firm supporter of the Energy Union initiative from the outset. It calls on the Commission to pursue implementation of the Energy Union strategy, ensuring there is an adequate energy infrastructure and smoothly functioning energy markets ensuring the availability of secure, affordable and climate-friendly energy for the general public and businesses. The EESC highlights the significance of the energy dialogue at EU, national and local levels, with the full involvement of civil society. It will issue its views regularly on the state of the Energy Union and individual initiatives.

2.3.4. Transport is closely linked to the Energy Union. As transport is one of the basic enablers of activities for the whole of society, it deserves a high profile in the Commission's work programme. The main purpose of the measures should be to provide people and businesses with accessible, smooth, safe, affordable, and climate-friendly mobility and transport. This requires substantial public and private investment in transport systems and the development of public transport. Transport-related energy and climate issues, and the introduction of new technologies should not be developed in isolation from transport market issues.

2.3.5. Taking into account the horizontal importance of services of general economic interest (SGEIs), the EESC invites the Commission to improve the rules on public compensation for the provision of SGEIs and their application, in order to provide guidelines and create a compendium of best practices.

2.3.6. The EESC acknowledges the role of both cities and rural areas in economic, social and territorial development and cohesion. In underlining the role of cities, the EU should continue to work on a well-defined, properly implemented Urban Agenda. The considerable potential of rural, mountain and island areas should be utilised in the Commission's new approach to integrated territorial development.

2.4. ***Development of production and services***

2.4.1. The EESC calls on the Commission to adopt a comprehensive approach and strategy to industrial development. Special attention should be paid to the opportunities and challenges brought about by global megatrends such as rapid progress in digitalisation and the internet of Things, interlocking of manufacturing and service industries, and the transition towards a low-carbon and circular economy.

2.4.2. The growth potential of services, including the retail sector, has to be unleashed as well, while safeguarding consumers' and workers' rights and acknowledging that there are still barriers in the Single Market.

2.4.3. Innovation policy, including social innovation, is crucial for economic competitiveness and renewal and for achieving societal benefits. The EESC calls for the promotion of supranational networks and cross-cutting networks between universities, businesses and civil society organisations within the context of Horizon 2020. The EESC also recommends simplifying administrative rules on funding and state aid.

2.4.4. An EU-wide Industry 4.0 and Society 4.0 strategy is needed, focusing on technologies and platforms, standards and reference architectures, networks of regional Innovation Hubs and skills at all levels.

2.4.5. As for the challenges raised by global megatrends in individual branches such as the automotive, steel and coal industries, the EESC calls for proper management of structural change, through fair and appropriate transition frameworks and dialogue on sector-specific issues with social partners. On the other hand, opportunities emerging in areas such as the space and defence industries have to be grasped and turned to good advantage, while ensuring favourable conditions for the development of industrial sectors in general, with good working conditions.

2.4.6. Special efforts should be focused on enhancing the financing, innovation and internationalisation of small and medium-sized enterprises and the Small Business Act for Europe has to be fully implemented. SME policies should be tailored to the different needs of various forms of enterprises such as family businesses, traditional small and micro enterprises, start-ups and scale-ups, including social economy enterprises. The EESC also invites the Commission to launch consultation on the definition of an SME.

2.4.7. The EESC finds it important that a comprehensive view be taken on new trends in production and consumption patterns, such as collaborative, circular, sharing and functional economic models, as well as development opportunities such as the social economy. Measures are needed to facilitate the introduction of these new and diverse models, but at the same time, a level playing field and compliance with relevant and appropriate legislation has to be guaranteed in order to ensure public and consumer protection, and workers' rights.

2.4.8. Taking into account the specific role played by the social economy, the EESC reiterates its request to launch a comprehensive Action Plan for the Social Economy in line with the December 2015 Council Conclusions on '*The promotion of the social economy as a key driver of economic and social development in Europe*'.

2.4.9. Multi-functionality, the diversity of farming models and sustainability should be maintained at the heart of the matter when addressing the funding, modernisation and simplification needs of the Common Agricultural Policy (CAP) as part of the next MFF. Greater efforts are also required in research and digitalisation in the agricultural sector.

2.4.10. The EESC calls on the Commission to shift to a more integrated agricultural and food policy, also taking into account the need to move towards a circular economy and to drastically reduce food waste. The Commission should also adopt legislation to eliminate unfair trading practices in the food supply chain.

2.4.11. In order to enable the proper development and renewal of industries and agriculture, the political and regulatory framework must provide a stable and predictable investment and operation environment and follow the principles of better regulation, for the well-being of citizens.

2.5. ***International trade***

2.5.1. The EESC calls for active and fair trade negotiations with partners such as Japan, Mercosur and ASEAN, as well as the smooth implementation of agreements already concluded, taking into account the issues raised in previous EESC opinions. In implementing the Commission communication on 'Trade for all', the EESC considers it important to conclude negotiations in a balanced and transparent way, delivering benefits for business and citizens, while protecting environmental, social, labour, consumer and other standards, as well as public services. All in all, the EESC underlines the significance of transparency and the involvement of civil society in the negotiation, implementation and monitoring of trade agreements from the very beginning.

2.5.2. The EESC welcomes the improvements made to investor dispute settlement with the introduction of a new system to replace ISDS, but calls on the Commission to take further steps so that the ICS can truly function as an independent international judicial body.

2.5.3. The pursuit of bilateral trade negotiations should not weaken the EU's commitment to the WTO and a strong multilateral global agreement. The EESC expects an active follow-up to the 2017 WTO Ministerial Conference in areas such

as agriculture and e-commerce. In addition, there is an urgent need to assess risks and opportunities, from a civil society perspective, in order to determine the way forward in the ongoing multilateral negotiations on the Trade in Services Agreement (TiSA) and Environmental Goods Agreement (EGA). The EESC also calls for rapid adoption and implementation of the reforms of the EU Trade Defence policy.

2.5.4. The EESC deems it important to ensure consistency between trade policy and the United Nations Sustainable Development Goals, the Paris Agreement on Climate Change and the EU's development policy. To this end, ambitious trade and sustainable development chapters with strong civil society monitoring mechanisms should be sought, for inclusion in the trade agreements.

2.5.5. The EESC furthermore calls for civil society monitoring of all aspects of the agreements, including those whose provisions do not specifically contain a joint monitoring body involving civil society. The EESC's expertise confers unique benefits on such work.

2.5.6. It also calls for there to be discussions with civil society on the impact assessment and practical implementation of the proposed Multilateral Investment Court.

3. **Fostering the social dimension of Europe**

3.1. ***European Pillar of Social Rights***

3.1.1. The EESC takes note of the Commission's Communication on a European Pillar of Social Rights and the proposal for a Proclamation of the EPSR, and the accompanying legislative and non-legislative initiatives. The EESC is working on this package and will give its opinions in due course.

3.1.2. So far, the EESC refers to its earlier opinion on the European Pillar of Social Rights ([1]), in which it pointed out its general objectives for the development of the Pillar through a combination of legal and non-legal instruments related to areas such as the future of work, fair working conditions, employment, enforcement of the existing EU social *acquis*, and social investment. It stated that the Pillar should apply to all Member States, while acknowledging that the Euro area may need particular instruments/mechanisms. It took the view that the European Semester and National Reform Programmes should become the principle vehicles for the implementation and monitoring of the Pillar, and called for concrete benchmarks in the European Semester.

3.1.3. The framework conditions in labour markets need to support new and more diverse career paths. Different forms of sourcing labour and different forms of working are needed in working life. This requires providing a suitable employment protection legislation environment to provide a framework for fair working conditions and to stimulate recruitment under all employment contracts.

3.1.4. In order to respond to the changing demand for skills and competences, the EESC emphasises the need for improving the work-based education system, vocational education and training, lifelong learning, as well as upskilling and reskilling. Ways to enhance smooth transitions between jobs and from unemployment and education to work should be developed as well, with the aim of achieving an inclusive labour market.

3.1.5. Acknowledging the fact that the future of the EU is strongly linked to younger generations' trust in the EU project, the EESC underlines that the Commission should strengthen its activities to effectively address the root causes of youth unemployment and exclusion.

3.1.6. In order to enhance inclusive growth and social cohesion, the EESC calls for measures to meet the need for social investment, in the sense of investing in people and in social infrastructure and services. Further consideration needs to be given to how to link the 'Juncker Plan 2' with the Social Investment Package objectives, including through the EFSI. Moreover, the EESC has called for a European Social Investment Pact, which should support social reforms and social investment and help to bring about renewed economic, social and territorial convergence. The Annul Growth Survey should also emphasise social investment.

([1]) Opinion of 25 January 2017 on the Communication from the Commission *Launching a consultation on a European Pillar of Social Rights* (OJ C 125, 21.4.2017, p. 10).

3.1.7. The European Social Fund should continue to be a key component of the ESI Funds, with specific attention paid to promoting the training and labour integration of vulnerable groups in the population (e.g. young people, immigrants and refugees, and people with disabilities). The consolidation and redeployment of the new Erasmus processes must be made more systematic and inclusive. The EESC also reiterates its call for opportunities for all young people to benefit from European exchanges.

3.1.8. Whilst acknowledging that poverty reduction is primarily the competence of the Member States, the EESC points out that: poverty reduction should be systematically addressed through the European Semester process; academic research on 'reference budgets' enabling a life in dignity should continue to be supported; and there should be comparable and common indicators e.g. on poverty and inequality, as well as mandatory social impact assessments of all reform agendas proposed by the National Reform Programmes and the Country Specific Recommendations. The EESC has also advocated the creation of an integrated European Fund to combat poverty and social exclusion, based on experiences with the implementation of the FEAD and the ESF. In addition, the Europe 2020 Strategy should be linked with implementation of the 2030 Agenda.

3.2. ***Citizens' and consumers' rights***

3.2.1. The EESC calls on the Commission to closely monitor compliance with the EU's fundamental values and principles in all Member States, and to strengthen the procedures to protect and defend democracy, the rule of law, fundamental rights, human rights and access to justice.

3.2.2. Consumer policy is close to the interests of the public and can therefore influence people's commitment to the EU's integration process. The EESC calls on the Commission to ensure that consumer rights are enforced and respected in the REFIT process, in the digital world and in the safety of products and services. The Commission should strengthen measures to eliminate energy poverty and consumption poverty and to enhance access to food and services for all Europeans. The Commission should also promote consumers' rights to information, education and participation and their right to organise themselves so that their interests are represented when the rules in which they have a stake are being devised.

3.2.3. The Commission must complete its review of the main legal and non-legal instruments of EU consumer policy as a cross-cutting, horizontal citizenship policy and must present a new action plan to protect and defend consumers over the next 10 years.

3.2.4. The EESC calls on the Commission to take all appropriate measures to counter gender discrimination in the labour market, education and decision-making, as well as gender-based violence. The EESC also calls on the Commission to establish an agenda to protect minorities and vulnerable groups, promoting the full respect of fundamental rights and non-discrimination. The Commission should intensify efforts to unblock the Directive on implementing the principles of equal treatment, and address the conditions of children, women and the elderly in vulnerable situations as well as new forms of vulnerability.

3.2.5. The Commission should upgrade the European Disability Strategy in line with the recommendations of the UN Committee on the Rights of Persons with Disabilities and implement the UNCRPD in its external policies and programmes, including the launch of an EU disability card recognised in all Member States. Preparations for a European Disability Rights Agenda 2020-2030 should also be starting, and the year 2021 should be declared the European Year of Disability Rights.

3.2.6. Accessibility for all should be mainstreamed into Digital Single market initiatives. To this end, the Commission should step up its efforts to conclude negotiations with the other institutions on the European Accessibility Act. Passengers' rights should also be strengthened, with special attention paid to people with disabilities and with reduced mobility.

3.2.7. The EESC also encourages the Commission to support activities in educational institutions at all levels to help students to distinguish between fake news and science-based facts.

3.3. ***Migration***

3.3.1. The EESC underlines the need for assisting and integrating refugees and asylum seekers. It advocates an efficient reform of the Common European Asylum System that is respectful of human rights and the establishment of a genuinely common system for all Member States. It also recommends that progress be made with resettlement and humanitarian visas for refugees in order to meet real needs. It calls on the Commission to monitor implementation of the agreement on the distribution of refugees among Member States.

3.3.2. Furthermore, it calls for the review of partnership agreements with third countries of transit and origin of migration flows to respect human rights and international law, and to develop financial instruments to address the root causes of migration.

3.3.3. While appreciating the Commission's work on the legal channels of migration through the evaluation of existing directives, the EESC calls for longer-term governance of labour migration, planning for updated legal mobility channels, and the exchange of information on labour market opportunities. Taking into account Europe's demographic structure, the EESC highlights the need to transform the challenge of integrating refugees and migrants into the labour market into an opportunity. Investment in training and adequate support systems will be key factor to facilitating integration into the labour market to help migrants fulfil their potential, thus utilising their skills, entrepreneurial spirit and dynamism, while recognising the value of diversity and different cultures in our society in general.

3.3.4. The EESC considers that 2018 — as the European Year of Cultural Heritage — presents a unique opportunity for mobilising all players to counter populism and nationalism and to promote a positive narrative for the future of Europe. In this context, awareness-raising about the need for intercultural understanding with regard to refugees and migrants could also be enhanced.

3.4. ***Internal security and external policy***

3.4.1. The EESC calls on the Commission to continue implementing measures, including the effective control of external borders, to protect Europeans against security threats such as terrorism, organised crime and cybercrime.

3.4.2. In addition, it considers it necessary to strengthen cooperation on defence. To this end, the EESC endorses the creation of a European Defence Union and welcomes the European Defence Action Plan.

3.4.3. Taking into account the challenges raised by the unpredictability of US policy and the risk of increased protectionism and unilateralism, the EESC encourages the EU to continue work in line with its Global Strategy, supporting multilateralism in the framework of the United Nations and working actively towards preventing conflict and solving international crises. The EESC also underlines the need for closer coordination of objectives, policies and resources among Member States in order for the EU to be a more effective player on the world stage.

3.4.4. The implementation of Agenda 2030 should form the basis of EU development cooperation. To show leadership, the EU should present a voluntary review of its internal and external activities on SDGs at the UN High Level Political Forum.

3.4.5. The EESC supports the establishment of a platform for dialogue with social partners in the context of the European Neighbourhood Policy in order to better assess the labour market, and calls on EU Member States to develop a common European approach to the coordination of social security systems between the EU and southern neighbouring countries. The neighbourhood policy must make clear the link between instability and poverty, and inequality and the lack of opportunities, which can increase vulnerability to radicalisation and hamper the process of democratisation.

3.4.6. The EESC highlights the significance of external economic relations and international diplomacy for safeguarding and increasing stability and security. It also encourages the EU to make full use of the role that culture can play in international relations.

4. **Facilitating the transition towards a low-carbon and circular economy**

4.1. The Action Plan on the Circular Economy should be carried out in an integrated, consistent way, making use of the opportunities for reconciling economic, social and environmental aspects. The EESC calls on the Commission to encourage market-driven activities by promoting innovation, facilitating front-runner initiatives, including in remote and urban areas, enhancing their scale-up, and providing an enabling regulatory framework. It also points out the links between the circular economy and other 'new economic models'.

4.2. Due attention should also be paid to the implementation of 'traditional' environmental policy and legislation, covering waste management and air, water, soil and biodiversity protection. The EESC urges the Commission to continue this work as part of the European Environmental Review process.

4.3. Climate targets for 2030 should be implemented in as cost-efficient a manner as possible. To this end, the EESC calls on the Commission to carry out a comprehensive assessment of the current low-carbon policy instruments, and make sure that the tools are appropriate and used in the most efficient way.

4.4. The Commission should also consider climate issues from the point of view of climate justice, i.e. from the perspective of issues such as equality, human rights and poverty.

4.5. Climate diplomacy remains an important mission for the EU in the fight against climate change. It is necessary to get all the biggest emitters to commit to targets which are at least as ambitious as those of the EU. The EESC also encourages the Commission to strive for global carbon pricing in order to create a level playing field in relation to competitors outside the EU.

4.6. The EESC calls on the Commission to prepare a strategy on increasing its climate and environmental 'handprint', i.e. its positive global impact. This requires an environment conducive to innovation and investment and favourable trading conditions for exporting climate solutions and low-carbon products. This is how the EU can make an efficient contribution to climate change and environmental challenges and have a much greater impact than solely operating within its own borders.

5. **Empowering, involving and consulting Civil Society**

5.1. The EESC underlines the pivotal role of civil society organisations in the design, implementation and monitoring of policies at all stages and at all levels, including the local level. This requires a change in culture and an acknowledgement of the value of civil society at EU and Member State levels, which is already enshrined in Art. 11 TEU, which provides for EU institutions to promote and facilitate horizontal and vertical civil dialogue, to carry out broad consultations and lay down the foundations for the European citizens' initiatives. These are complementary processes that take place without prejudice to consultation of the EESC and social dialogue.

5.2. The EESC follows closely and is actively involved in structured dialogues or consultative fora (e.g. Circular Economy Stakeholder Platform, European Migration Forum) gathering and involving civil society organisations and other players from EU institutions and Member States and calls for support for its initiatives for the creation of a Platform for Change (gender equality in the transport sector) and an Institutional Forum on citizens' participation (in the framework of the citizens' initiative). When constituting such platforms like REFIT, the Commission should consider the EESC's representation, in accordance with the mandate given to the Committee by the treaties, and in so doing ensure that this reflects the Committee's composition in the form of its three groups.

5.3. As a complementary process to the above initiatives, the Commission recently set up a dedicated internet portal entitled 'Contribute to law-making' to gather the opinions of the general public, thus including both organisations and individuals. The EESC recommends that the Commission make a distinction between contributions from civil society organisations and those coming from individuals. To this end, the Commission should carry out stakeholder mapping in cooperation with the EESC to identify representative and geographically balanced target groups, drawing on the Transparency Register. In addition, the Commission should ensure that the responses have quantitative and qualitative weighting. Furthermore, the Commission should constantly work on the improvement of transparency, accessibility, feedback and accountability to participants.

5.4. The EESC calls on the Commission to develop a more strategic approach to these practices, putting them on a more structured institutional and representative foundation by taking advantage of the resources of representative consultative bodies that already exist at European, national and regional levels. To this end, the Commission should work closely with the EESC and ask for an exploratory opinion on how civil dialogue could be organised effectively and on a permanent basis, leading to a specific Commission communication.

5.5. The EESC underlines that there is a need to improve the effectiveness of the European Citizens' Initiative, in line with the announcement of the revision of the ECI regulation made by EC First Vice-President Timmermans, and to explore new ways, such as the use of digital tools, to increase the engagement of young people and people from vulnerable groups in particular.

5.6. Finally, the EESC acknowledges that the Commission has taken into account many elements of the EESC's contribution to the 2017 work programme. However, there are also issues that have not been included and they have therefore been reiterated in this document. As regards implementation of the Commission's 2018 work programme, the EESC is ready to submit its views and participate in work on specific initiatives in the course of the coming year.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Resolution of the European Economic and Social Committee on 'The Commission's White Paper on the Future of Europe and beyond'

(2017/C 345/02)

At its plenary session of 5 and 6 July 2017 (meeting of 5 July), the European Economic and Social Committee adopted the following resolution by 226 votes to 16 with 15 abstentions.

Towards a Common Sense of Purpose

An EESC view on the future of Europe ([1])

1. European society and citizens ask for a credible, legitimate, and resilient EU. For more than a decade the EU has been challenged by political, economic, and social shocks, fostering a gloomy attitude and uncertainty among citizens. The EU needs overall strategies to promote the well-being of its citizens, robust and sustainable investments, creativity and entrepreneurship, and strategies to address the widening gap between rich and poor, poverty and wealth inequality. The current economic recovery should by no means be an excuse to remain passive. By contrast, the EESC urges that a considered and cohesive way forward be found in order to strengthen confidence and trust, as well as a focus on tangible results for citizens and on Europe's huge potential.

2. False expectations must be avoided. Above all, the aim should be an EU that is able to deliver in providing fully-fledged equal opportunities for all. Economic, social and environmental factors are interrelated. It is essential to enable the continent to adjust to the deep transformation process and fierce competition across the globe, and to effectively shape globalisation according to the EU's values.

3. The 'blame Brussels' game, which too many have played and still play, must stop. A common commitment on the part of the European institutions and of a wide range of stakeholders including social partners and civil society organisations, both nationally and at EU level, is indispensable. The EESC underlines that the legitimacy of EU decisions depends ultimately on the quality of the democratic process.

4. The path ahead can only be pursued successfully if it is inspired by that same *common sense of purpose* that expressed the conviction of the founding fathers, and was later reflected in any major step forward. The EU should mobilise the legislative tools, guidance, funding and cooperation at its disposal to allow the EU to advance in all desired dimensions. The Treaty of Lisbon points the way.

The White Paper scenarios

5. The EESC does not believe that a choice between scenarios ([2]) is a successful method for promoting a *common sense of purpose* or for defining the future path. Firstly, the EU is not starting from scratch. Thus the Commission should base its proposals on an in-depth analysis of the history of the EU — its achievements and shortcomings — as a valuable source for the future. The commitments of the Member States in the Rome Declaration are a positive and healthy starting point ([3]). The five scenarios are addressed to the Member States, focusing on institutional changes, and thus lack direct relevance for European citizens. They also appear artificial.

6. For the EESC, scenario 1 or, as it sees it, muddling through, is not an option. Scenario 5 looks attractive to a number of people, but at present it is unrealistic. Scenario 2, with an exclusive focus on the common market, is far too limited. Scenario 4 requires an agreement between 27 Member States, which might lead to paralysis of the EU and promote centrifugal trends, endangering the Union's goals and values. Under Scenario 3, mechanisms for differentiated integration, such as enhanced cooperation, could be a useful instrument to overcome blockages in particular areas and to foster a

([1]) This resolution, adopted by the European Economic and Social Committee at its plenary session on 5 July 2017, follows on from a request of 4 April 2017 by the European Commission's president, Jean-Claude Juncker, asking the EESC to set out the ideas and priorities of Europe's organised civil society for the future development of the European Union, based on the *White Paper on the Future of the EU*.

([2]) See the White Paper on the Future of Europe, March 2017.

([3]) Declaration of the leaders of 27 Member States and of the European Council, the European Parliament and the European Commission of 25 March 2017: http://www.consilium.europa.eu/en/press/press-releases/2017/03/25-rome-declaration/

positive dynamic in the EU integration process. However, they are instruments for achieving policy objectives rather than a goal in itself. While they should be recommended as a way of overcoming paralysis or obstacles to desirable EU legislation, the EESC underlines equally the need to promote convergence within the Union and to fight fragmentation and division. Therefore an agreement between frontrunners or catalyst countries should always be open to *the willing*, while a *common sense of purpose* should prevail.

The EESC's view on the future

A. ***Method***

7. Strategic themes should be put in a common perspective to avoid a looming *Europe à la carte* or centrifugal trends. The EESC recommends a development whereby conditions are established for sharing political power across the board in a better way. All this depends primarily on political will and as such it should be a core issue in a genuine debate about the future.

8. The traditional distinction between the national and European level should disappear. Common challenges and interwoven realities across the continent underline the need for a *common mission*. They also require an acknowledgment of European citizenship alongside national citizenship. Policy-making must include and involve all levels of society. Objectives should be shared and the impact of decisions and policies should also be systematically evaluated at national, regional and local level to gain the support of citizens.

9. The European Parliament (EP) must play a central role in shaping Europe's future direction. In addition, there is fundamental need to promote the engagement of national parliaments, as well as their interaction with the EP.

10. The central objectives must be accompanied by an agreement among the Member States on:

— goals, common instruments and deadlines; most needed is a common narrative, building on consistency, transparency, visibility and, above all, shared communication;

— a desirable reform of the Council, ensuring effectiveness and transparency, as well as an independent Commission in matters of exclusive competences and shared competences, with strong emphasis on the Community method;

— the need for orderly consultative arrangements with all stakeholders, as well as correct implementation and respect for the rule of law.

B. ***Policies***

11. Whatever option for the future of Europe is selected, the EESC wants a cohesive and coherent European Union. Many current policies are part of deepening integration, a long-term process that the EESC fully supports. On nearly all of them the EESC has quite recently made detailed comments and proposals for the future.

12. The single market in all its economic and social dimensions and in the framework of a sustainable development model is the indispensable cement of European integration. It should ensure a genuine level playing-field. In the same vein, EMU was seen as a decisive step forward. However, despite impressive progress its architecture remains fragile. EMU is at the core of future developments in the EU; deepening it is therefore crucial. The EESC favours a gradual pathway to a political union with a range of macroeconomic and microeconomic measures and provisions, as well as a strong social dimension. Completion of EMU calls for genuine economic governance, including EU management of the financial sector, well-ordered reforms in the Member States concerned, and shared approaches to labour market policies. Improved governance must reinforce the foundation for more convergence, as well as solidarity, across the euro area. The highly competent public services in the EU can be supportive. The euro area should start closer cooperation in other fields.

13. The EESC also stresses the need for more cohesive governance, deeper integration and full commitment of Member States in the following areas:

— a coordinated European industrial policy based on fair competition — also in discouraging tax evasion — must ensure shared instead of national approaches in improving Europe-wide conditions to foster competitiveness in a social market economy, with the committed participation of all stakeholders in consensual dialogues and in facilitating investment (programmes) and supporting SMEs;

— promotion of upward social convergence — in line with economic convergence — in terms of employment and social outcomes, through the implementation of the European Pillar of Social Rights, while respecting national competences;

— an Energy Union with proper governance, which is indispensable for a proper common market and energy security;

— a forward-looking European strategy and legislative framework to fight climate change on the basis of the Paris Agreement and as a contribution to the international climate agreements, and promotion of the 2030 Agenda for Sustainable Development across EU policies;

— a Digital Single Market as an important element of future competitiveness and promoting quality job creation, while anticipating the effects of digital transformation on employment and the labour market;

— an enhanced Europe-wide technology, research and innovation strategy;

— a (multilateral) trade policy which, in transparent negotiations, should ensure open markets and social and environmental sustainability, also emphasising equality in trade relations to secure European interests in a world that is increasingly facing protectionist trends;

— an EU policy for consumers, in the form of a citizenship policy.

14. In the EESC's view, social matters and education must likewise be addressed more systematically at EU level to find convincing solutions. Social security and education are mostly subject to the principle of subsidiarity, and therefore fall within the scope of national legislation and decision-making processes, often including the active participation of social partners. Shared competences between the EU and Member States must be better applied in social affairs. Given increased labour market tensions owing to the digital revolution, structural weaknesses in labour markets, and globalisation, the EESC calls for visible European engagement with a view to pushing for more convergence on certain social and labour conditions, while helping to promote quality job creation, fair mobility and positive commitment from citizens. A particular focus on youth and youth unemployment is needed. The role of the social partners, civil society at large, and social dialogue are paramount.

15. More economic and social convergence in the EU is required. Yet the discrepancies between national economies, culture and traditions of social systems need to be taken into account. The EESC underlines that the EU should not be an onlooker but should take a well-defined responsibility. Proper discussions between the social partners (and other stakeholders) are needed first before a common way forward can be defined. Moreover, the EESC points to the importance of the EU social directives being effectively implemented by the Member States.

16. Education is also subject to subsidiarity. However, it is undeniable that the social and economic future of Europe and the engagement of citizens are closely related to up-to-date education and training systems at all levels. The future of the younger generation depends strongly on education. Skills are key for young people as well as older generations. The EU must therefore take an active part in the modernisation process that is under way. Education also plays an important role in communicating Europe: the EESC underlines the need for adequate information and education about the EU — including on European values and citizenship — in primary and secondary schools.

17. Free movement of persons in the Schengen area must be re-established. This means by definition that common borders must be more effectively controlled. In parallel, the deplorable rise in international terrorism, involving murder but also cybercrime, is a serious cause for public uncertainty and must be combated. Cooperation between police forces and judicial authorities is needed more than ever.

18. These areas are directly related to foreign policy and to the acute problem of failing states and civil wars in Europe's neighbourhood, as well as to the ensuing migration flows that are currently overshadowing all other European issues. The EESC is very much in favour of a joint migration policy that affords refugees protection under international law, a Common Asylum System, action to combat illegal migration and human trafficking, and the promotion of legal paths into the EU. In the same context, the EU must establish proper partnerships with neighbouring countries, and in particular it must relaunch a real Euro-Mediterranean policy.

19. Europe faces the challenge of looking after its own affairs more than it ever has since 1945. Relations within NATO and with the United States, and the effective common European management of problems arising in the European Union's neighbourhood, all urgently require deepening of the EU's Common Foreign and Security Policy, on which successful internal and external security will necessarily depend.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

OPINIONS

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

527TH EESC PLENARY SESSION OF 5 AND 6 JULY 2017

Opinion of the European Economic and Social Committee on 'Improving the effectiveness of EU policies for SMEs'

(own-initiative opinion)

(2017/C 345/03)

Rapporteur: **Milena ANGELOVA**

Plenary Assembly decision:	21 January 2016
Legal basis	Rule 29(2) of the Rules of Procedure
Section responsible	Single Market, Production and Consumption
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Plenary session No	527
Outcome of vote (for/against/abstentions)	157/1/4

1. **Conclusions and recommendations**

1.1. The EESC praises the fact that SMEs are declared to be at the heart of economic policies in the EU. It appreciates that over the last decade, a great deal of legislation has been adopted and much funding has been allocated to supporting them. However, the EESC shares the opinion frequently expressed by the SME community that significant inefficiencies in both the formulation and implementation of SME policies still exist, which substantially hampers the effect of the support measures.

1.2. The EESC's recent studies ([1]) have revealed that EU SME policies and current support mechanisms treat the large number of SMEs in Europe as a homogeneous group and regrettably do not distinguish between the different needs of the numerous sub-groups of enterprises falling under the definition of SMEs. Examples of tailored support mechanisms are rather rare. Using a 'one size fits all' approach to develop EU SME policies is a crucial problem that prevents policies from fully achieving their desired effect on SMEs ([2]). Therefore, better marketing of SME policies, together with more precise targeting of SMEs' specific needs, is strongly recommended, alongside the forthcoming public consultation on the relevance of the definition of SMEs.

1.3. The EESC warns that a bureaucratic approach and the complexity of administrative rules are still prevalent in EU SME policies and the current support mechanisms, despite the constant efforts at EU level to minimise the administrative burden. EU SMEs often feel that the responsible officials have no idea of how their businesses actually function. The

([1]) EESC study: 'Assessment of the effectiveness of the EU's SMEs policies 2007-2015' (January 2017); EESC study: 'Access to finance for SMEs and midcaps in the period 2014-2020: opportunities and challenges' (May 2015), referred herein as 'EESC studies'.

([2]) The Loan Guarantee Facility and all COSME financial instruments are good examples of tailored support mechanisms.

majority of EU support mechanisms seem unsuited to respond to SMEs' pressing needs for fast, clear and effective solutions.

1.4. The EESC is concerned by the fact that the majority of SMEs — mostly the small and micro companies — are not aware of the existence of these support tools and networks, due to a communication gap. This can be addressed by greater efforts to raise awareness, further support to enable more SMEs to access the right information, stronger engagement of the official bodies with key local intermediaries at national and regional level that specialise in working with SMEs (employers and SME associations, chambers of commerce), and providing more user-friendly and tailored to businesses' needs support. Most of the tools on offer are too complex, unclear and bureaucratic in design and content to meet the needs of SMEs. To tackle this, the EESC urges the European Commission (EC) and Member States (MS) to make the best use of the European Semester, to apply systematically and everywhere the partnership principle ([3]) and to involve compulsorily SME representative organisations at European, national and regional level in the design, implementation and monitoring of SME policies and support measures. Country-specific recommendations should consistently focus on support policies for SMEs, to ensure relevant formulation, effective implementation, and qualitative and quantitative measures of results.

1.5. The EESC regrets that monitoring of the progress of EU SME policies remains fragmented. While SMEs' business activities are comprehensively recorded, the impact of EU support measures on these activities, and the extent to which changes in SMEs' development can be attributed to these measures, are not recorded. The available information is mostly quantitative and does not provide qualitative insights; therefore, it does not provide a basis for a proper assessment of the effectiveness and efficiency of the policies and supporting tools ([4]).

1.6. In line with its previous opinions, the EESC expresses its concern that the implementation of the Small Business Act for Europe is far from complete ([5]). Achievements in the different areas are uneven, with worse results in entrepreneurship, the single market and access to finance. Skills and innovation and state and public procurement have actually deteriorated since 2008 ([6]). Clearly, MS should be encouraged to take relevant measures and to adopt SBA in the designing and the implementation of policies and legislation having an impact on SMEs.

1.7. ***Specific recommendations***

1.7.1. The EU's SME policies should acknowledge the heterogeneity and diversity of European SMEs. They should explore the specific needs of microenterprises, family and 'traditional' businesses, social enterprises, liberal professions, self-employed people and all other specific sub-groups that have quite different legal forms and models of operation, in order to be able to provide an adequate portfolio of policy measures to promote their growth.

1.7.2. The EESC proposes that the EC assess whether the current definition of SMEs corresponds to their heterogeneity, sectoral dynamics, specific features and diversity during the last decade ([7]). The EESC calls for a visible, coordinated and consistent horizontal policy for SMEs, based on a multiannual action plan.

1.7.3. EU SME support tools should be translated to the language of business so as to be fit for their purpose of promoting growth and employment. To cope with the over-complexity of support mechanisms that has been identified, it is important to seek out the help and advice of SME organisations that are most closely attuned to SMEs' needs, so as to make EU SME policies speak the language of business. In this regard, SMEs currently count on the national social partners as a significant positive factor to convey their views on how to improve the SME promotion policies and call for them to be

([3]) As per Regulation (EU) No 1303/2013 (Art. 5), developed further in Regulation (EU) No 240/2014.
([4]) http://ec.europa.eu/regional_policy/sources/docgener/evaluation/pdf/expost2013/wp2_final_en.pdf, p. 31.
([5]) OJ C 229, 31.7.2012, p. 49; OJ C 181, 21.6.2012, p. 125.
([6]) 2016 SBA Factsheet. SBA Profile. Performance measured by the SBA indicators.
([7]) For example in the US, the Small Business Administration sets its criteria to be based not only on ownership structure, revenue and number of employees but also on the economic activity of the enterprise. This facilitates the application of relevant industrial policies.

more actively involved in the NRP. Their role, together with that of SMEs associations, chambers of commerce and industry and other SME intermediary organisations, should therefore be strengthened.

1.7.4. EU SME policies should dedicate more efforts to informing SMEs — and especially the most vulnerable sub-groups among them, such as mono- and micro-enterprises, traditional companies with low innovative potential, companies from remote regions, etc. ([8]) — about available support. Key support networks should be maintained and popularised, as well as made more user-friendly and comprehensive for SMEs. The potential for ensuring the coordination of existing support networks in a common one-stop-shop system respecting the situation in each MS should be carefully considered by the EC.

1.7.5. It is crucial to establish a strong multi-stakeholder partnership — SME platforms — with the social partners and public and private stakeholders engaged with SMEs' problems, at national and regional level. Strengthening the interaction with SME organisations, which are most closely attuned to SMEs' needs, especially at national and regional level, is vital to overcoming the communication gap existing between SMEs and EU support mechanisms. It also has the potential to provide a new and effective channel to reach out to SMEs by using local branches of employers' organisations, chambers of commerce and economy, SME associations and professional/sectoral organisations as key intermediaries in popularising and furnishing existing support tools.

1.7.6. Best results for SMEs come when local authorities cooperate with SME organisations when formulating and implementing policy. The current tendency for mediation to be organised mainly around banks is not the best option. Banks should be financial intermediaries, but in all other aspects (policy formulation, information, promotion, etc.), representative SME organisations are more suitable. Therefore, the EESC invites the EC to shape measures to support the SME organisations in implementing the SME policies and in disseminating relevant information to SMEs, including by providing financial support to them.

1.7.7. The EESC calls for the Small Business Act, and the two principles it establishes — 'think small first' and 'once only' — to be made legally binding. However, applying the 'once only' principle should not infringe upon host countries verifying the necessary legal and professional requirements for conducting business. The partnership principle should be extended to all legislative procedures that directly or indirectly affect SMEs. In practical terms, annual meetings of SME platforms at EU and MS level are strongly advisable.

2. **SMEs — a key focus of economic policies in the EU**

2.1. EU SME support policies ([9]) are needed because, unlike SMEs in other parts of the world, European SMEs have to comply with regulations at both national and European level — often decided without real consultation with their representative organisations, in contradiction with the 'think small first' approach. This substantially increases the effort and costs required to do business, notwithstanding the limited human and technical resources of SMEs.

2.2. In 2008, the EC launched the 'think small first' and 'once only' principles as a decisive step towards promoting competitiveness and improving the business climate for 23 million SMEs in Europe ([10]). The EESC strongly supported this endeavour ([11]), but warns that if the SBA is not legally binding and all levels of governance — EU, MS and regions — are not obliged to apply it, the SBA will remain a merely political declaration.

([8]) SMEs' diverse dimensions are very well described in http://ec.europa.eu/regional_policy/sources/docgener/evaluation/pdf/expost2013/wp2_final_en.pdf, p. 20.
([9]) European Charter for Small Enterprises (2000).
([10]) COM(2008) 394 final.
([11]) OJ C 27, 3.2.2009, p 7; OJ C 224, 30.8.2008, p. 32; OJ C 182, 4.8.2009, p. 30.

2.3. SBA implementation was evaluated and updated in 2011 ([12]), but the conclusions on its real impact were rather unenthusiastic and called for more efforts ([13]). The EESC has repeatedly put forward proposals to improve the effectiveness of policies for SMEs ([14]). Nowadays, SMEs are affected by all EU policies and therefore they need a truly horizontal, visible, coordinated and consistent policy to be formulated and implemented in an effective and efficient way ([15]).

2.4. SME policies do not take the different needs of different categories of SMEs into account. In order to increase the effectiveness of their formulation and implementation, a substantial outreach effort is needed so as to differentiate their addressees more precisely and to target and tailor the solutions on offer to their specific needs. The segmentation criteria could be based not only on size (e.g. in general, the smaller the enterprise is, the harder it is to get access to finance and the more it is in need of advice, coaching and mentoring), but also on location (cities v small towns and remote rural areas), on life-cycle phase (start-up, scale-up), on sector (industry, trade, agriculture, tourism, etc.), etc.

2.5. Substantial preparatory work for a revised SBA has already been carried out. The REFIT programme has taken on the task of making much-needed improvements to the EU legislative framework and of reducing the administrative barriers. Over the years, the amount of EU legislation in force has grown to 19 875 documents ([16]). Of these, 1 527 contain provisions related to SMEs, mostly found in the following subject matters: State aid (343), competition (293), internal market (217), research and technological development (133) and budget (117).

2.6. Recent EESC studies demonstrate that despite the numerous initiatives that have been launched, EU SME policies need major revision so as to diversify support measures, simplify applicable rules and optimise communication and collaboration with SMEs and SME organisations in order to be able to effectively address SMEs' variety and diverse needs. The role of regions and territories in the implementation of EU policies and legislation, in particular those affecting SMEs, is growing considerably ([17]).

3. **SME support policies — challenges and opportunities**

3.1. SMEs are being confronted with increasingly serious challenges of various kinds:

— constantly intensifying competition and globalising markets,

— new business models as a result of the development of new technologies, such as widespread digitalisation (Industry 4.0), the circular economy and the sharing economy,

— shortage of skilled and qualified manpower as a result of the demographic crisis in Europe, population ageing, and migration.

3.2. SMEs are quite a heterogeneous and diverse group. They can be differentiated on the basis of their size, life- cycle stage, location, type of ownership, sector of activity, etc. and their needs for support are quite varied depending on which sub-segment a given SME is in. A special group that requires specific treatment is constituted by the 'monoentrepreneurs' (almost 50 % of all SMEs), which are almost excluded from the scope of the support measures. In order to help this most vulnerable group of SMEs to strive and thrive, the issue of bogus self-employment should be properly addressed as well.

3.3. Against this backdrop, formulating promotion policies based only on the size of the supported companies might be outdated, too broadly targeted and fail to consider the different needs of different groups of SMEs. In its opinions, the EESC has constantly stressed the need for better targeted and more precisely defined SME promotion policies in Europe ([18]) as well as the need to revisit the definition of SMEs so as to better reflect the variety of SMEs and differences between the

([12]) COM(2011) 78 final.
([13]) OJ C 376, 22.12.2011, p. 51.
([14]) OJ C 229, 31.7.2012, p. 49, OJ C 181, 21.6.2012, p. 125.
([15]) http://www.eesc.europa.eu/resources/docs/final-joint-declaration—horizontal-sme-policy.pdf
([16]) Agreements, directives, regulations and decisions.
([17]) According to the European Committee of the Regions, more than 85 % of EU legislation is applied at territorial level.
([18]) ECO/372, information report not published in the Official Journal (OJ C 13, 15.1.2016, p. 8; OJ C 383, 17.11.2015, p. 64).

MS ([19]). The EESC invites the EC to launch a consultation on the SME definition. This should encompass an assessment of how the definition is applied in the implementation of SME policy measures for the micro, small and medium-sized companies.

3.4. ***Adequacy of support instruments for the needs of SMEs***

3.4.1. SME support instruments must be evaluated from the point of view of the actual effect they have on improving the situation for SMEs and if they meet in particular the principles set out in the SBA. The EESC sees a need for a qualitative and in-depth assessment of the effectiveness and efficiency of investing EU funds, as well as a need for greater efforts by the MS to implement the 'think small first' and 'once only' principle at national and regional level which should be compulsory at all levels ([20]).

3.4.2. The 'think small first' and SBA principles are not explicitly present in the Juncker plan. They can be seen to a certain extent in the Horizon 2020 and COSME programmes, but should be better implemented in practice. The EESC invites the EU policymakers to consider the SBA principles in all EU legislative texts that might have a direct or indirect impact on SMEs.

3.4.3. The cost of credit and cost of building and renting have decreased in recent years due to the crisis. This, together with some new targeted instruments, creates good opportunities for start-ups, but companies' scale-up phase remains widely under-supported. In this regard, the EESC welcomes the EC's new initiative to address this problem ([21]).

3.4.4. Bank loans remain the main source of funding for SMEs, but access to banking finance is still not easy for many SMEs, because of weak banks' balances, lack of ECB monetary policy transmission in some countries and the relatively high barriers set by requirements for guarantees. Market-based finance through private equity funds, venture capital, issuing bonds and equity instruments on specialised market segments and crowdfunding, is increasingly important, but most SMEs are still unprepared to use these opportunities ([22]). They need proper guidance on timing, detailed information, and support in order to be able to explore them. According to the EESC survey, an extremely high proportion of SMEs are unaware of opportunities for support through ESIF grant schemes, or of the possibility of acquiring financing via an investment fund supported by EU funds.

3.4.5. A spot survey shows that the focus and priorities of support instruments do not always match SMEs' priority needs ([23]), one of the reasons being the failure to acknowledge the significant differences that still exist between the MS. For example, access to new markets is indicated as the most serious challenge for SMEs primarily by companies from southern Europe, whereas most support for improving access to markets, including international markets, is received by companies from northern Europe. This is clear evidence that the needs of SMEs are notably different at national level, prompting the question of whether pan-European instruments should perhaps be designed in greater detail. This view is also fully endorsed in the Annual Report on European SMEs 2014/2015 ([24]), according to which the group of countries with the

([19]) The common definition of SMEs is set out in EU Recommendation 2003/361/EC. Another definition of SMEs is given in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 and in Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 (OJ C 383, 17.11.2015, p. 64).

([20]) OJ C 303, 19.8.2016, p. 94.

([21]) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:733:FIN

([22]) OJ C 388, 31.12.1994, p. 14.

([23]) The survey was conducted via EESC, UEAPME, CEEP and BICA members from April to May 2016. The results were analysed, with MS split into two groups on the basis of the classification used in 'Industry 4.0. The new industrial revolution. How Europe will succeed', Roland Berger Strategy Consultants, March 2014. https://www.rolandberger.com/media/pdf/Roland_Berger_TAB_Industry_4_0_20140403.pdf
The Group 1 countries are Austria, Belgium, Sweden and Germany — with a high readiness for Industry 4.0 and designated 'potentialists' and 'frontrunners'. Assigned to Group 2 are Bulgaria, Romania, Hungary, Spain and Cyprus — labelled 'hesitators' and 'traditionalists'. This division makes the results of the spot survey comparable with earlier EESC research (see ECO/372).

([24]) http://ec.europa.eu/DocsRoom/documents/16341/attachments/2/translations/en/renditions/pdf

lowest scores are mainly from southern Europe. These countries report extremely low success rates for projects, including in the SME component of Horizon 2020 ([25]).

3.4.6. The high expectations placed on the role of 'SME envoy' have unfortunately not been justified so far. Few SME representatives are aware of who performs that function in their countries. Most SMEs state that the 'SME envoy' performs merely protocol and ceremonial functions rather than playing a role that is linked to real measures to promote SMEs. While the core aim of this network is to be an interface between the European Commission and the national bodies and to effectively promote SMEs' interests within national bodies and in national legislation, SMEs expect to receive real advice and information about EU policies in cooperation with SMEs organisations.

3.4.7. Promoting entrepreneurship is connected with establishing appropriate conditions to: increase the share of start-ups and new companies that survive and succeed; help new companies to improve their competitiveness and to grow more quickly and more effectively; and improve insolvency procedures as well as the development and strengthening of business transfers ([26]). While much has already been achieved in terms of making the registration technology and procedure more straightforward in the EU, there is still more to be done in order to achieve the second and third goals. The 'second chance' principle is estimated to perform the worst in all MS, and even the EC does not award contracts to entrepreneurs who have failed.

3.4.8. Additionally, procedures for liquidation (both in cases of insolvency and voluntary winding-up) as well as for restructuring and inheritance are difficult from a purely procedural perspective in many countries. The EESC stresses the need to simplify and harmonise insolvency law ([27]).

3.4.9. The public hearing and recent EESC studies also provided important insights on the key challenges experienced in all main priority areas for EU SMEs:

3.4.9.1. *Burden reduction/simplification*:

— the number of SME-related exemption/simplification initiatives under the REFIT programme is limited,

— the outdated SME definition remains unaddressed,

— the SME test is applied partially and unevenly by MS as it is still not obligatory,

— public consultations on impact assessments and roadmaps are hampered by a bureaucratic institutional approach and the fact that they are not accessible in all EU languages,

— all SMEs point to corruption and inefficient state administration as serious problems that have a very adverse impact on their business,

— late payment by public administrations and large clients remains a debilitating trend in some MS, despite the introduction of stricter requirements in the revision of the Late Payment Directive ([28]).

3.4.9.2. *Promotion of entrepreneurship*:

— entrepreneurship is still not consistently incorporated in the majority of the MS' national education systems,

([25]) There is a correlation between the conclusions of the report and the number of approved projects under the Horizon 2020 instrument to the end of 2015:
Austria (25), Belgium (12), Germany (88), France (67), Sweden (46) and the United Kingdom (139). These countries saw an improvement in SME employment and added value at the end of 2014 that reached 2008 levels;
Bulgaria (1), the Czech Republic (6), Croatia (1), Cyprus (2), Denmark, Greece (11), Hungary, Italy, Latvia, Lithuania (5), Poland, Portugal, Romania, Slovenia and Spain have not yet reached the level of 2008.

([26]) Lichtenstein, G. A., T. S. Lyons, 'Incubating New Enterprises: A Guide to Successful Practice' (The Aspen Institute, Rural Economic Policy Programme, USA, 1996).

([27]) OJ C 209, 30.6.2017, p. 21.

([28]) Directive 2011/7/EU.

— teacher training in entrepreneurship is sporadic and mostly carried out with reference to individual projects — few cross-European initiatives exist in this area ([29]),

— youth programmes focused on entrepreneurship, although successful, threaten to deviate from their initial goals of promoting entrepreneurship,

— promotional campaigns such as the European SME Week have little impact on encouraging participants to strongly consider becoming entrepreneurs,

— start-up costs are still three times higher than the stated benchmark.

3.4.9.3. *Improving access to markets and internationalisation*:

— the single market is not yet complete, which impedes SMEs' access to markets, including in relation to cross-border provision of services,

— complicated administrative procedures and high delivery costs for export/import,

— SME support schemes for internationalisation lack a tailored approach,

— standards and IPRs are still unattractive to SMEs mainly because their benefits are not well communicated to them, costs are high, and rules are too complicated.

3.4.9.4. *Facilitating access to finance*:

— the typical financing model is bank loans, followed — distantly — by grants and supported by financial instruments,

— grants are not market-driven and not tailored to specific SME sub-groups and their policy orientation rarely matches SMEs' needs,

— financial instruments are better suited to SMEs' immediate needs for working capital. Unfortunately, a very low proportion of SMEs are well informed about them, a tailored approach to their application is still rare, their provision is highly dependent on effective collaboration among financing institutions, intermediaries and final recipients, and there is a lack of data and analysis on their real effect; greater complementarities and synergies between existing instruments and players at regional, national and supranational level, including promotion of more efficient financial instruments — e.g. counter-guarantees,

— in spite of the substantial progress made in providing innovative non-lending financing channels such as private equity, venture capital, etc., they remain relatively underdeveloped in the majority of the MS ([30]),

— a significant proportion of SMEs are afraid to apply for financial instruments of European programmes, because 'to get financing seems to be too complicated'.

3.4.9.5. *Supporting competitiveness and innovation*:

— although Horizon 2020 allocates special funding for SMEs, it cannot solve all SMEs' problems with access to risk finance for innovation, and there are regrettably few projects from the newest MS,

— still insufficient interest of SMEs in the programme due to arduous and unfair eligibility and application rules,

— existing rules may possibly discourage SMEs from participating in viable consortia for the implementation of innovation projects,

— the cost for SMEs to apply for voluntary tools developed by the EC ([31]) remains relatively high and thus only a limited number of companies are able to use them.

([29]) https://ec.europa.eu/growth/smes/promoting-entrepreneurship/support/education/projects-studies_en
([30]) OJ C 388, 31.12.1994, p. 14.
([31]) e.g. EU Eco-Management and Audit Scheme, EU Ecolabel, EU Environmental Technology Verification, or the Product Environmental Footprint.

3.4.9.6. *Provision of key support networks*:

— the information provided is still not of the expected quality,

— structure, content and design are not very user-friendly,

— the approach to providing information is frequently bureaucratic,

— language barriers are common as information is largely provided only in English.

3.5. ***Policy consistency***

3.5.1. To be consistent, SME promotion policies must take into account the diversity of SMEs by collecting microdata and analyses at the microeconomic level. This is the only way to improve understanding of the different needs of SMEs in line with their particular characteristics.

3.5.2. At present, Europe's banking and capital markets remain fragmented. The Capital Markets Union (CMU) project, launched to address this, can be realised only if it is consistent with other policies to support SMEs. Most SMEs' limited knowledge and understanding of the different financial instruments would restrict the development of the CMU. For this reason, support for SMEs should include putting in place a long-term, sustainable approach to financing, and building understanding of the different instruments, the possibilities for complementarity, and the advantages and risks associated with different instruments.

3.5.3. Most often, the relations between the owner, management and employees in SMEs are closer than in large companies and social dialogue is therefore a win-win situation, by laying the groundwork for a committed and engaged workforce with high-quality jobs. In order for all the stakeholders to benefit from such a situation and to enhance the accumulation of social capital inside SMEs, systematic support should be provided to SMEs so as to make them aware of the importance of social dialogue, health and safety, work conditions, innovative forms of work organisation, work-based learning, and skills development. In this endeavour, the role of social partners and NGOs is indispensable.

3.6. ***Specific recommendations regarding priority areas of EU SME policies***

3.6.1. *Burden reduction/simplification*:

— avoid gold-plating by providing clearer translation of EU legislation, by putting in place systems to solve litigation and misinterpretation of such texts, and by drafting 'SME-friendly notes' and a vade mecum summarising and explaining relevant information for SMEs;

— make the SME test obligatory for new legislative proposals and guarantee its effective implementation by all MS, and systematically across EC services ([32]),

— ensure more effective inclusion in a structured manner of SMEs and their organisations in impact assessments of new legislation via simplification of their format and content as well as availability of information in all EU languages, and assess the impact on the different groups of SMEs,

— carry out a complete fitness check of EU legislation on EU policies on regular basis,

— more effectively (making it compulsory) include SMEs' national and regional organisations as partners in the interinstitutional debate on new legislation relevant to SMEs,

— ensure effective monitoring of results under the REFIT programme in terms of lessening the burden for SMEs.

([32]) The SME test is already included in the EC impact assessment — https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/sme-test_en.

3.6.2. *Promotion of entrepreneurship*:

— support the actions of EU, national and regional SME organisations for providing information, training and coaching/mentoring of enterprises,

— enrich the existing tools to support the strengthening of an entrepreneurial mindset among young people and ensure support programmes stay focused on the development of key entrepreneurial skills,

— introduce entrepreneurship as part of the curriculum at all levels of education ([33]),

— further simplify and reduce the costs of start-up procedures, ease access to finance and motivate more people to develop their entrepreneurial endeavours,

— provide simple and easy business transfer, liquidation procedures, and second chance options.

3.6.3. *Improving access to markets and internationalisation*:

— optimise the functioning of the single market so as to prevent gold-plating, non-application and other MS practices that distort competitiveness without curtailing workers' and consumers' rights,

— increase the visibility of existing internationalisation support networks by means of better collaboration with SME organisations at national and regional level,

— provide tools to help SMEs take part in exhibitions, conventions and fairs abroad,

— encourage the creation of regional and national sectoral clusters of SMEs with a certificate of guaranteed quality,

— reduce further the costs of standards and IPRs for SMEs and promote their benefits for competitiveness.

3.6.4. *Facilitating SMEs' access to finance*:

— reduce formalities, monitoring and control to the absolute minimum necessary — compulsory implementation of the 'once only' principle, use of electronic forms, simplification of the application of '*de minimis*',

— design SMEs grant-based programmes on the basis of careful needs assessments, avoid the detrimental practice of implementing projects only for the sake of acquiring non-repayable finance, without any business development strategy,

— strengthen the collaboration between EIF, financial intermediaries and SME organisations in order to design highly effective financial instruments that respond to SMEs' needs for working capital, loans and guarantees and provide assessment of the effects produced by means of quantitative indicators,

— establish a full diversified portfolio of tailored and innovative support measures to effectively reach the heterogeneous group of SMEs ([34]),

— provide support for SMEs which are prepared for issuing bonds and equity instruments on specialised market segments,

— allocate sufficient resources to the COSME Loan Guarantee Facility for it to reach its goals, taking the financial impact of Brexit into consideration,

— explore ways to strengthen innovative non-lending financing channels such as private equity, venture capital, business angels and crowdfunding, and effective use of the support of guaranteeing institutions.

3.6.5. *Supporting competitiveness and innovation*:

— provide tools for improving SMEs' access to venture capital for the introduction of innovations,

([33]) OJ C 332, 8.10.2015, p. 20.
([34]) OJ C 351, 15.11.2012, p. 45; OJ C 34, 2.2.2017, p. 66; OJ C 303, 19.8.2016, p. 94.

— support cooperation between SMEs and research and educational institutions and facilitate the exchange of information between them,

— create favourable conditions for building viable consortia in which SMEs and their market-driven innovative ideas play a central role,

— support SME competitiveness by coaching/mentoring with a view to: providing capacity building and technical assistance; disseminating best practise; supporting cooperation between SME organisations.

3.6.6. *Provision of key support networks*:

— promote EU, national and regional SME organisations as the most important 'centre of gravity' by putting in place strategies for them to build their capacity and by implementing the principle of multilevel and multifactor governance at EU, national and regional level and apply in the legislative process,

— consider the option of creating a single portal for all SME support initiatives with a clear and user-friendly design — with rich e-content, limited redirections, understandable language.

3.6.7. *Development of proper labour skills*:

— adapt the vocational training systems to the requirements of the labour markets; create systems for monitoring and forecasting labour markets' needs,

— enhance support for MS to facilitate the involvement of SMEs in apprenticeship schemes,

— support short-term training programmes; encourage cooperation between employers' associations and educational institutions.

Brussels, 6 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on 'The counterfeit and pirated products industry'

(own-initiative opinion)

(2017/C 345/04)

Rapporteur: **Antonello PEZZINI**

Co-rapporteur: **Hannes LEO**

Plenary assembly decision	26.1.2017
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Outcome of vote	119/0/0
(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. The European economy is increasingly based on creativity and innovation. Intellectual property rights (IPR) intensive industries in Europe account for 39 % of the EU's GDP and 26 % of its employment ([1]). The EESC considers that businesses must enjoy a series of conditions that facilitate innovation, investment and employment.

1.2. According to estimates from the UN ([2]) and OECD, counterfeit products represent 5-7 % (UN) or up to 2,5 % (OECD) of world trade. The majority of counterfeit products in Europe are produced outside the EU, but production is also on the rise in Member States. The internet has considerably simplified and massively increased the scope for selling counterfeit products online while the risk of being prosecuted remains very low.

1.3. The counterfeit industry takes advantage both of differences in the effectiveness of customs controls at key entry points to the single market and of the fragmented and variable nature of the national implementation of EU rules and standards, facilitating the entry into the EU of products that endanger consumers' health, public safety and security and the competitiveness of businesses.

1.4. Consequently, a fully-functioning and interoperative Customs Union must ensure the efficient operation of the new system introduced by the customs code, protecting businesses from unfair competition, especially from the global counterfeit and pirated products industry — not only in the interests of business but because it has direct implications for global health, safety and security, as well as economic growth.

1.5. In the EESC's view, given that two kinds of counterfeiting must be distinguished — 'counterfeiting' as infringement of IPR, i.e. pure unfair competition with no threat to safety and public health, and 'counterfeiting crime' as a criminal act, as defined by the Medicrime Convention ([3]) — stamping out counterfeiting and piracy should be a key EU priority not only with a view to ensuring the healthy growth of free world trade without protectionism, but also in view of the

([1]) Joint EPO-OHIM report on IPR-intensive industries in the EU, September 2013.
([2]) http://www.springer.com/978-1-4614-5567-7 United Nations Office on Drugs and Crime (UNODC).
([3]) http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/211

professionalisation of organised crime in the trade in counterfeit and pirated products and the risks posed to consumers. This could involve appropriate criminal proceedings to discourage such 'counterfeiting crime' activities.

1.6. In order to reduce the negative impact of the growing volume of counterfeited and pirated goods on the market, measures must be taken at sectorial, national, European and multilateral level to counter:

— the failure to build up production and investments;

— damage to image and quality, including technical non-conformity, fake conformity or compliance certificates and false conformity markings, and the mis-use of such certificates and markings;

— the risks to health, safety and the environment;

— the absence of any type of certification, standards and quality checks for counterfeit goods;

— the loss of jobs and failure to create new businesses;

— lost fiscal and parafiscal revenue;

— growing problems in the area of security and tackling organised crime, including terrorism financing.

1.7. The EESC is convinced that a joint effort is needed by all public and private actors to identify and implement a joint strategy of coordinated measures aimed at preventing, detecting and combating this phenomenon, supported by an appropriate common technical and legislative framework.

1.8. The EESC considers however that the initiative is primarily a matter for the EU private sector comprising the industries and service providers who are most concerned — as well as the whole value chain, with the involvement of right holders and SMEs — while the European Commission has to update the regulatory framework for IPRs in order to modernise the existing rules and adapt the criminal law options currently available in the EU and its Member States. Together they should build up a strong joint impetus, from the source through the entire supply chain, identifying interoperative mechanisms for international cooperation and monitoring of suppliers/clients, in order to minimise the risk of counterfeiting in the supply chain.

1.9. Stronger joint action by the private sector is crucial, in the EESC's view, to ensuring effective partnerships with the internet site providers, content producers, brand owners, electronic payment operators, advertisers/advertising networks and internet domain registers, and voluntary memorandums of joint action, that are able to generate rapid adjustments to sudden market changes.

1.10. Robust promotion by the private sector should be flanked by public measures such as:

— the development of new para-judicial techniques to curtail the growing trade in counterfeit products, allowing for private/public collaboration to optimise customs intervention by means of marking and traceability,

— interoperative detection systems that communicate with automatic risk management systems based on suitable technologies, enabling e-commerce owners and right holders to identify and prevent infringements,

— introduction of a new 2018-2021 strategic plan with a renewed and better-coordinated framework for action, relying on appropriate financial resources, with greater transparency and forward-looking capacity, more fine-tuned intelligence techniques, an 'EU Notorious Countries List', the implementation of strengthened onsite IPR desks, including efforts to combat counterfeiting crime, and more advanced market surveillance instruments (interactive

database) with an effectively common customs service, in line with the proposal for a Directive on the Union legal framework for customs infringements and sanctions ([4]);

— initiatives to provide better statistics and analysis on the scale and impact of counterfeiting.

1.11. The EESC considers that a European anti-counterfeiting campaign should be financed, including a European Anti-Counterfeiting Day and a special telephone hotline, highlighting:

— the serious loss that the entry onto the market of counterfeited and pirated products and their purchase causes for entire sectors of the economy, for health, the environment, European innovation and creativity, and for employment, public revenues and economic growth as a whole;

— the need for substantial efforts to improve the database on counterfeit products and in the assessment of related production and jobs losses in order to design appropriate policies. At present, the statistical basis and econometric estimates need to be more accurate, reliable and comparable.

1.12. The EESC views closer coordination of the various European Commission services with the European agencies involved in the issue with their counterparts in Member States to be essential. This can be achieved by supplying sufficient resources for cooperation across Europe and efforts to establish a true culture of cooperation. Setting up a central counterfeiting task force for an adequate period of time should help to effectively achieve this objective.

1.13. The EESC urges the Council and the EP, as a matter of urgency, to prevail upon the European Commission to:

— follow through rapidly with the technological and structural measures and the new 2018-2021 Action plan against counterfeited and pirated products;

— support more robust joint action by the private sector, with rules and structures that ensure that free international trade develops on a fair and proactive basis.

2. **Introduction: nature and quantitative and qualitative characteristics of the phenomenon**

2.1. To define the subject of the present opinion, reference is made to the counterfeiting concepts set out in Regulation (EU) No 608/2013. 'Electronic and digital piracy', trade and the dissemination of IT software or illegal files, in violation of the relevant intellectual property laws, do not fall within the scope of this opinion, since they are closely linked with the Digital Agenda, for which the EESC has set up a dedicated Permanent Study Group.

2.2. Quantifying the counterfeiting phenomenon is a complex task, since, as in all spheres of illegal activity, the data available are too heavily based on estimates and approximations, given that counterfeiting channels are for the most part controlled by criminal organisations, which have shrewdly identified the huge potential of this type of illegal activity, with minimal risks of being caught.

2.3. In recent years, the types of goods targeted by counterfeiting have multiplied to the extent that no products now exist which cannot be imitated and sold: everything is copied, from clothing accessories, to mechanical spare parts and tools, building materials and equipment, jewellery, footwear, design objects, toys, cosmetics, and medicines, and fake goods would now appear to constitute a parallel sector in their own right, a real competitor which businesses must pit themselves up against and from which they must defend their market share.

([4]) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.487.01.0057.01.ENG&toc=OJ:C:2016:487:TOC

2.4. Ease of purchase often means that consumers choose counterfeit products, with serious repercussions on businesses, particularly SMEs; poorly regulated and difficult to control, e-commerce and online auctions represent an effective and secure way of establishing a wide customer base and trading in low-cost counterfeit goods.

2.5. Counterfeiting has become one of the main facilitators and financers of organised crime. The involvement of criminal organisations has resulted in a drastic increase in the level of professionalism in the counterfeiting industry: organised criminals have developed the networks necessary to enable them to optimise their results on a global scale.

2.6. The production of counterfeit goods is generally considered an external phenomenon: customs statistics clearly show that the majority of countries from which counterfeit products originate are not members of the EU. China, although having made the greatest commitment to stamping out counterfeiting, remains one of the industry's key players.

2.7. The rise of the internet has created new distribution channels for counterfeit products involving a low risk for the seller due to the difficulties in prosecuting intermediaries in the value chain. Greater cooperation is needed along the whole value chain to effectively tackle trade in counterfeit goods online.

2.8. IPR-intensive industries in Europe account for 39 % of the EU's GDP and 26 % of its employment ([5]). According to recent studies ([6]), counterfeit goods represent between 5 and 7 % of world trade, which amounts to roughly EUR 600 billion per year, while the OECD ([7]) put the value of imported fake goods at 2,5 % of international trade in 2013, equivalent to EUR 338 billion, and estimates that up to 5 %, or EUR 85 billion of goods imported into the EU are counterfeit or pirated, excluding those produced and sold within a single Member State, and those bought on the internet and through indirect economic activity.

2.9. According to other international statistics from 2017 ([8]) the global trade in counterfeit and pirated goods is estimated to generate between USD 923 billion and USD 1,13 trillion annually.

2.10. The production of counterfeit goods, including on a large scale, is on the rise in Member States as counterfeiters attempt to circumvent customs controls at the EU's external borders.

2.11. The placing on the market of counterfeit and pirated products causes enormous damage to the economy, facilitating the development of an 'underground economy', which deprives ([9]) of the revenue required for essential public services and places a heavier tax burden on taxpayers, with regular job losses.

2.12. In the EU, counterfeiting is responsible for roughly 800 000 job losses per year and roughly EUR 14,3 billion in annual tax revenue losses, including VAT and excise duties ([10]).

2.13. The EP has adopted a series of resolutions on the subject, in particular its Resolution of 9 June 2015 ([11]), in which it recommended pursuing an approach which brings together all actors in the fight against counterfeiting, raising awareness among consumers and providing them with more information, developing new trade models, improving defence

([5]) Joint EPO-OHIM report on IPR-intensive industries in the EU, September 2013.
([6]) UNODC, *The Globalisation of Crime. A Transnational Crime Threat Assessment.*
([7]) OECD/EUIPO (2016), *Trade in Counterfeit and Pirated Goods*: *Mapping the Economic Impact*.
([8]) Global Financial Integrity, *Transnational Crime and the Developing World,* March 2017 (statistics confirmed by WAITO — April 2017).
([9]) In 2013, an estimated EUR 90 to 120 billion in lost tax revenue — *Frontier Economics — 2016*.
([10]) Sectoral studies on nine sectors affected by counterfeiting: cosmetics and personal care; clothing, shoes and accessories; sports products, toys and games; jewellery and watches; bags; recorded music; wine and alcohol; pharmaceuticals.
([11]) Europarl P8_TA(2015)0219 — 09/06/2015 — http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0219&language=EN&ring=A8-2015-0161

mechanisms for SMEs, promoting a convergence of interests between Member States and third countries and making greater use of data collected by the European Union Intellectual Property Office (EUIPO).

2.14. On 19 March 2013, the Council adopted a Resolution on the EU Customs Action Plan to combat intellectual property rights infringements (2013 to 2017), setting out clear objectives, earmarking appropriate resources and defining result and performance indicators according to a clearly defined road map on:

— the implementation and monitoring of new legislation to enforce intellectual property rights;

— measures to tackle the infringement of intellectual property rights in the trade of goods and services;

— cooperation with the key source, transit and destination countries so as to combat illegal trade along the entire international supply chain;

— increased cooperation with EUIPO and law enforcement authorities.

2.15. On 18 May 2017, the Council conclusions on setting the EU's priorities for the fight against organised and serious international crime 2018-2021 underline that 'the criminal markets are increasingly complex and dynamic[…]. […] Special attention should therefore be given to the online trade in illicit goods and services, including counterfeit goods[…]'.

3. **International overview**

3.1. Customs statistics clearly show that the majority of countries from which counterfeit products originate are not members of the EU, given that key players in the counterfeiting industry include not only China and Hong Kong, but also other Asian countries specialised in specific sectors: India in pharmaceuticals, Egypt in food products and Turkey in perfumes, cosmetics and footwear, along with Malaysia, Belarus, the United Arab Emirates, Indonesia, Thailand and the Philippines.

3.2. In 2014 EU Customs statistics revealed that more than 66 % of textile and clothing counterfeit products came from outside the EU.

3.3. Transit points for the transport of goods from Asia to Europe play a particularly important role, since they act as central zones for the transport of goods containers in a network of 3 000 free zones located in 135 different countries. These areas are used as a place to exchange, document and relabel the contents of containers.

3.4. Another factor to take into account is the considerable rise in the domestic production of counterfeit and pirated goods in the EU, an activity which, according to Europol, is becoming more and more profitable for organised criminals and which carries much lower risks and is linked with other types of crime, such as fraud, document forgery, tax evasion and human trafficking.

3.5. With the relocation of counterfeit and pirated goods production facilities to within the EU, the resulting lower transport costs and reduced risks of interception, and the development of well-organised criminal networks with adequate resources, a new model appears to be emerging: the expected expansion of the Tanger Med free zone in Morocco, only 15 km away from the EU, could offer criminal networks further opportunities to place larger quantities of counterfeit goods on the European market.

3.6. The countries whose businesses were most affected by counterfeiting activities between 2011 and 2013 are the US at 20 %, Italy at 15 %, France and Switzerland at 12 %, Japan and Germany at 8 %, the UK and Luxembourg. Indirect losses and additional costs incurred for new design/innovation solutions due to counterfeiting activities should also not be underestimated.

4. **Combating counterfeiting and piracy in the single market**

4.1. The EESC strongly calls on the Member States to introduce measures aimed at:

— strengthening national anti-counterfeiting measures and legislation, promoting the harmonisation of legislation at EU level, developing efficient frameworks for administrative inspection of counterfeit goods and adapting the criminal law options available in the Member States;

— ensuring common high levels of implementation of European legislation at national level through the exchange of best practices;

— tasking the competent authorities with collecting comparable statistical data, including on the links between counterfeit products and deaths or accidents, e.g. by groups of products;

— devising policies to monitor, control and prevent more effectively the risks posed by counterfeit products to public health;

— empowering consumers, via smartphone technology, to make their own judgement as to the authenticity of their goods and to be able to verify and check the features and the value and safety of what they buy;

— improving communication with consumers, warning them of the risks of counterfeit products and showing them how to use new methods to recognise fake goods with ease: consumer awareness should be raised, and national information and education campaigns should be pursued;

— involving local actors, intersectoral groups and consumer associations more actively in the fight against counterfeiting at national level, in particular by means of information campaigns;

— giving customs officers sufficient means and resources and appropriate training in methods and policies for detecting counterfeit products;

— facilitating the registration of trademarks, models and other intellectual property rights for SMEs, while maintaining a high level of technical standards and of IRP.

4.2. The EESC calls for a new EU framework 2018-2021, including a fully financed and coordinated Action Plan with a view to strengthening anti-counterfeiting legislation and initiatives at EU level, through measures such as:

— accelerating the establishment of a single European customs system, through shared procedures, instruments and unified databases which can be consulted immediately;

— adopting common criteria for collecting statistics, while emphasising sectoral initiatives as there are no ‘one size fits all’ solutions;

— promoting innovative tracking and monitoring applications;

— implementing more robust European coordination, in order to bring standards in the fight against counterfeiting up to the same levels in all Member States;

— stepping up intelligence activity and bilateral law enforcement agreements along the entire supply chain, including with the help of an expanded EU-IPR desk on location;

— taking immediate steps to promote the simplified EU framework for support and assistance to European SMEs;

— including anti-counterfeiting clauses in new FTAs;

— implementing and coordinating preventative measures at international level to monitor the 3 000 free zones and the entire supply chain;

— tasking the competent EU authorities with collecting fully comparable statistical data on the links between counterfeit products and deaths or accidents;

— establishing common EU measures to control and prevent more effectively the risks posed by counterfeit products to public health;

— improving EU communication with consumers and alerting and teaching them how to identify these products (JRC model);

— encouraging the EU business community to pool information more effectively on problems linked to counterfeiting and to step up measures designed to combat counterfeiting, such as special telephone hotlines for consumers and improved data management systems;

— taking coordinated action on e-commerce (payment methods and advertising) and adopting common specific rules to monitor the sale of medicines and other sensitive products online involving operators, interprofessional groups and consumer associations;

— developing the counterfeiting-crime approach against criminal organisations and their impact on safety, public health and security, taking established legal principles connected with the Medicrime Convention and extending them to industrial counterfeit products associated with safety and public health risks;

— together with EMA, Europol, EFSA and ENISA, drawing up specific rules for monitoring sales of medicines, foodstuffs and other sensitive products on the internet;

— assessing the role intermediaries can play in the protection of IPRs, including in relation to counterfeit goods, and considering amending the specific EU legal framework for enforcement ([12]);

— developing and supporting a strong European anti-counterfeiting campaign inside and outside the internal market in parallel with the national ones;

— promoting a joint technological initiative (JTI) on counterfeiting, under Horizon 2020;

— allocating appropriate funding to the measures adopted within this New Action Plan 2018-2021.

5. **Ensuring optimum governance**

5.1. It is essential, in the EESC's view, to ensure closer coordination of the various Commission services and the European agencies involved in the issue. This can be achieved by setting up a task force reporting directly to the Commission president, able to interact with the relevant private sector segments, international bodies and the competent Member State authorities.

5.2. This counterfeiting task force should present an all-embracing annual report on progress made in technological, structural and regulatory spheres, especially at international level.

5.3. The European Commission and the European agencies, especially the EUIPO, Europol and OLAF, as well as NGOs involved in stamping out counterfeiting, need to step up their international coordination, by holding annual international conferences.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([12]) See COM(2016) 288 final.

Opinion of the European Economic and Social Committee on 'Industrial change in the EU beet sugar industry'

(own-initiative opinion)

(2017/C 345/05)

Rapporteur: **José Manuel ROCHE RAMO**

Co-rapporteur: **Estelle BRENTNALL**

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Outcome of vote	111/1/2
(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. The EU beet sugar industry is preparing for one of the biggest changes in its history: the end of production quotas on 1 October 2017. The end of quotas presents opportunities for EU beet sugar manufacturers, in particular the possibility of producing more sugar for food use and exporting without limits. To benefit from these openings, the EU beet sugar industry has worked hard to increase its competitiveness. Nevertheless, the end of production quotas also creates additional risks and uncertainties and could put the sector under pressure. Competition will intensify, putting pressure on prices for both growers and processors, while isoglucose is expected to take an increased market share. Less competitive EU beet sugar manufacturers and growers may struggle to survive in a harsher and more volatile market environment. This could have serious consequences for workers, undertakings, farmers and rural communities. It is essential that policy-makers remain vigilant as regards the future of the sector.

1.2. Aid for sugar private storage will be the only specific instrument that remains as an option to support the EU beet sugar industry after the end of production quotas. However, in the event of a market crisis in the EU beet sugar sector, it is not clear under which circumstances such aid might be introduced. The conditions for the activation of aid for private storage must be better defined so that the system is fit for purpose. The European Commission could consider defining an objective price threshold that would trigger the decision-making process for the activation of aid for private storage. This would make the process less subjective, and promote the rapid and uniform introduction of such assistance in times of crisis. General crisis provisions, such as Article 222 of the Single CMO Regulation, should also be explored as an option. This committee welcomes the setting up of the Sugar Market Observatory; so long as its composition is balanced and it is convened in a timely manner should market difficulties arise.

1.3. The CAP should include market tools that support continued sugar production in the EU Member States. The EU beet sugar industry contributes decisively to job creation and economic activity, as well as the competitiveness of the food and drink industry. Currently the CAP allows Member States to grant coupled support to sectors or regions where specific types of farming or specific agricultural sectors that are particularly important for economic, social or environmental reasons are experiencing certain difficulties. This is the case for sugar beet cultivation in vulnerable regions. Coupled direct payments should be focused on reducing the risk of a decline in and/or the abandoning of beet sugar production in such regions in order to avoid rural desertification and preserve biodiversity. In the context of increased volatility, direct support

for farmers should be supplemented by better access to risk management tools. The interdependence of processors and farmers is the reason for the specific contractual framework that regulates the relationship between growers and processors in the sector.

1.4. In the event of unfavourable developments in the EU sugar market from 1 October 2017, redundancies may occur. The European Commission should explore the suitability of the different Structural and Investment Funds (ESI) in order to support regional or local employment, particularly for workers and farmers affected by possible utility closures. It may be necessary to make exceptions regarding the criteria for the introduction of some of these funds.

1.5. From 1 October 2017, EU beet sugar manufacturers will be obliged to notify both the selling price of their principal product and the purchase price of their primary input. This degree of market transparency is not matched by transparency further down the supply chain and by isoglucose producers. The European Commission should consider the recommendations of the Agricultural Markets Task Force to extend market transparency downstream to the users of sugar, to give a better picture of how value added is shared along the supply chain. Market transparency — be it for sugar and isoglucose producers or sugar users — must not affect the competitive positions of those undertakings affected.

1.6. Increased sugar exports will be crucial for the EU sugar industry after the end of quotas. The European Commission should promote EU sugar exports and challenge the arbitrary imposition of trade defence instruments by third country importers. The European Commission should exercise caution in its pursuit of trade liberalisation in the context of the EU's free trade negotiations. It should challenge the trade-distorting support policies of the major world sugar producers and exporters more assertively, both at the WTO and during bilateral trade negotiations.

1.7. Fostering alternative outlets for sugar beet — such as bioethanol, animal feed, bioplastics, and bio-based chemicals — will be essential for the sector's future competitiveness. The European Commission should maintain the 7 per cent cap on biofuels that can be counted towards the 10 per cent target for renewable energy in transport. Annex IX to the Renewable Energy Directive (2009/28/EC), which classifies molasses as an advanced biofuel feedstock, should remain unchanged. The European Commission and European Investment Bank should work to stimulate and enhance innovation in the domain of other bio-based co-products. This could take the form of an EU Innovation Fund and a programme of low-interest loans.

2. **The importance of beet sugar production for rural areas and the environment**

2.1. The European Union is the world's leading producer of beet sugar. On average, 17,2 million tonnes were produced each year between 2011/12 and 2015/16. Sugar-producing companies purchase around 107 million tonnes of sugar beets yearly from 137 000 European growers. Sugar beet is mainly transformed into sugar, but a considerable quantity is processed into other products, such as animal feed, renewable ethanol and bio-products. Such products can play an important role as a buffer in case of over-supply.

2.2. Beet sugar factories are for the most part located in rural areas characterised by low levels of industrial activity. They are often the economic backbone of the regions in which they are located, with few industrial alternatives existing. The EU sugar sector provides almost 28 000 direct jobs, which are mainly concentrated in the most competitive sugar beet-producing regions. These jobs tend to be relatively high-skilled, and sugar industry workers enjoy higher remuneration than in most other agricultural sectors. In addition to direct employment, the economic activity generated by the industry provides for a further 150 000 indirect jobs, for example in transport, logistics and construction.

2.3. Only in very exceptional circumstances is it possible to restart sugar production once a sugar production facility has been closed down. This is because the construction of a sugar factory entails high capital costs, typically of several hundred million euros. In most cases, the closure of a single facility means the permanent loss of an essential industrial activity, resulting in the loss of hundreds of direct and indirect jobs. The search for alternative industrial employment can lead to rural migration and depopulation.

2.4. The situation is similar for growers. Sugar beet must be cultivated in geographical proximity to the factories that process it. This is because of the relatively high cost of beet transport — six to 7 tonnes of beet are required to produce 1 tonne of sugar. Where a beet sugar factory goes out of business, growers are deprived of an outlet for their sugar beet. Unless there is another factory within an economically viable distance, they are forced to switch to other crops. This has a substantial negative impact on the financial returns of the farmers concerned, many of whom will have made substantial investments in specific equipment such as for beet harvesting, which is not applicable to other crops. In addition, the sudden conversion to other crops by a large number of farmers can put considerable pressure on local agricultural markets.

2.5. Beet sugar production is environmentally sustainable. Sugar beet is always grown in rotation with other field crops. Crop rotation helps conserve soil fertility and reduce levels of soil-borne pathogens and pests and thus reduces the requirement for plant protection products. The development and dissemination of good practices is widespread in EU beet growing regions. The use of mulch and reduced tilling are encouraged within the sector to promote soil fertility and reduce erosion. In factories, energy use is minimised by the use of employing combined heat and power systems (CHP) and through heat recovery and water conservation.

3. **The competitive position of the EU beet sugar industry**

3.1. The EU sugar sector has invested heavily in technical improvements and cost-reductions, as well as in human capital, research, education and training. Over the last 26 years, the average EU cost of production for quota sugar has increased by only 0,4 per cent per annum, compared to an inflation rate of 2,2 per cent per annum. This translates into a continuous reduction of costs relative to inflation over two decades ([1]). These gains have contributed to the increasing the competitiveness of the EU's sugar-using food and drink industry.

3.1.1. Sugar beet yields have increased substantially over past years thanks to a combination of technical and seed variety improvements, driven by cooperation between the industry, growers, research and development and the seed trade. Average beet sugar yields (tonnes sugar/ha) have increased by 2,4 per cent per annum for the last 26 years, and this trend is projected to continue into the post-2017 period. EU sugar yields per hectare are now higher than those in Australia or Brazil's Centre-South region, which are counted among the most competitive regions in the world. Four of the world's top ten biggest sugar-producing companies are based in the EU ([2]).

3.2. These competitive gains are due in part to a substantial restructuring of the sector that took place between 2006 and 2009. Following the reform in 2006, the EU beet sugar industry closed almost half its factories with the loss of 4,5 million tonnes of production capacity, over 24 000 direct jobs and 165 000 farm suppliers ([3]). This transformation has made the EU beet sugar sector more economically sustainable, albeit at a high social cost. Since the 2008/2009 marketing year, employment has remained relatively stable, as has the number of factories.

3.3. Strong relations between sugar processors and employees have been sustained by longstanding social dialogue at European and national level. The EU Sugar Sector Social Dialogue has existed since 1968, and it has been key to ensuring a socially-adequate transition in difficult times, such as those following the 2006 EU sugar policy reform. By contributing to a sense of co-ownership, the Social Dialogue contributes to the industry's competitiveness.

3.4. Further gains in competitiveness will be pursued from 2017, in particular as manufacturers may seek to reduce fixed costs by operating factories at full capacity. This could imply longer beet processing campaigns and therefore higher risks for both processors and growers, due to uncertainties related to the harvest and storage of beet in winter time.

([1]) Figures taken from the CEFS annual Manufacturing Costs survey, which is undertaken on a yearly basis to calculate an average cost of production for EU quota beet sugar.

([2]) F.O. Licht's International Sugar and Sweetener Report. 18 May 2017. Vol. 149, No 14. These four sugar-producing companies are: Südzucker, Tereos, ABSugar, and Nordzucker.

([3]) CEFS Statistics.

3.5. To avoid wastage, EU sugar processors use the whole of the sugar beet to produce a range of products in addition to sugar, for example: the stones and soil from the cleaned beet are sold to the construction industry; the fibrous material from the beet ('beet pulp') and molasses are extracted and processed for use in animal feed; and molasses and other syrups deriving from sugar production, can be used to produce renewable ethanol. Increasingly, sugar producers are also diversifying into the production of ingredients for bio-based products for industries such as plastics, textiles, pharmaceuticals and chemicals.

4. **Relations within the sugar supply chain**

4.1. Beet sugar processors and sugar beet farmers are mutually dependent. Farmers are reliant on sugar-producing companies to provide the fixed capital and expertise to extract the sugar from their beets, and processors are dependent on their contracted farmers to supply the crop. To minimise beet transport costs, farmers also need to be located in geographical proximity to the sugar factory they supply. In addition, many of the largest sugar-producing companies are cooperatives, which enables the supplying farmers to have a direct stake in the industry.

4.1.1. The interdependence of processors and farmers necessitates a specific contractual framework to balance the rights and obligations between the two partners. Contractual relations between sugar beet farmers and sugar processors after 2017 are set out in Article 125 and Annex X of the Single CMO regulation. These rules have recently been supplemented by a Delegated Regulation, which allows value-sharing clauses to continue to be included in beet contracts on a voluntary basis ([4]). The majority of sugar industries have recently agreed beet contracts for 2017/18 and beyond that include some form of linkage between sugar beet prices and sugar market prices.

4.1.2. Beet sugar manufacturers have long been obliged to report monthly on prices, production and stocks, and this obligation will remain into the post-quota period. From 1 October 2017, sugar beet prices are also to be notified to the European Commission and published on an annual basis. This degree of market transparency that characterises the sugar processing sector is not matched by transparency further down the supply chain and by isoglucose producers. Evidence suggests that price transmission along the sugar supply chain is low ([5]), and there may be merit in exploring the feasibility of greater transparency for the users of EU beet sugar.

4.2. Cane sugar refiners are also active on the EU sugar market. Cane sugar refiners do not transform sugar beet, but are dependent on imports of raw cane sugar for refining. The EU allows unlimited duty-free imports of sugar from the least-developed countries under the 'Everything But Arms' (EBA) Scheme and from African, Caribbean and Pacific countries that have concluded an Economic Partnership Agreement (EPA) with the EU. EU raw cane sugar refiners benefit from duty-free market access concessions under bilateral agreements with Central America, Colombia, Peru, Ecuador and South Africa that currently total 420 000 tonnes per annum. Annual availability of raw sugar for refining under the reduced-duty CXL quota — which is divided between Brazil, Australia, Cuba and all third countries ('Erga Omnes') — totals over 700 000 tonnes and is set to rise to almost 800 000 tonnes in 2017/18. In both recently-completed and ongoing free trade negotiations the EU is offering additional access for third countries to the EU sugar market.

5. **The end of production quotas**

5.1. Since 1968, EU sugar and isoglucose production for food use has been limited by production quotas. Production quotas will cease to exist on 1 October 2017, i.e. the start of the 2017/2018 EU sugar marketing year. From then on, EU sugar and isoglucose producers will be free to produce sugar and isoglucose for food use without limits. The existing export ceiling will also cease to exist ([6]). As a consequence, operators in the EU sugar sector will be free to export sugar without limits from 1 October 2017.

([4]) Commission Delegated Regulation (EU) 2016/1166 of 17 May 2016 amending Annex X to Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards purchase terms for beet in the sugar sector as from 1 October 2017.

([5]) Areté, October 2012. Study on price transmission in the sugar sector. Final report. European Commission, DG Agriculture and Rural Development. Tender N° AGRI-2011-EVAL-03.

([6]) Cf. DS266. The EU may currently export c. 1,35 million tonnes of sugar per marketing year, i.e. 10 per cent of quota sugar production.

5.2. Sugar production is expected to rise in 2017/18. This increase in production is expected to be structural. In addition, isoglucose is expected to occupy a larger share of the EU sweeteners market, with isoglucose manufacturers aiming to produce 2-3 million tonnes 'over time', much of which may be used for the production of soft drinks ([7]). By way of comparison, EU sugar consumption is in slight decline.

5.3. Increased domestic sugar production and an enlarged market share for isoglucose could weigh on EU white sugar prices in the post-quota period. The European Commission's Medium-term Prospects for Agricultural Markets 2016-2026 suggests that EU white sugar prices will be below the reference threshold of 404 EUR/tonne for much of the post-quota period, i.e. below the average costs of sugar production and sugar beet cultivation.

5.3.1. In 2015, EU white sugar prices reached their lowest level since the price reporting system began in 2006 ([8]). This situation had a severe effect on the reported financial results of EU sugar producers, many of whom were unable to turn a profit in the fiscal year 2015/16. Sugar producers in Italy have come under particular pressure, with one producer opting not to produce for the 2015/16 marketing year. Greece's sole sugar producer is also in serious difficulty.

5.4. From 1 October 2017, EU sugar producers will be free to export without limits. This may be an opportunity to increase revenues to compensate for lower sugar prices within the EU. World sugar consumption is projected to grow at a rate of 1,5-2 per cent per annum (c. 2-3 million tonnes per year), so there should be sufficient demand for an increase in the EU's sugar exports.

5.4.1. Nevertheless, an increase in EU sugar exports is dependent on sufficient access to third country markets. The European Commission should work to open the sugar markets of net sugar importers in its free trade negotiations, both through the reduction/elimination of customs duties and the opening of tariff-rate quotas. It should continue to eliminate duties on exports of EU high sugar-containing products, and back strong rules of origin for such products to ensure that EU sugar producers benefit from increased exports.

5.4.2. EU sugar exports are sometimes challenged by the imposition of trade defence instruments by third countries. The European Commission should do everything possible to fight such measures once the sector becomes deregulated from 1 October 2017 and the sector must offer the necessary support to any agreed proceedings.

5.5. In both recently-completed and ongoing free trade negotiations, the EU is offering access for third countries to the EU sugar market. Market opening is exposing EU white sugar prices to downward pressure and increasing volatility. The current world market is a residual dump market subject to high volatility that frequently trades below the average production costs of even the most efficient global industries. This is due in large part to the trade-distorting support measures of some of the major sugar producers and exporters, such as Brazil and Thailand. The result is that the EU beet sugar industry is not competing on a level playing field with sugar producers in third countries. The Commission must treat sugar as sensitive in its free trade negotiations by maintaining the EU's duties on sugar. The ongoing negotiations with Mercosur present a grave risk to the sector, given that Brazil is the dominant world producer and exporter. The Commission must be prepared to challenge the major sugar subsidisers at the WTO dispute settlement body and during trade negotiations.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([7]) This is the figure given by the starch industry association StarchEurope.
([8]) In February and June 2015 prices bottomed out at 414 EUR/tonne.

Opinion of the European Economic and Social Committee on 'From Cork 2.0 Declaration to concrete actions'

(own-initiative opinion)

(2017/C 345/06)

Rapporteur: **Sofia BJÖRNSSON**

Plenary Assembly decision	26.1.2017
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(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. The EESC welcomes the Cork 2.0 Declaration and the conference in September 2016 that led to it. The declaration offers strong ongoing support for a rural policy at EU level.

1.2. It is evident that rural regions in the EU are not homogeneous and that situations vary between and within Member States. The EESC believes that these differences mean there is a need for focus and a strategic approach when using available EU funds. This must be based both on priorities set by the Member States and their regions and, most importantly, on initiatives from those living in rural areas. Mandatory rural proofing of policy decisions and strategies can also be a way to take account of and pay attention to the specific circumstances of rural areas.

1.3. Rural development is a horizontal issue that affects practically all policy areas. A more coherent policy for rural and regional development is needed, as is a robust budget for the ESI funds (European Structural and Investment Funds). The EESC notes that the ESI fund with the greatest focus on rural development is the European Agricultural Fund for Rural Development (EAFRD), and stresses that the other ESI funds — such as the European Regional Development Fund (ERDF) and the European Social Fund (ESF) — should increase their share.

1.4. There is considerable scope for simplifying the policy. The EESC emphasises the need to simplify the regulatory framework for the ESI funds, both at EU level and in national and regional implementation of the policy. The current system is so complex that some avoid seeking support.

1.5. Many parts of Europe, particularly in rural areas, still lack reliable internet solutions. The EESC stresses that this is unacceptable. Rural areas need broadband, e.g. for fully functioning telephony, for their own safety and for their quality of life. Broadband access can be a factor influencing the extent to which above all young people choose to stay in an area or move away. Broadband is a must for businesses and entrepreneurs.

1.6. The agricultural sector plays a very important role in rural areas because of its strong affinity with the land. Agricultural production is both an indispensable feature of rural areas, in order to meet society's demand for sustainable food products, and a driver of rural development. It is therefore only natural, in the EESC's view, that most of the resources available under the EAFRD are earmarked for agricultural activities. Good conditions for young farmers are a prerequisite for the long-term sustainability of agricultural production.

1.7. The EESC would stress that achieving sustainable development requires a good climate for innovation.

1.8. The EESC points out that UN Sustainable Development Goal 17 and its subgoals, as well as the Paris climate agreement (COP 21), provide overarching objectives covering all EU policies, notably rural development. Regional and local authorities that operate in rural areas must play an active role in implementing these international commitments.

2. **General comments**

Cork 2.0

2.1. In 1996, the Commission held a conference in Cork, Ireland. The outcome of that conference was the Cork Declaration, which laid the groundwork for the second pillar of the common agricultural policy (CAP) and for the rural development programmes. In autumn 2016 the Commission held another conference in Cork, when the Cork 2.0 Declaration was adopted.

2.2. The declaration was drawn up by broad consensus at a conference organised by the Directorate-General for Agriculture and Rural Development and attended by some 340 participants from a majority of EU Member States, representing civil society and government at national, regional and EU level, including members of the EESC. At the closing session, the declaration was presented under the title 'A better life in rural areas', which was implicitly endorsed by the participants.

2.3. The starting point for the declaration is agricultural and rural development policy in the EU, but to a certain extent it also takes a broader approach, referring to the UN Sustainable Development Goals (2030 Agenda) ([1]) and the Paris climate agreement (COP 21) ([2]).

2.4. The text first sets out the reasons for the declaration, and then identifies 10 policy orientations:

— Point 1: Promoting rural prosperity

— Point 2: Strengthening rural value chains

— Point 3: Investing in rural viability and vitality

— Point 4: Preserving the rural environment

— Point 5: Managing natural resources

— Point 6: Encouraging climate action

— Point 7: Boosting knowledge and innovation

— Point 8: Enhancing rural governance

— Point 9: Advancing policy delivery and simplification

— Point 10: Improving performance and accountability.

2.5. The declaration takes a broad approach to rural development, and its strength lies in its scope and content, as it covers all of the elements needed for a viable and sustainable rural environment in the EU. The EESC notes, however, that its scope is also its weakness, as it creates complexity with no room for focus at EU level. In view of the significant challenges for rural areas, the EESC wishes to underline the importance of using available funding in a targeted way to ensure real results. This focus must be based both on priorities of the relevant Member States or regions and, most importantly of all, on initiatives of those living in rural areas.

([1]) See opinion on *Next steps for a sustainable European future* (see page 15 of this Official Journal).
([2]) See opinion on *The road from Paris* (OJ C 75, 10.3.2017, p. 103).

2.6. The content of Cork 2.0 is very similar to that of the 1996 declaration, except for the addition of climate issues and digitisation.

2.7. The EESC sees itself as a natural partner when it comes to implementing the declaration, and requests that the Commission continue producing progress reports on said implementation.

EU funding for rural development policy

2.8. All EU countries have national or regional rural development programmes, which are financed partly by the EAFRD and partly from national funds (both public and private). These programmes set out measures aiming to contribute to sustainable development in its three dimensions — environmental, social and economic. They are drawn up by the relevant Member State or region, and approved by the Commission.

2.9. The EAFRD is one of the ESI (European Structural and Investment) funds, along with the Cohesion Fund (CF), the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Maritime and Fisheries Fund (EMFF). A common regulatory framework ([3]) governs the technical implementation of the ESI funds. In addition, each country has concluded joint partnership agreements for the funds setting out the policy implementation priorities. This is part of the process of implementing the objectives of the Europe 2020 strategy. There is thus a close link between the funds, and a strategy for coordinating them.

2.10. The EAFRD provides for rural networks, at EU level with the European Network for Rural Development, and at national and regional level. Networks create platforms for meeting and sharing experiences, and their activities improve the basis for effective implementation and achievement of the objectives of rural development programmes.

2.11. The Committee of the Regions has commissioned a study on the extent to which the ESI funds are used for rural development ([4]). It is not surprising that the EAFRD is the fund that provides the most resources and which is used for this purpose. The share provided by the other funds is relatively small. Since rural development is a horizontal issue and important for EU cohesion, the EESC considers that efforts should be made to increase this share.

2.12. The ESI funds have been, and will continue to be, the primary means at EU level of implementing the intentions of the Cork declarations. The EU's next funding period will start in 2021, and the formulation of policy for this period will determine how well the intentions behind Cork 2.0 are put into practice. The EESC would also note that implementing the declaration and the policy objectives will require the ESI funds to have a robust budget.

3. **Steps forward**

Rural proofing

3.1. Point 1 of the declaration states that there should be a rural proofing mechanism that ensures that the potential of rural areas is reflected in the EU's policies and strategies. Rural and agricultural policies should build on the identity and dynamism of rural areas through multi-sectorial approaches and should consider the value of sustainability, social inclusion and local development.

3.2. Rural proofing would mean objectively and systematically taking into account and paying attention to the specific circumstances of rural areas. It could be a tool for identifying the impact of policy decisions on rural areas, in order to avoid affecting them negatively.

3.3. Rural proofing is practised for example in Finland, the United Kingdom and Canada. It may be either mandatory or optional. In Northern Ireland, there has been a legal requirement for rural proofing since 2016. The various national systems are similar;

3.4. For rural proofing to deliver results, it needs to be mandatory. It must provide the people taking decisions with a solid basis for doing so. Rural proofing that resulted only in reports and findings, but did not affect the decisions being made, would be meaningless.

([3]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.
([4]) See: http://cor.europa.eu/en/documentation/studies/Documents/Evolution-Budget-Dedicated-Rural-Development-Policy.pdf

3.5. It must also be recognised that the EU and the Member States do not have just one countryside, but many different rural areas with different opportunities and circumstances. This must also be reflected in rural proofing and in policy both at EU level and within the Member States, if rural development is to produce good results. People living in rural areas also have a role to play in creating a local identity and working to develop this as well as discussing and deciding to what extent to preserve the rural character.

LEADER and community-led local development

3.6. Point 8 of the declaration states that we need to build on the success of LEADER and on the bottom-up approach on which it is based. The EESC has in numerous texts set out its position on the EU's cohesion policy, the partnerships established under it, the LEADER method and the new approach of community-led local development (CLLD).

3.7. The EESC endorsed the analysis already set out in 2004 in the Commission's third progress report on cohesion that the objective was to help achieve more balanced development by reducing existing disparities, avoiding territorial imbalances and coordinating regional policy and sectoral policies ([5]).

3.8. The Committee notes, however, that this objective has not been achieved, and that there needs to be a more cohesive policy for rural areas and regional development.

3.9. The EESC has also welcomed the partnership principle as an effective way of promoting ESIF programmes. The partnership principle involves the participation of both the traditional economic and social players and civil society organisations, environmental partners, non-governmental organisations and bodies responsible for promoting gender equality.

3.10. The Leader method is a tried and tested development tool where the public sector and civil society participate in a local partnership. The EESC noted back in 2011 that the method should also be able to tap into funding from all the ESI funds. It has also been a positive factor in improving urban-rural linkages ([6]). The method can also be used for urban areas, but the EESC would emphasise that this should not be allowed to happen at the expense of rural development.

3.11. During the 2014-2020 programming period, community-led local development (CLLD) within the LEADER method has emerged as a new instrument where the four ESI funds make a joint contribution. Local development can be implemented most effectively by those who live and work in an area and are familiar with it.

3.12. At least 5 % of EAFRD funds must be channelled through CLLD. The way it is structured, such that all four sets of rules must be followed for each of the funds, has limited the possibilities for using it in a simple, rational way. With a view to the next programming period, the Commission should put forward proposals for significant simplification, so that community-led local development can reach its full potential as a tool for both rural and urban areas, together with a minimum share of funding for the method.

Jobs and services

3.13. Factors such as jobs and services affect the extent to which people want or are able to remain living in rural areas or move to them. There is a general trend in the EU for people to move away from rural areas, creating a vicious circle and reducing the likelihood of achieving Community objectives or the UN Sustainable Development Goals. Demographic developments may pose a challenge in future, and both young and old people in rural areas need to have the conditions for a good quality of life.

([5]) See opinion on *Territorial cohesion* (OJ C 228, 22.9.2009 p. 123).
([6]) See opinion on *LEADER as a tool for local development* (OJ C 376, 22.12.2011, p. 15).

3.14. Access to basic public and business services such as schools, healthcare, postal services, food shops, public transport, etc. may vary between urban and rural areas. This can be a critical determinant in people's choices of where they want or are able to live. For families with children, for instance, access to functioning childcare can influence the extent to which parents are able to work. In some parts of the EU access to services is generally worse in rural areas than in urban areas. The spatial planning process must take this into account so as to ensure that people's quality of life in rural areas does not suffer.

3.15. In several EU countries unemployment is higher in rural areas than in urban areas. But this varies widely, as is apparent from Eurostat statistical data ([7]). Certain businesses report difficulties finding skilled workers in rural areas. Consequently a mismatch is apparent between demand and supply in both directions. Young people who want to study gravitate to places with a university or college and do not return.

3.16. Managing to accommodate immigrants — and especially their families — is and will continue to be a challenge facing residents of rural areas in the coming years. Seeking and maintaining mutual regard and respect ought to be encouraged. Rural areas could offer good living conditions for immigrant families. In countries with high immigration — e. g. of refugees — and migrant labour finding job opportunities may be a challenge, but migration can also create recruitment options.

3.17. Issues of job opportunities and education and training are covered mainly in points 3 and 7 of the declaration. The question of services is addressed more indirectly. The EESC considers that Community initiatives have both direct and indirect implications for development, in particular the question of job opportunities generated by efforts to promote business. Access to services falls more to the respective Member States, even if the ESI funds can drive service provision.

Agriculture and rural development

3.18. Farmland and forests cover around 85 % of the land area of the EU, with large variations between countries and regions. The cultivated landscape provides the conditions for producing food, feed, energy and fibre, but it is also a resource in terms of conservation and production of public goods such as rich flora and fauna. Landscape is a factor that distinguishes rural areas from urban ones and is a unique aspect of rural development in the EU; the agricultural sector also plays a very important role in rural areas because of its strong affinity with the land. Issues concerning preservation of the rural environment and management of natural resources are highlighted in points 4 and 5 of the declaration. The conditions for management and use are of decisive importance for the intrinsic values of the landscape, water quality and biodiversity.

3.19. Agricultural production is considered in the declaration, albeit mainly indirectly: the text suggests that agricultural production (in the form of foodstuffs) is to some extent taken for granted. As already mentioned, issues relating to the conservation and management of the environment and natural resources are dealt with more explicitly. The EESC points out that agricultural production is both an indispensable feature of rural areas, in order to meet society's demand for sustainable food products, and a driver of rural development. People working in the agricultural and forestry sectors make up a significant proportion of the rural population, create job opportunities and provide a basis for demand for services. An important factor here is the possibility for new farmers, and especially young farmers, to take over and expand a business. Only a small proportion of farmers are young and efforts are needed to facilitate generational renewal.

3.20. The three dimensions of sustainable development — economic, social and environmental — are necessary for sustainable agricultural production. The economic dimension may in some cases be critical for farming. An example is when species-rich meadows and pastures gradually decrease in size as livestock grazing becomes less profitable, which in turn has a negative impact on biodiversity. This illustrates that if farms are not economically viable there are effects on the surrounding environment and that it is important for farmers to receive remuneration for the environmental services they perform.

([7]) http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics_at_regional_level

3.21. The EESC considers the agricultural sector to be an area of rural development where the EAFRD has, and should continue to have, primary responsibility. Most of the resources available under the EAFRD are quite rightly earmarked for agricultural activities, for example in the form of environmental compensation, skills development, support for areas with natural constraints, and investment aid. Other EAFRD areas — for example energy, broadband and support for innovation — have positive effects for rural areas more widely. At the same time, agriculture is a business activity like any other, and this target group should not be excluded from support provided through other ESI funds.

3.22. Today's farmers and forestry businesses can be seen as both landscape creators and managers of a landscape used by earlier generations. For many people, the cultivated landscape is a key aspect of better quality of life, and its importance for leisure, outdoor activities and the tourism industry should not be underestimated. The intrinsic value of landscape and land resources can create business opportunities and livelihoods in many different ways.

3.23. A more balanced territorial development should also include a transition to sustainable food systems ([8]). Developing a holistic approach to food systems is essential to address economic, environmental and social challenges related to food production and consumption and to ensure good governance of initiatives on multiple levels and in multiple sectors. Such initiatives include, for example, the promotion of short supply chains aimed at improving rural development by promoting access to healthy fresh diets for consumers ([9]). This would also benefit local economies and agricultural production.

Innovation

3.24. The importance of innovation in rural development, in order to implement and generate new ideas, cannot be overstated. Innovative solutions create the conditions for a sustainable society, for example for the rural contribution to a more circular, bio-based economy and climate-smart solutions, and the potential for production with fewer inputs. The transfer of and access to knowledge is a key factor in implementing innovative ideas.

3.25. New technology and new, innovative production forms provide a good basis for greater sustainability of agricultural production, resulting in improved animal welfare and the potential to produce more with fewer inputs in the form of e.g. plant nutrients or plant protection products. Applying new technology and implementing innovations often require extensive investment that can mean risk-taking for individual farms. Often it is not possible for one person alone to shoulder the risk. Investment aid, for example from the rural development programme, should be an option to boost technology and methods sought by society. There may be an inherent conflict between development of agricultural technology and the number of jobs available, since increased mechanisation and structural change in many cases lead to a decrease in employment, although this trend may produce more financially stable jobs.

3.26. Strategies for, and the implementation of, innovation must be based on identified needs rather than on the amount of funding available. Point 7 of the declaration highlights the need to boost knowledge and both technical and social innovation, as well as the need for cooperation between stakeholders to use and share information. Community initiatives such as the European Innovation Partnership (EIP), e.g. EIP-Agri, can be useful here because of their bottom-up approach which generates networking and communication, and exchange between players at different levels, with a particular focus on business practice. It would be useful to support 'innovation intermediaries' to further promote innovation in rural areas.

Digitisation

3.27. In today's world, access to high-speed broadband is an indispensable aspect of infrastructure and a requisite for a well-functioning society in both urban and rural areas, affecting both access to labour and access to employment. The trend is for more and more to be done online. But many parts of Europe, particularly in rural areas, still lack reliable broadband solutions. The EESC stresses that this is unacceptable. People living in rural areas need broadband for their own safety (e.g. fully functioning telephony) and for their quality of life (e.g. fully functioning TV). Broadband access can be a factor

([8]) See opinion on *More sustainable food systems* (OJ C 303, 19.8.2016, p. 64).
([9]) This is the subject of an EESC own-initiative opinion on *Civil society's contribution to the development of a comprehensive food policy in the EU*, due to be adopted in December 2017.

influencing the extent to which above all young people choose to stay in an area or move away. Broadband is a must for businesses, as in most cases they cannot operate without a functioning broadband connection. Examples are payment solutions in an increasingly cashless society, accounting, e-commerce, or communication with customers. Farming is an example of a sphere where ICT is becoming ever more advanced in terms of providing new technological solutions.

3.28. The need for and opportunities offered by digitisation, are highlighted in the declaration. Where market forces are not enough to drive the expansion of broadband, as is often the case in rural areas, the EESC believes that there should be scope for aid. It feels that the ERDF should be the primary source of support for infrastructure while it should be possible to use the EAFRD for more complex and specific projects. The European Investment Bank and the European Fund for Strategic Investments can provide support here, e.g. through innovative financial instruments.

Role of rural areas in relation to the circular economy and climate change

3.29. Rural areas have an important role to play in a circular economy. The circular economy is mentioned in point 6 of the declaration, which deals with encouraging climate action. But the circular economy has other positive aspects, which are also highlighted in the EESC's opinion on the *Circular economy* ([10]). There is a need for a sustainable cycle between town and country, not just in terms of resources but also in order to help strengthen agriculture and reduce imports of inputs. Rural areas thus have great potential to contribute to a more circular society, in part by being able to use waste products as a resource, e.g. as fertilisers and soil improvers, and in part by producing renewable energy and biomaterials.

3.30. Reducing the use of fossil fuels and making use of renewable energy are an aspect of lowering climate-relevant emissions. Rural areas have great potential to contribute to this too, not least by generating solar, wind and hydro energy, as well as bioenergy. Renewable energy production can, however, have a major impact on local people and on the environment, and it is therefore important to take account of all elements of sustainable development.

3.31. When it comes to climate change, we need both to reduce its effects and to adapt to them. Thanks to their large tracts of agricultural land and forests, rural areas have great potential to act as carbon sinks and thus to help reduce climate-relevant emissions, at the same time as production itself releases such emissions. The best available technology should be used in production, to minimise emissions. There is a need for skills development at all levels — from farmers to decision-makers — in combination with investment opportunities.

3.32. In summary, rural areas have significant potential to contribute to a sustainable society and thus also to both the UN Sustainable Development Goals (2030 Agenda) and the climate agreement in Paris (COP 21), as is made clear in the Cork 2.0 Declaration. However, the challenges are significant, and investment is needed, both tangible and intangible, in order to address them.

Simplification

3.33. Discussions concerning support from EU funds often highlight the complexity of this, both for beneficiaries and for authorities. The policy complexity issue is addressed in point 9 of the declaration. The EESC emphasises that simplification is necessary, both at EU level and in national and regional implementation of the policy. The current system is so complex that some avoid seeking support, and thus complexity is compromising implementation of the policy and realisation of its objectives. Some types of application in principle cannot be completed correctly without assistance from a consultant. There must be a focus on legal certainty for individual players.

3.34. For the current period, 2014-2020, the administrative rules for ESI funds were combined into a single regulation ([11]). In principle this was a positive move, as greater coordination can bring efficiency gains, particularly in the exercise of public authority, while the gains for individual beneficiaries are likely to be smaller, not least because they do not usually apply for aid from several different funds. The gains could potentially be greater for community-led local development in those countries where local development has been supported through several funds. The impact of the Common Provision Regulation is a question that may merit further investigation.

([10]) See opinion on the *Circular economy* (OJ C 264, 20.7.2016, p. 98).
([11]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 https://ec.europa.eu/digital-single-market/en/news/eu-regulation-common-provision-regulation-cpr

3.35. Current rural development policy under the EAFRD is implemented via rural development programmes, with the establishment of priorities and focus areas. This has created a system in which the budget for the programme is highly fragmented, as the measures, focus areas and priorities all get their own budget headings. The transparency of the programmes has been suffering, and the structure has generated more administration for authorities, which in turn pulls resources away from implementation of programmes and thus reduces the likelihood of their goals being achieved.

3.36. Point 10 of the declaration argues in favour of improving performance and accountability. This is also a guiding principle for the Commission's budget procedures — in 2015 it launched the *EU Budget Focused on Results* initiative. Citizens and taxpayers must be able to obtain information on the results of policy and on the extent to which policy goals are being met.

Brussels, 6 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the

'Application of State aid rules for compensating the provision of services of general economic interest (Decision 2012/21/UE and Community Framework)'

Own-initiative opinion

(2017/C 345/07)

Rapporteur: **Milena ANGELOVA**

Plenary Assembly decision	22.9.2016
Legal basis	Rule 29(2) of the Rules of Procedure
	Own-initiative opinion
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
Adopted at plenary	6.7.2017
Plenary session No	527
Outcome of vote	116/0/0
(for/against/abstentions)	

1. **Conclusions and recommendations**

1.1. The European Economic and Social Committee (EESC) appreciates the implementation of the services of general economic interest (SGEIs) package, which brings legal certainty for public service providers. The package strikes the right balance between the need to foster and support SGEI and the objective of preventing potential distortions of competition. However, stakeholders at regional and local level, in particular publicly owned SGEI providers (revealed by the EESC study 'Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest'), are voicing their concerns about key issues in the current rules that create unnecessary obstacles or a lack of legal certainty and therefore the EESC calls upon the Commission to take the measures needed to improve the current rules and their practical application, to provide guidelines, to create a best practices compendium and where necessary — to examine the need to update and amend the package.

1.2. Reviewing the first two waves of Member States' reports on the implementation of the SGEI package, the EESC notes with concern that they do not tackle the essential issue of compatibility requirements, a matter dealt with in depth by the Framework.

1.3. The EESC notes that in most cases, the lack of certainty or the substantial costs involved in fulfilling the requirements raise barriers that unduly prevent authorities from fully implementing SGEI policy. Such hindrances acutely affect regional and local authorities, as the dialogue between the Member States and the Commission on State aid cases is undertaken by central government, while other administrative levels do not enjoy direct access to this process.

1.4. The fact that only a handful of SGEI at regional or local level are reported (according to the above study) shows that the lack of direct channels with the Commission hinders proper financing of public services, which makes the appropriate authorities more reluctant to make full use of the Decision and to clear up doubts regarding its implementation.

1.5. The EESC calls on the European Commission to examine the possibilities of upgrading the Decision and of extending its scope, in order to address the following elements:

1.5.1. The EESC suggests that the Commission remove the exemption threshold and include all SGEI in the Decision, regardless of the yearly compensatory amount. Careful study of its current implementation proves that this will reduce the administrative costs and complexities that authorities would otherwise face, in particular at local level, without distorting the competition in any way.

1.5.2. In the light of the labour market and ever challenging skills mismatches, the EESC calls on the Commission to examine the possibility of broadening the scope of the Decision, by considering eligible services provided in order to enhance people's knowledge and qualifications and thus help them improve their job prospects.

1.5.3. The EESC calls on the Commission to examine carefully and perhaps to amend the particular texts of the Decision, mainly related to: the time-limit for keeping records of all the information necessary to determine the compatibility of the compensation granted; clarifying that entrustments' time limit should not have any material effect on their renewal or extension or on the eligibility of service providers running the remit; setting a readily available method for calculating reasonable profit; providing further clarification when addressing the requirement of sharing productive efficiency gains between the undertaking; ensuring a more flexible approach to minor overruns not exceeding 10 % of the yearly average compensation exempting them from updating the parameters.

1.6. The EESC finds that further clarification is needed of the conditions of compatibility under the Framework, related to:

— further specifying the alternative ways of meeting the requirement for ensuring compatibility in accordance with Article 106(2) of the Treaty on the Functioning of the European Union (TFEU) that are already widely used in its practice;

— avoiding mandatory requirements that might encroach on national law-making procedures, creating unwarranted problems;

— taking due account of the new legal requirements as regards procurement and concessions;

— coupling *ex-ante* methodology with full use of the *ex-post* net cost calculation, unless the authority prefers to set the compensation as a lump sum at the time of entrustment;

— endorsing both approaches for calculating the compensation — Net Aggregated Costs and Net Avoided Cost and provide further guidance on them in the Framework as it currently contains hardly any indication of how to establish the relevant counterfactuals;

— drawing a distinction between special or exclusive rights involving an advantage whose profit should be taken into consideration in financing public service obligations and universal coverage that involves a disadvantage for the designated provider;

— providing further clarification on profitability standards and to allow the use of different standards rather than imposing a particular one on the Member States;

— clarifying further the alternative ways of calculating these incentives, whose use should not be binding, given the complexity involved.

1.7. The EESC notes that the European Parliament and the Council have not enacted regulations setting the principles and conditions governing the services of general economic interest, in particular in the economic and financial field. Therefore, it calls on the Commission, the Parliament and the Council to examine ways to fulfil this mandate of Article 14 of the Treaty on the Functioning of the European union, without prejudice to the competence of Member States and the Treaty rules referred to in that Article.

2. **Subject of the own-initiative opinion**

2.1. In its action plan for 2017, the EESC stressed the importance of services of general economic interest as an essential element of our European economic and social model, enshrined as such by Article 14 of the Treaty on the Functioning of the European Union.

2.2. Article 14 calls on the Union and the Member States within their respective powers to *'take care that such services operate on the basis of principles and conditions, particularly* economic and financial conditions, *which* enable *them to fulfil their missions'*. Furthermore, it provides that *'the European Parliament and the Council, acting by means of* regulations *in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance to the Treaties, to provide, to commission and to fund such services'*. This mandate has not been translated into specific legislative initiatives until now. By contrast, the European Commission has developed a far-reaching set of rules on State aid applicable to SGEIs following the case law of the Court of Justice of the European Union.

2.3. The conditions of compatibility with the Treaty rules on State aid and Article 106(2) TFEU have been contentious, even since the Court of First Instance ruled in 1997 ([1]) that compensation awarded to firms implementing a public service mission should be regarded as State aid. Until then the consensus had been that compensating the extra costs stemming from the more demanding obligations associated with SGEIs did not confer any advantage. The Court of Justice reversed this position in 2001 ([2]), considering that the compensation could be considered State aid only if it exceeded the additional costs borne by the designated provider. Finally, the Altmark ruling in 2003 ([3]) established the criteria that any compensation scheme should meet to fall outside the scope of State aid rules.

2.4. The European Commission determines the compatibility of SGEIs with State aid rules, closely following the three introductory Altmark criteria. This requires:

— a clear definition of the public service obligations and specific entrustment to the designated provider through a public act;

— *ex-ante* establishment of the parameters for calculating the compensation in an objective and transparent way;

— compensation not to exceed the expenses incurred in implementing the public service, taking into account the corresponding income and a reasonable profit;

— selection of the designated provider must be undertaken either:

  — through a public procurement procedure;

  — determining the level of compensation on the basis of the costs that an average enterprise, well-run and adequately equipped, would bear in delivering the service, matched by the corresponding income, plus a reasonable profit.

2.5. In 2005 the Commission adopted the 'Monti-Kroes package', updated in 2011 (the 'Almunia package'), with key rules for SGEI funding: the package includes a Commission Communication ([4]) (the 'Framework' hereafter) setting out the conditions of compatibility for SGEIs and a Commission Decision ([5]) exempting from notification schemes that are less likely to distort competition due to their limited funding (Article 2(1)(a) of the Decision sets the annual threshold at EUR 15 million) or targeting of activities meeting social needs (i.e. hospitals; health and long-term care; childcare; access and reintegration into the labour market; social housing; care and social inclusion of vulnerable groups; and maritime links to islands, airports and ports with a low volume of passengers). The Commission declared its intention to carry out a review of this set of rules five years after their entry into force.

2.6. As part of its Programme for Europe, the EESC's objective with this own-initiative opinion is to contribute to the upcoming Commission review by taking a detailed look at experience with implementing the SGEIs package. To this end, the EESC has commissioned a study on the application of SGEIs rules to public compensation ('Review of Member States' reports on the implementation of the European Commission Decision on the provision of State aid to the provision of services of general economic interest').

([1]) Case T-106/95.
([2]) Case C-53/00.
([3]) Case C-280/00.
([4]) OJ C 8, 11.1.2012, p. 15.
([5]) OJ L 7, 11.1.2012, p. 3.

2.7. SGEI compensations rarely affect competition, as far as they cover the extra costs incurred by the designated providers in discharging the public remit. Thus, imposing on them the burden associated with State aid notification seems an overzealous step only justified in cases where other participants might suffer an undisputed damage. By contrast, conduct that severely undermines market conditions such as dumping sales from third countries or prices fixed at lower than warranted levels are unevenly matched by Community action. Thus, extending the scope of the Decision exempting SGEIs from notification, coupled with enhanced legal certainty and further flexibility in implementing the rules, seem essential to ensure that Treaty provisions fostering these essential services are properly met.

3. **Upgrading the Decision and extending its scope**

3.1. The EESC believes that the Decision strikes the right balance between the need to foster and support SGEIs and the objective of preventing potential distortions of competition. Exemption from notification reduces the administrative costs and complexities that authorities would otherwise face, in particular at local level. Because SGEIs that are not eligible under the Decision face stricter rules, only cases raising particular concerns for competition should fall outside its scope, in accordance with the aim of concentrating at EU level resources for the scrutiny of State aid. Experience has shown that the Commission clears an overwhelming majority of the SGEIs schemes examined by it. Only three SGEI cases have led to an in-depth investigation procedure under Article 108(2) of the TFEU since the 2012 Decision and Framework were enacted. Two cases involved postal services (State aid SA.35608 on Hellenic Post, ELTA and State aid SA.37977 on the Spanish Post Office) and another a hospital scheme (State aid SA.19864 on financing to IRIS hospitals in the Brussels Region) following a Court ruling annulling a clearance decision by the Commission as the complexity meant that a formal investigation was required. In all cases examined by the Commission, claims by competitors play a key role, thus securing full discipline without requiring the systematic notification of SGEI schemes. Furthermore, case law and Commission practice provide enough guidance to stakeholders for gauging whether they can safely apply the Decision without the need to notify SGEIs schemes to secure full certainty. The EESC therefore suggests that the Commission remove the exemption threshold and include all SGEI, in the Decision regardless of the yearly compensatory amount, following the example of compensatory schemes for passenger transport ([6]).

3.2. Setting a threshold according to the volume of aid involved thus triggering notification may have relevance for scrutiny at EU level, in particular in cases where granting the aid involves non-transparent modalities, such as fiscal rebates or exonerations, soft loans or public guarantees. Furthermore, the Decision provides that specific activities may require scrutiny due to competition concerns, thus allowing it to impose mandatory notification in order to address such cases. In any event, maintaining the current threshold set in Article 2(1)(a) of the Decision at such extremely low levels, imposes undue burden on authorities, with no visible advantage for enforcing competition. Therefore, the EESC would ask the Commission to confine the notification requirement to forms of aid or particular activities where potential distortions might warrant a closer view to ensure an even playing field.

3.3. The EESC invites the EC to examine the possibility to broaden the scope of the Decision in order to make eligible services related to enhance people's knowledge and qualifications and thus improve their job opportunities. Furthermore, there is a need to provide clarification in grey areas involving private involvement, where further guidance would be welcome.

3.4. The Decision should ensure full compatibility with higher-ranking Community law and avoid undue burden for regional and local authorities. In particular, Article 8 requires the Member States to keep available during the entrustment period and at least 10 years from the end of that period all the information necessary to determine the compatibility of the compensation granted. This rule runs contrary to Article 17 of Council Regulation (EU) 2015/1589, which provides that on expiry of a 10-year period any aid granted cannot be recovered and therefore the Commission refrains from submitting it to the compatibility test as its usual practice shows. Preserving information for more than 10 years that serves no purpose for State aid control represents an undue burden for authorities and infringes the principles of proportionality and proper administration enshrined in the Treaty.

([6]) OJ L 315, 3.12.2007, p. 1.

3.5. Article 2(2) of the Decision applies to entrustments awarded for a maximum of 10 years, except for those SGEIs requiring a significant investment justifying a longer period. While Commission practice under the Framework interprets this rule generally as preventing entrustments exceeding that time limit, the wording of the Decision could imply that undertakings running a public service for a longer period might fall outside its scope. The EESC therefore requests that the Commission clarify the entrustments' time limit should not have any material effect on their renewal or extension or on the eligibility of service providers running the remit. This issue is particularly sensitive in the case of publicly owned providers entrusted by their authorities, as their sole purpose is to provide the public service in question.

3.6. Article 5(5), (7) and (8), concerning reasonable profit, should set a readily available method for calculating it. The current approach, similarly to that in the Framework includes methods such as the Internal Rate of Return that prove far too complex for local SGEI and thus discourage their use for calculating the compensation. Setting up profitability benchmarks involves costly consultancy services out of reach for most SGEIs. The EESC asks the Commission to clarify this issue, as Commission practice endorses the direct comparison with related sectors' profitability based on available official or private data sources widely recognised as fully representative.

3.7. Efficiency incentives, while lacking any definition, are taken into account in Article 5(6) thus requiring further clarification, in particular when addressing the requirement of sharing productive efficiency gains between the undertaking, the Member State and/or the users. The EESC asks the Commission to dispel any doubts about how to interpret this requirement.

3.8. Article 6(2) of the Decision provides that any overcompensation should trigger an update of parameters for the future. Compensation not exceeding 10 % of the yearly average amount can nevertheless be carried forward to the next period. Full consistency would argue for no updating of the parameters in the latter case, avoiding a reappraisal that would entail legal uncertainty for designated providers in cases that do not affect competition. The EESC recommends that the Commission ensure a more flexible approach to minor overruns not exceeding 10 % of the yearly average compensation exempting them from updating the parameters.

3.9. Any discriminatory treatment of local and regional authorities, and thus of the services of general economic interest provided at these levels, should be avoided. Currently, local and regional authorities have to submit their requests, answers and doubts through the official channel of their Member State, as only the latter can engage in a formal dialogue on State aid provisions with the Commission. Thus, the information issued by local and regional authorities for the attention of the Commission must be taken on board by the respective Member State. Therefore, the EESC invites the Commission to establish a more structured dialogue with local and regional authorities on State aid procedures and issues. State aid rules and requirements should also be adapted to the special needs and means available for regional and local authorities, thus ensuring fair and equal treatment in practice.

4. **Clarifying the conditions of compatibility under the Framework**

4.1. The Framework sets out in detail the different requirements for ensuring compatibility in accordance with Article 106(2) TFEU and the case law interpreting it. While it provides ample explanation of the criteria applied by the Commission, it often adopts an overcautious stance that creates unnecessary problems and produces a degree of uncertainty. Commission practice shows that in many areas such difficulties have been overcome by applying a pragmatic interpretation of the Framework. Making specific references to these solutions would increase legal certainty and effectively reinforce equal treatment while preserving the principle that each case should be examined on its merits. The EESC therefore recommends that the Commission further specify the alternative ways of meeting the requirement that are already widely used in its practice. Such clarification would dispel many of the doubts authorities and providers currently face.

4.2. Under the Treaty, conferring and defining a public service remit fall under the fundamental competence of Member States. Thus the references in point 13 of the Framework to the conditions that SGIs/public services should meet can only serve as useful guidance. However, the inclusion of these references may raise legitimate concerns about a potential limitation of the Member States' powers. For, it is up to the Member States to decide, in the public interest, on the standards of 'quality, safety, affordability, equal treatment, promotion of universal access and of user rights' that each essential service should meet, regardless of its coverage by the market or a remit. The Member States also have the power to decide

accordingly whether ensuring those standards requires a SGEIs/public service. The market conditions, while being highly relevant, cannot overrule or curtail on the authorities' ability to defend the public interest. The EESC therefore suggests that the Commission limit its action here to a reference to its guiding Communication confining the scope of its assessment to checking the potential existence of manifest error, a matter ultimately falling within the remit of the Court of Justice.

4.3. Point 14 of the Framework unduly places conditions on the powers of the Member States to grant a remit by requiring them to conduct public consultations to take into account the interests of users and providers, thus encroaching on national competencies that fall outside the Commission's purview. While authorities always pay due attention to stakeholders' interests, compelling them to justify the need for a remit and to conduct public consultations, or introducing alternative instruments, hardly fits with Treaty provisions and principles. The Commission's practice shows that it pays limited attention to this rule, especially if the Member States face hurdles in enforcing it. The EESC therefore proposes that the Commission redraft this point so as to avoid mandatory requirements that might encroach on national law-making procedures, creating unwarranted problems.

4.4. The requirement under point 19 of the Framework that entrustments comply with Union public procurement rules fails to take into account that secondary law in this field has experienced a thorough review following the 2014 procurement package. The Public Procurement Directive only applies, according to its Article 1(2), to acquisitions by contracting authorities and cannot impose a binding regime on SGEIs as they refer to tasks performed by an undertaking on behalf of the authority. Thus, any requirement under procurement law would run contrary to its governing directive. The 2014 procurement package also rules concessions for the first time. But it would be highly misleading to infer that SGEIs could fall under this regime: concessions imply that undertakings assume all the risk once the award has been granted, in sharp contrast with SGEIs, where the authorities cover the extra costs involved in running the service, thus minimising risk. Only where the authority chooses to apply concessional treatment to an SGEI would this regime would apply, but in these cases there would be no aid element, as the designated provider would bear all risk. Thus, neither procurement nor concessional rules would apply to SGEIs. Legally speaking, the Framework can only call on the Member States to implement, where applicable, the principles of transparency and equal treatment for selecting providers, in particular private ones, with no binding obligation being attached to this request. The EESC therefore asks the Commission to revise point 19 of the Framework to take due account of the new legal requirements as regards procurement and concessions.

4.5. While point 22 of the Framework provides that the compensation can be based either on expected or on actually incurred costs and revenues, all too frequently Commission practice requires establishing the compensatory amounts *ex ante*. Such a calculation method, which prevents authorities from compensating *ex post* according to the effective net cost, seems an undue interference that could lead to unsolvable problems, since if the *ex-ante* amounts fail to cover the net cost, the provider would face systematic underfunding. Moreover, if the authority provides additional support to bridge this gap, it would in principle face potential penalties for breaching the conditions set in the authorising decision. Commission practice has largely overlooked this inconsistency except in cases when a claimant has raised the issue. While it seems appropriate to set *ex ante* the methodology for calculating the compensation, the ensuing, tentative amounts should not have any binding character. Only once the yearly results are available can calculation of the net cost and corresponding compensation take place. The EESC therefore calls on the Commission to ensure full consistency and compliance with the second Altmark criterion by coupling *ex-ante* methodology with full use of *ex-post* net cost calculation, unless the authority prefers to set the compensation at the time of entrustment.

4.6. The Net Avoided Cost method for calculating the compensation is based on the assumption that in the absence of a public service obligation the designated provider would downgrade its activities and aim to maximise revenues. The conventional NAC method would mean the provider discontinuing all loss-making activities. The difference between this counterfactual scenario and the actual results of the service provider determines the amount of the compensation. The Commission has recently advocated the Profitability Cost (PC) approach, where the counterfactual would be discontinuation of activities that prevent the undertaking from maximising its results. The compensation thus covers not only the additional costs of the SGEI but also the less efficient activities, even if they are profitable. To trim compensatory payments, the Commission requires the market and non-material advantages enjoyed by the provider to be deducted from the compensation. The preference for the PC approach leads to *de facto* divergences in implementing a single

principle, thus compromising legal certainty. The EESC recommends that the Commission endorse both approaches and provide further guidance on them in the Framework, which currently contains hardly any indication of how to establish the relevant counterfactuals.

4.7. The cost allocation method seems the most appropriate one for most SGEIs, as its calculation is based on the difference between the costs of meeting the public service obligation and the corresponding revenues. Nonetheless, the Member States wanting to use this method must justify the reasons for discarding the NAC approach that is otherwise considered mandatory. Since the NAC involves a complex and costly analysis, external consultancy services often being required, the EESC recommends that the Commission recognise this method as a fully valid one, on the same footing as the NAC except for specific activities such as postal services where such methodology stands as the binding one, according to the Third Postal Directive.

4.8. Point 32 of the Framework, on revenue, rightly includes the excessive profits generated from special or exclusive rights. Yet in recent practice this has included profits from universal provision even if they do not derive from such rights, thus leading to misleading assessments. It should be stressed that universal coverage implies a disadvantage because the designated provider is bound to service a given territory regardless of the costs incurred. Thus, should the provider perform this service on a profitable basis, Treaty principles would be breached if this surplus should finance on a mandatory basis other loss-making public service obligations. The EESC therefore asks the Commission to clarify this point and to draw a distinction between special or exclusive rights involving an advantage whose profit should be taken into consideration in financing public service obligations and universal coverage that involves a disadvantage for the designated provider.

4.9. Reasonable profit as envisaged in the Framework raises some issues that need further clarification. While the Framework advocates using Internal Rates of Return, it recognises the inherent difficulty of applying this method. Thus, in practice the Commission compares firms from the same or a related sector using standard profitability criteria such as ROE or ROS. Yet the lack of certainty on this issue often leads to divergent results. The EESC therefore suggests that the Commission recognise all standard and well-established profitability criteria rather than making any given one mandatory. The EESC asks the Commission to provide further clarification on profitability standards and to allow the use of different ones rather than imposing a particular one on the Member States.

4.10. The mandatory efficiency requirement under points 39 to 46 of the Framework is proving to be a formidable hurdle for stakeholders and authorities alike. As the Framework provides no clue on how to calculate the efficiency incentives, Commission practice allows widely divergent assessments, thus compromising the principles of legal certainty and equal treatment. The EESC therefore asks the Commission to clarify further the alternative ways of calculating these incentives, whose use should not be binding given the complexity involved.

Brussels, 6 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on 'Implications of the digitalisation and robotisation of transport for EU policy-making'

(own-initiative opinion)

(2017/C 345/08)

Rapporteur: **Tellervo KYLÄ-HARAKKA-RUONALA**

Plenary Assembly decision	26.1.2017
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	157/0/2

1. **Conclusions and recommendations**

1.1. Digitalisation and robotisation in the field of the mobility of people and the transport of goods provide society with several potential benefits such as better accessibility and convenience for passengers, efficiency and productivity for logistics, improved traffic safety and reduced emissions. At the same time, there are concerns relating to safety, security, privacy, labour and the environment.

1.2. While technology offers endless opportunities, progress must not be solely technology driven but aim at creating added value for society. Political debate — together with the proper involvement of civil society in transport planning processes, particularly in large urban areas — is therefore necessary.

1.3. Realising digital transport requires solutions for existing bottlenecks, as well as integrated investments along the TEN-T network in transport, energy and telecommunication systems, including the deployment of 5G. EU funding instruments such as the Connecting Europe Facility, the EFSI and Horizon 2020 should support these undertakings.

1.4. The digitalisation and robotisation of transport provide new business opportunities for both manufacturing and service industries, including SMEs, and could be an area of competitive advantage for the EU. To this end, the EESC calls for an encouraging and enabling business environment, including openness towards new business models and boosting the development of European digital platforms.

1.5. The digitalisation and robotisation of transport will bring about profound changes in the nature of work and the demand for skills. The EESC highlights the importance of dealing with these structural changes by enhancing a fair and smooth transition and addressing the skills gap, together with the appropriate monitoring of progress. Social dialogue and informing and consulting workers play a key role in the transition process. Member States also have to adapt their education systems to respond to the new demand for skills.

1.6. The digitalisation and robotisation of transport require the adequate availability, accessibility and free flow of data. At the same time, proper data protection has to be ensured. Increasing cybersecurity capabilities and tackling liability issues are also necessary in order to respond to new developments.

1.7. The EESC stresses the intermodal character of digital transport, which touches the very heart of the EU's transport strategy. It also implies close connections with other policy areas such as those relating to the digital single market, energy, industrial development, innovation and skills. As the goals and requirements of climate change mitigation act as one of the drivers of digital transport, there is also a close link with environmental sustainability.

2. **Background and ongoing trends**

2.1. Digitalisation is expanding into all areas of the economy and society — transport being an area often used as an example. The purpose of this own-initiative opinion is to consider the developments and implications of the digitalisation and robotisation of transport from the point of view of society as a whole, including businesses, workers, consumers and citizens in general, and to put forward the EESC's views on how these developments should be taken into account in EU policy-making, in order to seize the opportunities and manage the risks in a proper way.

2.2. Much is already going on in the markets, as well as in different policy areas at national and EU levels. The EESC has also addressed this theme in its opinions, with regard to e.g. the future of the automotive industry ([1]) and the European strategy on Cooperative Intelligent Transport Systems, C-ITS ([2]), as well as Artificial intelligence ([3]).

2.3. The digitalisation of transport takes several forms. At present, vehicles, aircraft and ships already use digital information in many ways, including technology and services supporting car driving, traffic control of trains, aviation and shipping management. The digitalisation of passenger and goods information is another area of everyday application. Thirdly, robots are commonly used in terminal operations in the area of freight logistics.

2.4. Further automation and robotisation open up new opportunities for transporting goods and people, as well as for various kinds of monitoring and surveillance. Virtual robots, i.e. software robots play a central role here by enabling the increased use and connection of different information systems, allowing them to function as one interoperable unit.

2.5. The automation of transport involves developing means of transportation with regard to their interaction with human beings, as well as with infrastructure and other external systems. Driverless and unmanned vehicles, ships and airspace systems that are fully autonomous, i.e. that function independently, are the final step in this development.

2.6. At present, driverless cars are being developed by several car manufacturers and tested in practice. Driverless metros have already been introduced in many cities while driverless buses and platoons of trucks are being tested. The use of unmanned aircraft systems or drones is rapidly increasing and even remote-controlled and autonomous ships are being developed. In addition to vehicles, aircraft and ships, new kinds of infrastructure solutions and traffic control systems are being explored.

2.7. Although steps towards autonomous and unmanned transport are being taken, the basic structures are still based on people as the main actors. The most remarkable implications are to be seen when fully autonomous and unmanned transport is a reality. Prognoses on when this will happen vary significantly. However, it is important to prepare for the future and make the necessary decisions in good time.

([1]) Information Report of EESC's Consultative Commission on Industrial Change (CCMI) on 'The automotive industry', CCMI/148, adopted by CCMI on 30 January 2017.

([2]) EESC Opinion on 'Cooperative Intelligent Transport Systems', TEN/621 (not yet published in the Official Journal).

([3]) EESC Opinion on 'Artificial intelligence', INT/806 (not yet published in the Official Journal).

2.8. Digitalisation also enables passengers and other transport users to benefit from a new kind of Mobility as a Service (MaaS) concept through digital platforms.

2.9. The ongoing development of MaaS seeks to respond better to market demand by combining the reservation, purchase and payment systems of transport chains and providing real-time information on time-tables, weather and traffic conditions, as well as available transport capacity and solutions. MaaS is thus the user's digitised transport interface. At the same time, it aims at optimising the use of transport capacity.

2.10. The rapid development of technology such as big data, cloud computing, 5G mobile networks, sensors, robotics and artificial intelligence — especially with its learning capacities such as machine learning and deep learning — is the key enabler behind the developments in digital and automated transport.

2.11. It is, however, obvious that one cannot proceed successfully if the progress is solely technology driven. Ideally, the development should be based on societal demand. On the other hand, it is often difficult for citizens to see the opportunities that the new developments provide.

3. **Implications for the transport system**

3.1. Digital development creates conditions for intermodality and thus contributes to the system approach in transport. It also means that the transport system has several new elements in addition to the traditional infrastructure.

3.2. The foundation of the system, however, still remains: roads, railways, harbours and airports. Besides these basic elements, an advanced digital infrastructure is needed, covering mapping and positioning systems, different kinds of sensors for data generation, hardware and software for data processing, and mobile and broadband connections for data distribution. Automated traffic management and control systems are also included under digital infrastructure.

3.3. As both the digital and digitised infrastructure require electricity, and given the interaction between smart electric grids and electric vehicles, electricity infrastructure is also a key element of the transport system. Finally, new services and infrastructure are needed to allow access to traffic information as well as the booking and payment of mobility services. The system, from physical infrastructure to physical transport services, is therefore linked by different kinds of digital elements.

3.4. Despite rapid developments, there are still several bottlenecks hindering progress towards digital transport systems which must therefore be overcome. These include, for example, shortages in the availability and accessibility of data, the lack of fast internet connections, and technical limitations relating to sensors and real-time positioning.

3.5. The EESC calls for investment in technology and infrastructure on which digital transport can be built, in particular traffic management and control systems: SESAR (Single European Sky ATM Research) and ERTMS (European Railway Traffic Management System) are projects that are already at a mature stage but which lack substantial financial resources. VTMIS (Vessel Traffic Management and Information System) and C-ITS still need to be developed. Furthermore, 5G connections have to be made available along the TEN-T core network. EU funding instruments such as the Connecting Europe Facility, the European Fund for Strategic Investments and Horizon 2020 should prioritise these undertakings.

3.6. The interoperability of digital systems is also necessary in order to enable cross-border connectivity both domestically and internationally. The EU should strive to be the forerunner and standard-setter in this field.

3.7. The EESC stresses that digitalisation does not remove the need for investments in basic transport infrastructure, although it optimises the use of the existing capacity. Furthermore, during the transition period, partly automated and fully autonomous vehicles and vessels move together, which has to be taken into account in road and maritime infrastructure. New challenges have also emerged in aviation due to the deployment of drones.

3.8. The EESC encourages the development of traffic management systems and common rules for drones at the EU level and internationally at the ICAO. Furthermore, the development of rules is needed at the IMO in order to enable the development and introduction of remote-controlled and autonomous shipping, including in ports.

4. **Implications for business and innovation**

4.1. Digitalisation and robotisation bring about increased efficiency, productivity and safety for freight transport and logistics. New business opportunities also emerge for manufacturing and service industries with regard to automation and robotics, services for citizens' mobility, solutions for more efficient logistics, or the digitalisation of the whole transport system. This holds true both for big companies and small and medium-sized enterprises, including start-ups.

4.2. Taking into account that EU companies are leaders in many fields related to digital transport, it could well be an area where a competitive advantage could be developed. As a lot is happening outside the EU with regard to the development of digital and autonomous transport, the EU also has to strengthen its efforts in the fields of innovation, infrastructure and the completion of the single market, including adaptation of the legal framework to new operating conditions.

4.3. There is also a need for openness towards the development and introduction of new kinds of business models, based on digital platforms. In order to enhance the creation of European platforms it has to be ensured that enabling and supporting conditions are in place and that the regulatory framework provides businesses with a level playing-field.

4.4. The digitalisation and robotisation of transport is primarily based on data management as in any other sector. From a business point of view, data can be considered as a production factor or raw-material to be processed and refined to create added value. To this end, the free flow of data is essential. The EESC therefore calls for effective solutions that eliminate the problems associated with the accessibility, interoperability and transfer of data, while securing adequate data protection and privacy.

4.5. The EESC considers it important to open up and facilitate access to transport and infrastructure related mass data, generated by the public sector, for all users. In addition, clarifications and rules are needed for the management of non-personal data, notably data generated by sensors and intelligent devices. In assessing the questions of data accessibility and reuse, it is useful to note that in general, it is not the data itself that brings a competitive advantage but rather the tools, innovation resources and market position for refining it.

4.6. To develop and gain experience in digital and autonomous transport, the experimentation with and piloting of new technologies and concepts must be facilitated. This requires functioning innovation and business ecosystems, adequate test-beds and an enabling regulatory framework. The EESC calls on the authorities to adopt an approach that stimulates innovation instead of applying detailed rules and requirements that hamper development.

5. **Implications for employment, work and skills**

5.1. The implications of the digitalisation and robotisation of transport for labour are obviously the same as they are in other fields. New concepts and processes may result in jobs losses, while new jobs can be generated by new products and services.

5.2. The most significant changes may take place in the transport and logistics sector itself but implications for employment may also be seen in the related manufacturing sectors, as well as in supply chains and regional clusters.

5.3. With the deployment of unmanned transport, the demand for transport personnel will decrease. The same holds true for the implications of the increasing use of robotics for physical labour in terminal operations. Some of the jobs may be replaced by control and monitoring tasks but over time these tasks may also diminish. At the same time, new jobs may be created in other sectors, particularly in sectors related to information and communication technologies, digital services, electronics and robotics. Furthermore, while physical work and routine tasks diminish, the role of problem-solving and creative tasks grows.

5.4. The change in tasks also implies a considerable change in the market demand for skills. There is an increasing demand for high-skilled cyber-professionals such as software developers. On the other hand, there is an increasing need for the practical skills associated with using robotics and acting in human-robot cooperation systems. In addition, the significance of professionals with broad-based competences will grow.

5.5. The EESC highlights the importance of dealing with these structural changes in a proper way, by preparing strategies on how to ensure a fair and smooth transition, decrease negative social impacts and respond to the skills gap, combined with the appropriate monitoring of progress. Social dialogue and informing and consulting workers at all levels play a key role in the transition process.

5.6. There are both immediate and long-term needs for training and education. Member States have a decisive role in responding to the new skills demand by adapting their education systems, and good practices should be shared at the European level. A strong focus on science, technology, engineering and mathematics is required, while taking into account that the demand for creating new solutions also requires wide competences with education in arts and social sciences.

6. **Implications for safety, security and privacy**

6.1. It seems that citizens are not largely aware of the kinds of opportunities that digitalisation and robotisation provide e.g. for the accessibility and convenience of mobility, while the perception of safety, security and privacy turn out to be the main concerns. More knowledge and communication on the pros and cons is necessary, together with the proper involvement of civil society in transport planning processes at local level, particularly in large urban areas.

6.2. Advanced automation obviously increases the safety of transport due to the decrease in human error. On the other hand, new safety risks may emerge due to limitations in the shape recognition ability of sensors, potential malfunction of devices, internet disruptions and new kinds of human error such as software bugs. However, the net effect is assessed as being clearly positive.

6.3. As increasing concerns are emerging with regard to cybersecurity, this will be one of the core elements of transport security. Cybersecurity involves vehicles, aircraft and ships but also the infrastructure that supports, manages and controls them.

6.4. The introduction and deployment of unmanned and autonomous transport also raises the issue of traffic rules, especially those relating to ethical aspects. As transport is a cross-border function, traffic rules should be harmonised in the internal market, with the aim of further harmonisation at the international level.

6.5. With fully autonomous transport, new questions regarding liabilities also arise. This is also reflected in the development of insurance systems. The main challenge may be the factual establishment of liability in the event of an accident, given the role of digital systems and the involvement of several actors such as the manufacturers and owners of vehicles, and the managers of the infrastructure. This may require increased data storage in order to establish the circumstances of the accident. The EESC therefore calls on the Commission to investigate possible data collection frameworks and requirements for liability purposes, while bearing in mind the need for privacy.

6.6. As for privacy and increasing data needs, people are concerned about whether they are constantly being monitored. The use of shape recognition also raises privacy concerns. With regard to the protection of personal data, the General Data Protection Regulation (GDPR) will be applied as of 2018 with the aim of providing a single set of rules for the entire EU. The EESC has drawn attention to the importance of privacy and data protection in its previous opinions and stresses that data should only be used for purposes relating to the operation of the system and should not be kept for other ends.

7. **Implications for the climate and the environment**

7.1. The climate-related and environmental impacts of transport are dependent on many factors. Improving the energy efficiency of vehicles, aircraft and ships is one of the key measures to decrease emissions. Energy efficiency generally goes hand in hand with the automation of functioning and control systems.

7.2. The replacement of fossil fuels with low-carbon fuels, electricity or hydrogen is another key means of reducing emissions. Although a separate process, the deployment of electric vehicles and the roll-out of smart electric grids are closely connected to the automation of transport.

7.3. Measures that increase traffic flow also have a significant role to play in reducing emissions. Digitalisation and automatisation enable smooth transport and efficient multi-modal transport chains. This means greater transport efficiency, greater energy efficiency, lower fuel consumption and fewer emissions. To this end, high quality infrastructure and smooth border crossings are also of the utmost importance. Furthermore, land use and urban planning have an effect on the need and flow of traffic.

7.4. The environmental impacts are not only related to transport itself but also to the life-cycle of vehicles, aircraft and ships from manufacturing to end-of-life. The reshoring of manufacturing and the deployment of the circular economy approach are phenomena that contribute to decreasing life-cycle impacts.

7.5. Autonomous transport may lead to greater use of private cars due to the increased convenience for passengers. On the other hand, car-sharing — together with the use of public transport — is supposed to decrease the amount of private cars. Consumer preferences thus play a decisive role in the future of mobility. They may be influenced by providing readily available journey-planning facilities that encourage people to make environmentally-friendly choices. Appropriate pricing incentives may also have a role in influencing consumer behaviour.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on 'The External Dimension of the Social Economy'

(own-initiative opinion)

(2017/C 345/09)

Rapporteur: **Miguel Ángel CABRA DE LUNA**

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1. Conclusions and recommendations

1.1. The social economy is a key player and helps to achieve the objectives of all European policies with an external dimension: external and security policy, trade policy, neighbourhood policy, climate change policy, development cooperation and sustainable development policy. However, the lack of an appropriate regulatory environment, at both European and national level, prevents this sector from developing its full potential and maximising its impact.

1.2. The Partnership Instrument for Cooperation with Third Countries ([1]), which is aimed at developed and developing countries, could provide an opportunity for the social economy of the European Union (EU) in its process of developing its international dimension, fostering competitiveness, innovation and research.

1.3. The EU plays an important role in efforts to eradicate poverty and boost economic and social development at global level, which is reflected in the EU's Post-2015 Agenda and the approval of the 2030 Agenda for Sustainable Development of the United Nations (UN).

1.4. The European Economic and Social Committee (EESC) welcomes the fact that in the Post-2015 Agenda the Council underlines the importance of 'the social economy to job creation and sustainable development', which opens up new opportunities for boosting the external dimension of the social economy (point 43 of the Post-2015 Agenda), but regrets that the Commission has not included the social economy in its proposal for a new European Consensus on Development.

1.5. Given the business successes observed in various non-EU countries, it is clear that the social economy, in its various business forms, is prominent in the everyday life and productive activity of large regions of Africa, America and Asia and makes a major contribution to improving the living and working conditions of millions of people.

([1]) Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014.

1.6. Among the various forms that social economy enterprises take in these regions, the Committee underlines the leading role of, among others, cooperatives and mutual undertakings, which are very numerous and play an active role in agricultural production, finance and microfinance, the supply of clean water, housing, labour market integration of people with disabilities, the reduction of informal work through collective entrepreneurship initiatives in the social economy, youth employment and women's rights, which is playing an increasingly important part in the productive activity of cooperatives and mutual undertakings.

1.7. In addition to cooperatives, mutual benefit societies and other partnership-based social economy enterprises of a similar nature, the EESC underlines the important role of non-profit entities, associations and foundations known as NGOs, all of which form an integral part of the social economy under the 'social action third sector'. These NGOs manage social assistance, health and education services among others, and even promote social economy entrepreneurship initiatives among the local population.

1.8. The Commission has recognised the important role that social economy enterprises (SEEs) can play in the development of the circular economy, to which they can make an 'essential contribution' ([2]). In Europe, there are many examples of good practice in this area, where SEEs can play a substantial role in the investments in renewable energies in Africa planned under the European External Investment Plan (EEIP). SEEs make a significant contribution to sustainable economic growth, thus reducing their negative environmental impacts.

1.9. Without prejudice to the work of ethical banking, traditional financing instruments do not work for SEEs, which require instruments specifically adapted to them. The EESC therefore finds it regrettable that, despite their undeniable role in meeting the Sustainable Development Goals (SDGs) and their socioeconomic importance, SEEs are not systematically considered to be an actor as such in EU programmes designed to boost the international dimension and external promotion of business, and development cooperation programmes. Furthermore, the EEIP and the European Fund for Sustainable Development (EFSD) do not provide for any line of financing specifically for SEEs.

1.10. For example, the renewal of the Cotonou Partnership Agreement (CPA) will affect more than 100 countries in Africa, the Caribbean and the Pacific (ACP), with a total population of 1,5 billion people. The CPA is due to be renewed in 2020 and negotiations should begin by August 2018 at the latest. It is surprising that the abovementioned communication, based on the UN's 2030 Agenda and the EU Global Strategy on Foreign and Security Policy, does not mention the social economy among the non-state actors involved in the partnership. This comes under the general heading of 'civil society, economic and social partners and the private sector' (point 4.3.3 of the communication).

In view of the above:

1.11. Trade policy is one of the pillars of the EU's external action. Organised civil society is involved in the EU's various agreements with other countries and regions around the world (trade, association and economic partnership agreements) through the joint consultative committees (JCCs) and domestic advisory groups (DAGs) set up under those agreements. Although the social economy is included in several of these agreements, the EESC recommends that it take on a broader role and become a fixed component in all of them.

1.12. Both the EFSD and the EIB should work together to establish a financial ecosystem specifically for SEEs, as called for in the EESC opinion ([3]). In addition, the EEIP's technical assistance and development cooperation programmes should provide for the promotion of cooperative digital platforms. The digital economy is opening up new areas of action and development for SEEs. For example, the collaborative economy enables the creation of not-for-profit platforms (platform cooperativism) and the development of activities of great interest for the social economy's external dimension, such as collaborative production, collaborative finances (crowdfunding or peer-to-peer lending), collaborative governance and collaborative learning. In the latter case, learning via cooperative platforms can be important for the on-site training of social economy entrepreneurs in neighbouring countries and the south, strengthening crucial human capital in those countries.

([2]) COM(2015) 614 final, 2.12.2015.
([3]) EESC exploratory opinion on *Building a financial eco-system for social enterprises* (OJ C 13, 15.1.2016, p. 152).

1.13. The EESC endorses the recommendation of the Expert Group on Social Entrepreneurship (GECES) that the role of SEEs in EU external policy be strengthened. In this connection, the Commission and the European External Action Service (EEAS) must coordinate their policies and initiatives with a view to:

— allocating direct and indirect funding to SEEs in third countries, together with participating governments and organisations supporting the social economy;

— establishing specific cooperation initiatives with other global partners and innovation and investment funds in order to enhance the impact of the respective programmes.

1.14. The Commission and the social economy should facilitate the involvement of the G20 and the G7 in promoting specific policies to support the social economy (as discussed in the G20 Inclusive Business Framework), to better reflect the differences in the set of values, principles and raison d'être between these organisations (GECES Recommendation 12).

1.15. The role of the social economy in international forums (UNTFSSE, ILGSSE, G20, G7, ILO etc.) and cooperation with international financial organisations should be promoted via economic diplomacy.

1.16. The EU must ensure that, when trade agreements are negotiated, SEEs are not discriminated against compared to other businesses, by eliminating non-tariff barriers, which are in effect the cause of the discrimination.

1.17. Both the European Neighbourhood Instrument (ENI) and other financial instruments must contribute in a systematic way to the promotion of the social economy, both in the accession negotiations with candidate countries for EU membership, and with other neighbouring countries that are beneficiaries of preferential agreements.

1.18. The Commission must strengthen its leadership role in international cooperation and in boosting and recognising SEEs as key private sector players in achieving the SDGs and part of the EU's external agenda. To this end, the activities of the various departments of the Commission and of the EEAS will need to be coordinated and joint development cooperation programmes set up with other international financial organisations such as the World Bank, the Organisation for Economic Cooperation and Development (OECD), the African Development Bank, the Asian Development Bank and other public and private entities seeking multilateral and even local investment, creating incentives to make these funding channels work. SEEs should form an immediate, effective and generalised part of the EU's 'economic diplomacy'. The Commission should strengthen cooperation ties in the field of the social economy with international organisations (UN, ILO, OECD, etc.).

1.19. The Commission should specifically include the social economy sector as an EU business stakeholder in initiatives for access to third markets, in all development cooperation programmes and in the implementation of the Post-2015 Agenda, establishing specific indicators and objectives for cooperatives and other similar social economy enterprises. In particular, it is important for the Commission and the High Representative of the Union for Foreign Affairs to specifically include the social economy as one of the non-state actors in the next CPA and to include lines of funding specifically for SEEs in the EEIP and the EFSD.

1.20. In order to contribute to the monitoring and revision of the SDGs, the exercise should include a periodic report on the partnership policies between States and other public authorities and the social economy, including cooperatives, which are crucial for the implementation of the SDGs. States should also be encouraged to produce data and statistics.

1.21. The Commission should facilitate the inclusion of the social economy in the *structured dialogue* it intends to promote with the European and African private sector within the framework of a Sustainable Business for Africa (SB4A) platform.

1.22. The Commission should encourage preferential support for circular economy SEEs, which have achieved notable successes in Europe and which can be significant players in sustainable growth in countries outside Europe, creating many jobs for young people and women in local areas.

1.23. The Commission and the Member States must promote the participation, consultation and coordination of their external entrepreneurial and development cooperation activities with the bodies representing the social economy at European and national level, as well as with those of partner countries, and with international social economy organisations with a North-South and South-South dimension. The EESC reiterates its call ([4]) for the creation of a European *Sustainable Development Civil Society Forum* to promote and monitor the implementation of the 2030 Agenda, with the key players being the Council, Commission, Parliament, the representative bodies of the European social economy and the rest of civil society.

1.24. The Commission's technical assistance and development programmes must provide for the participation of networks of organisations representing the social economy as intermediaries and strategic stakeholders in implementing investment and cooperation programmes in neighbouring and developing countries, and must support governments so that they promote an institutional environment favourable to SEEs. The southern Mediterranean and the Balkans are an absolute priority.

1.25. The Commission and the EEAS should develop a way of identifying the different categories of SEEs in third countries, and promote the establishment of an appropriate legal framework that enhances the visibility of all SEEs. Given that this will be a complex process extending into the medium/long term, emphasis should be placed on cooperatives and mutual undertakings. These are present throughout the world, with a clear legal framework, present in all branches of productive activity and with a system of values and governance that underpins the entire social economy, enabling them to be identified as the backbone of the social economy.

1.26. In order to achieve the aims advocated in this opinion, the EESC urges the European Commission to act swiftly on its commitment to do more to raise inter-departmental awareness of the social economy through internal briefings for the relevant DGs and EU delegations in third countries.

2. **Introduction**

2.1. The two top priorities of the EU Global Strategy on Foreign and Security Policy are the EU's security and investment in the resilience of states and societies to the east and south of Europe, towards Central Africa. The social economy can play important roles in fostering inclusive development and sustainable growth as part of the implementation of these priorities and the European Neighbourhood Policy (ENP).

2.2. The ENP, which covers the countries to the east and south of Europe, and its financial instrument, the ENI, are key to fostering relations with the 16 countries concerned — six eastern European and ten southern Mediterranean countries, with the EU earmarking EUR 15,4 bn for their development in the 2014-2020 period.

2.3. Between 2016 and 2020, the EEIP, via the EFSD, will promote investments worth between EUR 44 bn and EUR 88 bn in Africa and the EU's neighbouring countries, with public sector bodies and private sector investors considered to be eligible counterparts for investment projects.

2.4. International trade is one of the pillars of the new Europe 2020 strategy aimed at making the EU more competitive and environmentally friendly. The Free Trade and Investment Agreements promoted by the EU can contribute to more dynamic economic growth in the EU, given that 90 % of future global growth will take place outside Europe. The EU should ensure that, when trade agreements are negotiated, SEEs are not discriminated against compared to other businesses, by eliminating non-tariff barriers, which are in effect the cause of the discrimination. The European social economy should make use of these agreements to boost the international dimension of its businesses, both in the neighbouring countries to the east and south of Europe and in the rest of the world.

([4]) EESC own-initiative opinion on the *2030 Agenda — a European Union committed to sustainable development globally* (OJ C 34, 2.2.2017, p. 58), point 1.4.

2.5. The EU plays an important role in efforts to eradicate poverty and to promote economic and social development at global level. The official development aid provided by the EU and the Member States amounted to EUR 68 bn in 2015 ([5]) and the EU provides more than 50 % of all global development aid.

2.6. At its meeting on 26 May 2015, the Council approved the EU's position on the new Post-2015 Development Agenda (A New Global Partnership for Poverty Eradication and Sustainable Development after 2015). The Post-2015 Agenda was championed by the EU at the UN General Assembly in September 2015, which adopted the 2030 Agenda for Sustainable Development. In the Post-2015 Agenda, the Council underlines the 'importance of micro, small and medium-sized enterprises and **enterprises of the social economy** to job creation and sustainable development' (point (43)).

3. **Social economy enterprises and organisations (SEEs)**

3.1. SEEs are made up of a large number of stakeholders with a core identity and with shared principles and values of behaviour, an identity that characterises them as free and voluntary bodies. These entities are based on systems of democratic and participatory governance and are created by civil society with the primary objective of using solidarity-inspired criteria to meet and address the needs of the people and social groups they represent, rather than remunerating external investors ([6]). It should be pointed out, for example, that German cooperatives have been recognised by Unesco as being part of the intangible heritage of humanity.

3.2. The stakeholders that make up the social economy are well defined and clearly specified by the EU institutions, as well as by the social economy's own key players and in the academic literature. Particularly significant here are the European Parliament Resolution on Social Economy (2008/2250(INI)) of 25 January 2009; the *Manual for drawing up the satellite accounts of companies in the social economy: cooperatives and mutual societies*, promoted by the European Commission (2006); the opinions of the EESC ([7]) and the Committee's report on *The Social Economy in the European Union* ([8]). All of the above are similar in that they identify the social economy as being made up of a range of businesses and entities 'based on the primacy of people over capital and include organisational forms such as cooperatives, mutual, foundations and associations, as well as newer forms of social enterprises' (Conclusions of the Council of the European Union of 7 December 2015 on The promotion of the social economy as a key driver of economic and social development in Europe) ([9]).

4. **Social Economy, European Neighbourhood Policy and the Global Strategy on Foreign and Security Policy**

4.1. The social economy can play a very important role in the EU's external action. The history of the social economy is a success story, not only in Europe but also in many southern neighbouring countries and broad regions of Africa. This is stressed by ILO Recommendation 193 of 20 June 2002 on the promotion of cooperatives, regarding them as one of the pillars of economic and social development which, through their values and systems of governance, promote the fullest participation by the whole population in this development, strengthening stability, trust and social cohesion.

4.2. The Commission and the Council have stressed on several occasions the importance of cooperatives and the social economy in EU external action. For example, the Commission's communication of 12 September 2012 ('The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations') underlines the role of cooperatives as important civil society stakeholders 'particularly active in promoting entrepreneurship and job creation by mobilising grassroots communities'. For its part, in the Post-2015 Agenda the Council confers on the social economy a significant role in job creation and sustainable development (paragraph 43 of the Post-2015 Agenda).

4.3. The two top priorities of the EU Global Strategy on Foreign and Security Policy are the EU's security and investment in the resilience of states and societies to the east and south of Europe, towards Central Africa.

([5]) EESC own-initiative opinion on the *2030 Agenda — a European Union committed to sustainable development globally* (OJ C 34, 2.2.2017, p. 58).
([6]) Principles and values based on Cooperative Principles formulated by the International Cooperative Alliance (ICA) (Manchester, 1995).
([7]) See the EESC opinion on the *Diverse forms of enterprise* (OJ C 318, 23.12.2009, p. 22).
([8]) Report Monzón-Chaves CIRIEC, 2012.
([9]) The Reader 2011 *'Social and Solidarity Economy: Our common road towards Decent Work'*.

4.4. The ENP is a key element of meeting the priorities set out in the EU Global Strategy on Foreign and Security Policy. According to this strategy, one of the external action priorities is to invest in the resilience of states and societies to the east and the south of Europe, towards Central Africa, for the benefit of countries both within and outside the ENP.

4.5. The consolidation of resilient states in the European neighbourhood — a priority of the EU's external action — cannot be ensured without strong, cohesive and resilient societies. Based on businesses created by people for people, the social economy is a vibrant expression of civil society. SEEs are the fruit of citizens' collective entrepreneurship initiatives which integrate economic and social objectives into a common project, making individuals responsible for, and actors in, their own destinies, and allowing them to improve their living conditions and be hopeful about the future. This is the best guarantee of strengthening resilient states to the east and south of Europe, in other countries within and outside the ENP, as pointed out in the EU Global Strategy on Foreign and Security Policy. And it is the best guarantee of ensuring the sustainability and long-term success of the first of the five overarching priorities of the EU's external action — security of our common home, Europe — and thus of preventing radicalisation.

4.6. Finally, the external dimension of the social economy can be extremely useful in creating jobs with rights in countries where there are high shadow economy rates or in countries undergoing a change of economic model. It can also help avoid the closure of businesses by enabling workers to take charge of them themselves, under a legal and organisational cooperative framework.

5. **The social economy and the EU's trade and investment policy**

5.1. Trade policy is one of the pillars of the EU's external action. Organised civil society is involved in the EU's various agreements with other countries and regions around the world (trade, association and economic partnership agreements) through the JCCs and DAGs set up under those agreements. The EESC recommends that the social economy, which already participates in a number of these agreements, should become a fixed component of all of them and proposes that this be used to draw on the experience of the social economy, in the sustainable development chapters of the agreements, to create enterprises with the values and characteristics of the social economy. And social economy organisations should regularly be represented in the membership of the civil society DAGs provided for by these chapters and in the business missions promoted by the Commission in third countries.

5.2. The participation of the social economy in the JCCs and DAGs can help strengthen the knowledge, ties and cooperation of the social economy between different regions, as is already the case, for example, between the EU social economy and its relevant counterparts in Latin America and the southern shores of the Mediterranean.

5.3. Through the ENI, the ENP earmarked EUR 15,4bn for the 2014-2016 period in order to achieve its objectives. The EEIP ([10]) which provides an overall framework for increasing investment in Africa and the EU's neighbouring countries, can be a suitable instrument for promoting the social economy in these geographical areas.

5.4. The 5th Africa-EU Summit will be held in November 2017 and will reformulate and further develop the Africa-EU partnership ([11]). The Commission should facilitate the inclusion of the social economy in the structured dialogue it intends to promote with the European and African private sector within the framework of a Sustainable Business for Africa (SB4A) platform.

5.5. The Commission has recognised the important role that SEEs can play in the development of the circular economy, to which they can make an 'essential contribution' ([12]). In Europe, there are many examples of good practice in this area, above all in the field of renewable energies.

5.6. By virtue of their characteristics and values SEEs can play a significant role in the investments in renewable energies in Africa planned in the EEIP, on the basis of the competitive advantages arising from better management of resources and raw materials and local connections, which make it possible to create new local jobs, especially for young people and women. Preferential support for circular economy SEEs will facilitate more sustainable economic growth, reducing negative

([10]) Commission Communication of 14.9.2016 (COM(2016) 581 final).
([11]) JOIN(2017) 17 final, 4.5.2017 (A new impetus for the Africa-EU Partnership).
([12]) COM(2015) 614 final, 2.12.2015.

environmental impacts by improved management of resources and reduced extraction and pollution.

5.7. The Partnership Instrument for Cooperation with Third Countries ([13]), which is aimed at developed and developing countries, could provide an opportunity for the social economy of the EU in its process of developing its international dimension, fostering competitiveness, innovation and research.

5.8. As has been pointed out many occasions, the rationale of the financial market does not lend itself to supporting SEE development. Traditional financial instruments do not work for the SEEs, which need instruments specifically adapted to them. Therefore, the true potential of SEEs can only be tapped if access to financing is incorporated into an adapted and fully integrated financial ecosystem ([14]).

5.9. The GECES has also highlighted the need for the Commission to earmark 'dedicated direct and indirect funding for social economy organisations, including social enterprises, in third countries, along with governments and support and social finance organisations' (Recommendation 13 of the GECES report on 'Social enterprises and the social economy going forward').

5.10. In this connection, both the ENI and other financial instruments should contribute in a systematic way to the promotion of the social economy, both in the accession negotiations with candidate countries, and with other neighbouring countries that are beneficiaries of preferential agreements.

5.11. A number of external initiatives have recently been launched by the Commission, such as the framework partnership agreement between the European Commission and the International Cooperative Alliance to promote the cooperative sector worldwide, for implementation between 2016 and 2020 under a programme with funding totalling EUR 8 million. However, both the ENP and the Global Strategy on Foreign and Security Policy overlook SEEs and fail to specifically include them as business actors in the EU's external policies and programmes, and do not provide for any lines of financing specifically for SEEs among the substantial funds allocated to the EEIP and the EFSD, nor are they included in any of the actions to promote the international dimension of European businesses.

5.12. The Commission and the social economy should facilitate the involvement of the G20 and the G7 in promoting specific policies to support inclusive business and SEEs (as discussed in the G-20 Inclusive Business Framework), to better reflect the differences in the set of values, principles and raison d'être between these organisations, as recommended by the GECES (Recommendation 12).

5.13. The role of the social economy in international forums (UNTFSSE, ILGSSE, G20, G7, ILO etc.) and cooperation with international financial organisations like the Global Social Impact Investment Steering Group (GSG) should be promoted via economic diplomacy, for example by participating in financing events organised by the ILGSSE.

6. **The importance of the social economy for achieving the SDGs**

6.1. The UN's 2030 Agenda includes 17 SDGs based on three pillars — economic, social and environmental. The social economy is playing an important role in meeting all of these goals. The range of actors that make up the social economy and the cross-cutting nature of the legal forms it comprises, make it difficult to gather aggregated data on the activities of the social economy, although the data that is available on cooperatives, mutual benefit societies and other similar entities indicates that the social economy and cooperatives in particular have a key part to play in meeting the 2030 Agenda SDGs.

6.2. In order to contribute to the monitoring and revision of the SDGs, the exercise should include a periodic report on the partnership policies between Member States and other public authorities and the social economy, including cooperatives, which are crucial for the implementation of the SDGs. States should also be encouraged to produce data and statistics.

([13]) Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014.
([14]) EESC exploratory opinion on *Building a financial eco-system for social enterprises* (OJ C 13, 15.1.2016, p. 152).

6.3. Cooperatives play a vital role in meeting the poverty reduction and sustainable development target in extensive regions of Africa, Asia and America. These are mainly savings and credit cooperatives and agri-food cooperatives specialising in production, supply and marketing (role emphasised by the FAO). In countries such as Tanzania, Ethiopia, Ghana, Rwanda and Sri Lanka, savings and credit cooperatives are very important in financing tools and supplies for work, working capital and consumer durables for poor people. Cooperatives in those countries also play a leading role in women's rights ([15]). There are 12 000 savings and credit cooperatives in Africa, with 15 million users across 23 countries ([16]).

6.4. Cooperatives and mutual societies play a very important role in health matters throughout the world, both in developed and emerging countries. Health cooperatives provide support for more than 100 million families globally ([17]).

6.5. One sector where cooperatives are making a major contribution to meeting the SDGs is access to clean water and sanitation. Bolivia (Santa Cruz de la Sierra) is home to the largest cooperative for the supply of drinking water in the world, providing very high-quality, clean water to 1,2 million people. Water supply cooperatives provide clean water to tens of thousands of households in the Philippines, India and various African countries. In some cases, members of cooperatives have drilled wells themselves and set up local groups to maintain them. There are around 3 300 cooperatives in the United States, supplying water for human consumption, fire protection, irrigation and sewage disposal ([18]).

6.6. Cooperatives are very effective at providing decent housing and improving insanitary conditions in neighbourhoods. Working together with poor families living in urban areas, the Indian National Federation of Housing Cooperatives has promoted 92 000 housing cooperatives with 6,5 million members and 2,5 million dwellings, the vast majority for low-income families. In Kenya, the National Union of Housing Cooperatives has launched a programme for improving insanitary conditions in neighbourhoods, bringing neighbours together to form cooperatives so that they can have access to decent housing ([19]).

6.7. Cooperatives are a valuable tool for reducing the high rates of informal work (50 % of all work in the world), which is always associated with poor living and working conditions. Collective entrepreneurship initiatives associated with cooperatives provide great social value, increasing people's sense of dignity and improving their living conditions (decent work), and offering a response to a model that produces insecurity and inequality. SEEs play a key role in empowering the most vulnerable groups, particularly women, young people and people with disabilities, in addition to creating sustainable economic revenue as well as successful social innovation.

6.8. In addition to cooperatives and mutual benefit societies, mention should also be made of the role of non-profit entities and non-governmental organisations (NGOs), all of which form an integral part of the social economy under the heading of the 'social action third sector'. They can draw on significant resources, including volunteers, enabling them to manage social, health, education and other services and, in many cases, to promote social entrepreneurship initiatives among the local population.

6.9. The business activities listed in the previous points show that the social economy business model is inspired by a system of values and participatory governance that makes it particularly suited to addressing many of the social challenges included in the SDGs. As the European Parliament has pointed out, 'most social problems should be approached through local solutions, in order to deal with practical situations and problems' ([20]). It is important to stress the role of the UN Task Force on Social and Solidarity Economy (UNTFSSE) in promoting the social and solidarity economy at global level and the initiatives of Cooperatives Europe and the ACI-EU project on international development through cooperatives.

([15]) ICA-ILO
([16]) B. Fonteneau & P. Develtere, *African Responses to the crisis through the Social Economy.*
([17]) ICA-ILO
([18]) *Idem.*
([19]) *Idem.*
([20]) European Parliament Report on the Social Economy (2008/2250(INI)).

6.10. Because they are deeply rooted in the local communities and because their priority aims are to meet people's needs, these enterprises do not relocate, effectively combating the depopulation of rural areas and contributing to the development of disadvantaged regions and municipalities ([21]). The Committee stresses in this connection the work of the Global Social Economy Forum (GSEF) which will hold its next meeting in the EU (Bilbao, 2018).

6.11. In this way, the social economy business model:

— generates wealth in rural and depressed areas by creating and supporting business initiatives which are economically viable and sustainable in the medium to long term;

— promotes and supports the entrepreneurial, training and business management capacities of socially excluded groups and the general population, creating consultation platforms at national level;

— creates funding instruments by setting up credit or micro-credit cooperatives to ensure access to finance;

— safeguards certain living conditions for vulnerable groups by improving access to food and basic social services such as health, education, housing and clean water;

— helps to reduce informal work by promoting collective entrepreneurship initiatives for which cooperatives are an excellent tool; and

— contributes to sustainable economic growth, thus reducing negative environmental impacts.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([21]) COM(2004) 18 final, point 4.3 (Promotion of cooperatives in Europe).

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

527TH EESC PLENARY SESSION OF 5 AND 6 JULY 2017

Opinion of the European Economic and Social Committee on the 'Proposal for a decision of the European Parliament and of the Council amending Directive 2010/40/EU as regards the period for adopting delegated acts'

(COM(2017) 136 final — 2017/0060(COD))

(2017/C 345/10)

Rapporteur: **Jorge PEGADO LIZ**

Referral	European Parliament, 3.4.2017
	Council, 31.3.2017
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	7.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	124/1/3

1. **Conclusions and recommendations**

1.1. The EESC takes note of the Commission proposal.

1.2. The Committee agrees in principle with this proposal and is pleased that, as it had always called for, the Commission has considered it appropriate to extend the delegation for a fixed period, with the possibility of renewal, as long as there are no objections raised by the Council and the Parliament.

2. **Aim of the proposal**

2.1. Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 ([1]) on the framework for the deployment of Intelligent Transport Systems (ITS) in the field of road transport and for interfaces with other modes of transport ([2]) requires that specifications be adopted, through delegated acts, for actions in four priority areas.

([1]) OJ L 207, 6.8.2010, p. 1; OJ C 277, 17.11.2009, p. 85.
([2]) OJ L 207, 6.8.2010, p. 1.

2.2. The power to adopt the delegated acts was conferred on the Commission for a limited period only, until 27 August 2017. Four delegated acts have been adopted since the entry into force of the directive, and a fifth delegated act addresses the provision of EU-wide multi-modal travel information services.

2.3. In the context of the European strategy on cooperative intelligent transport systems ([3]) (C-ITS), the Commission is currently working with the Member States' experts to establish a legal and technical framework to support the deployment of cooperative ITS. Apart from this work, several other actions in the directive's four priority areas ([4]) have still to be addressed, such as specifications and standards for the continuity and interoperability of traffic and freight management services (priority area II), specifications for other actions relating to ITS road safety and security applications (priority area III), and the definition of necessary measures to integrate different ITS applications on an open in-vehicle platform (priority area IV).

2.4. In order that the Commission can adopt further specifications through delegated acts, it considers it essential that the delegation of power be extended. Furthermore, specifications that have already been adopted may need to be updated to reflect technological progress or lessons learnt from their implementation in the Member States.

2.5. The Commission is therefore proposing that the delegation of power be extended by five years from 27 August 2017 and tacitly thereafter for further five-year periods, unless the European Parliament or the Council oppose such extension. The only aim of this proposal is to extend the delegation of power to the Commission to adopt delegated acts, for a further period of five years and tacitly thereafter for further five-year periods, unless the European Parliament or the Council oppose such extension, without changing the policy objectives or the scope of the ITS Directive.

3. **Background**

3.1. This proposal fits in with the Commission's more general Proposal for a Regulation (COM(2016) 799 final) adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny (RPS) to Articles 290 and 291 of the Treaty on the Functioning of the European Union, on which the EESC has already issued an opinion ([5]). As soon as the periods prescribed by the various legislative instruments in force for the adoption of the delegated acts expire, there should be an assessment of the need to extend the initial time-frames.

3.2. The Commission has reported on the studies that it carried out to demonstrate the need to extend the delegation of power enabling it to adopt delegated acts on ITS specifications, in particular:

(a) in October 2014, a report on the implementation of the ITS Directive ([6]);

(b) targeted consultations have recently taken place with stakeholder groups, in particular the European ITS Committee and the members of the European ITS Advisory Group.

4. **General comments**

4.1. The EESC draws attention to its information reports and its opinion on delegated acts ([7]) which were summarised in its recent opinion on RPS ([8]) and convey the essence of its position.

4.2. The EESC believes that all elements of the delegations of power must be defined, namely:

(a) their stated objectives;

(b) their precise content;

([3]) *A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility* (COM (2016) 766 final).
([4]) See Annex I to the Directive.
([5]) INT/813 (not yet published in the Official Journal).
([6]) http://ec.europa.eu/transport/themes/its/road/action_plan/its_reports_en.htm.
([7]) OJ C 13, 15.1.2016, p. 145; OJ C 67, 6.3.2014, p. 104; INT/656 (information report).
([8]) INT/813 (not yet published in the Official Journal).

(c) their exact scope;

(d) a strictly defined duration.

4.3. As regards the duration in particular, the EESC has always supported the principle of a fixed duration, renewable for an identical period, except in duly justified cases.

4.4. The EESC notes that in this proposal, the Commission has established a fixed additional period of five years beginning from 27 August 2017, which may then tacitly be extended for a period of identical duration, unless the European Parliament or the Council oppose such extension.

4.5. The EESC believes that this proposal brings legal certainty coupled with the flexibility required to take account of technological developments and to adopt the technical, functional and organisational specifications needed to ensure the proper functioning of ITS in the area of road transport at the appropriate time — it therefore deserves its approval.

4.6. The EESC is also of the view that extending the delegation of power to the Commission is essential to the integrated and coordinated deployment of interoperable ITS in road transport and their interfaces with other transport modes, particularly following Communication COM(2016) 766 final ([9]).

4.7. However, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council must receive all documents at the same time as Member States' experts, and their experts must have access systematically to meetings of Commission expert groups dealing with the preparation of delegated acts.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([9]) *A European strategy on Cooperative Intelligent Transport Systems, a milestone towards cooperative, connected and automated mobility,* 30.11.2016. EESC opinion TEN/621 (not yet published in the Official Journal).

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market'

(COM(2017) 142 final — 2017/0063 (COD))

(2017/C 345/11)

Rapporteur: **Juan MENDOZA CASTRO**

Referral	European Parliament, 26.4.2017
	Council, 27.3.2017
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	130/0/2

1. **Conclusions and recommendations**

1.1. The EESC welcomes the Commission's proposal, which it considers essential to the effective implementation of Regulation (EC) No 1/2003.

1.2. Although differences persist, as a result of voluntary harmonisation significant convergence has taken place between the systems in the various Member States, using EU rules as a template.

1.3. The ECN's system for case allocation should avoid any potential duplication of efforts on the part of the various Member States.

1.4. The EESC proposes that, in future, consideration should be given to the content of civil and administrative law being governed by means of a regulation.

1.5. Competition policy must guarantee equal opportunities. The EESC emphasises the importance of the national competition authorities (NCAs) having at their disposal the legal measures and instruments needed to tackle secret cartels, and draws attention to the serious harm caused by abuses of dominant position.

1.6. Respect for the **fundamental rights** of parties under investigation must be compatible with the full application of Articles 101 and 102 TFEU.

1.7. The EESC is concerned at the serious shortcomings with regard to the **independence and resources** of the NCAs that can currently be seen in many Member States. It is essential that NCAs are genuinely independent of the authorities; management staff must therefore be independent experts with a proven track record. Moreover, staff turnover should be kept low and members of staff should receive adequate vocational training.

1.8. In many cases, the damage caused by anti-competitive conduct is difficult — or even impossible — to repair, and the EESC therefore recommends that the powers allocated to the NCAs should also be used in preventive actions.

1.9. The Committee has previously argued that the size of **penalties** 'should act as a deterrent and […] should be made more severe in the event of a repeat infringement', and agrees that the ability of the competent authorities to impose penalties is a key component of competition policy.

1.10. The experience of the Commission, which usually applies **leniency** measures, can be regarded as positive. It is important that they are applied uniformly by the NCAs if genuine European competition law is to exist. However, these measures should not prevent injured parties (including consumers) from obtaining, by means of collective actions, compensation for the damage sustained.

1.11. The transnational nature of NCA actions means that **mutual assistance** between them is crucial.

1.12. When transposing the directive, the **suspension of the limitation period** must comply with the Member States' general rules on limitation periods.

1.13. NCAs should be granted the **power to institute legal proceedings in their own right**, since the lack of such a power hampers their effectiveness in some Member States.

1.14. The EESC highlights the importance of NCAs being able to use all types of **evidence** irrespective of the medium on which it is stored.

1.15. Information campaigns are needed, as most of the general public know very little about competition rules.

2. **The Commission proposal**

2.1. The EU Member States are essential partners of the European Commission when it comes to enforcing EU competition rules. Since 2004, the NCAs of the EU Member States have been empowered by Council Regulation (EC) No 1/2003 to apply EU competition rules alongside the Commission. For more than a decade both the Commission and the NCAs have enforced EU competition rules in close cooperation as part of the European Competition Network (ECN). The ECN was created in 2004 expressly for this purpose.

2.2. Enforcement of the EU competition rules by both the Commission and the NCAs is an essential building block for the creation of an open, competitive and innovative internal market and is crucial for creating jobs and growth in important sectors of the economy, in particular the energy, telecoms, digital and transport sectors.

2.3. The EU competition rules are one of the defining features of the internal market: if competition is distorted, the internal market cannot deliver on its full potential and create the right conditions for sustained economic growth. A key aspect of making the internal market deeper and fairer is ensuring that the internal market rules are effectively enforced so that they deliver close to the citizen.

2.4. Enforcement of EU competition rules is now taking place on a scale that the Commission could never have achieved on its own. The Commission typically investigates anticompetitive practices or agreements that have effects on competition in three or more Member States or where it is useful to set a Europe-wide precedent. The NCAs are usually well placed to act where competition is substantially affected in their territory. NCAs have the expertise with regard to how markets work in their own Member State. That knowledge is of great value when enforcing the competition rules.

2.5. There is untapped potential for more effective enforcement of the EU competition rules by the NCAs. Regulation (EC) No 1/2003 did not address the means and instruments by which NCAs apply the EU competition rules, and many NCAs do not have all the means and instruments they need to effectively enforce Articles 101 and 102 TFEU.

2.6. The gaps and limitations in NCAs' tools and guarantees mean that undertakings engaging in anti-competitive practices may face very different outcomes in proceedings, depending on the Member States in which they are active: rules under Articles 101 or 102 TFEU may be enforced ineffectively or not at all, for example because evidence of anti-competitive practices cannot be obtained or because undertakings can escape liability for fines. Uneven enforcement of the EU competition rules distorts competition in the internal market and undermines the system of decentralised enforcement that was put in place by Regulation (EC) No 1/2003.

2.7. In consequence, the Commission considers that a legislative proposal pursuing a two-fold policy is needed:

— based on Article 103 TFEU, with the aim of empowering NCAs to more effectively enforce the EU's principles of competition, by granting them the necessary guarantees of independence, resources and powers;

— based on Article 114 TFEU, seeking to bolster the internal market by removing national obstacles that prevent the NCAs from enforcing the rules effectively, in order to prevent distortions of competition and achieve more uniform application of the rules to the benefit of consumers and businesses.

2.8. Moreover, enabling NCAs to effectively provide each other with mutual assistance will ensure a more level playing field and safeguard close cooperation within the ECN.

3. **General comments**

3.1. The EESC welcomes the Commission's proposal, which it considers essential to the effective implementation of Regulation (EC) No 1/2003. In order for a European competition system to be set up, the barriers and gaps regarding the full implementation of Articles 101 and 102 TFEU that currently exist in certain Member States need to be removed.

3.2. The decentralised application of competition rules as a result of Regulation (EC) No 1/2003 has not, as was feared, resulted in the fragmentation of the powers to enforce competition policy. Although differences persist, as a result of voluntary harmonisation significant convergence has taken place between the systems in the various Member States, using EU rules as a template ([1]).

3.3. The EESC points out that the existence of parallel powers — both EU and Member State — will in certain cases require a drive to adapt national institutions and laws. In any event, the case allocation system in the framework of the ECN should avoid potential duplication of efforts in the various Member States.

3.4. The Commission considers a directive to be the appropriate instrument as it takes account of 'Member States' legal traditions and institutional specificities'. However, the aim for the NCAs to apply the rules uniformly and coherently, notably as regards the catalogue of sanctions (Chapter V) and immunity from and reduction of fines (Chapter VI), entails overcoming the huge diversity that exists at present. The EESC therefore proposes that, in future, consideration should be given to the content of civil and administrative law being governed by means of a regulation, with the Member States retaining full autonomy with regard to criminal legislation.

3.5. Competition policy must guarantee equal opportunities. The EESC emphasises the importance of the NCAs being properly equipped with the legal means and instruments needed to tackle secret cartels (as defined in Article 2(9) of the proposal) and also emphasises the serious harm that abuse of dominant position — usually by large companies or associations of large companies — causes to other businesses (SMEs in particular), consumers and users.

3.6. The EU Member States need to consider conducting information campaigns, as most of the general public know very little about competition rules.

4. **Specific comments**

4.1. ***Fundamental rights***

4.1.1. The Commission's proposal refers to the general principles of EU law and the Charter of Fundamental Rights of the European Union ([2]), in order to guarantee respect for the following rights: defence of undertakings; freedom to conduct a business; property ownership; good administration; and an effective remedy (Articles 16, 17, 41 and 47 of the Charter).

4.1.2. The EESC points out that in order for the wide powers that the NCAs need to carry out their duties to be recognised, safeguards and guarantees of the rights of parties under investigation need to be put in place and this must be compatible with the full application of Articles 101 and 102 TFEU. The NCAs and, where necessary, national courts must ensure that these guarantees are upheld. According to the case law of the EU Court of Justice (CJEU), the presumption of innocence constitutes a general principle of EU law (Article 48(1) of the Charter), which Member States must respect when applying competition law ([3]). The European Court of Human Rights has for its part confirmed the application of Article 6 of the European Convention on Human Rights (right to a fair trial) ([4]) and has ruled on the Commission's legitimacy ([5]) and the 'non bis in idem' ([6]) principle in competition proceedings.

([1]) *An Academic view on the Role and Powers of National Competition Authorities*, European Parliament, 2016.
([2]) Judgment in Karlsson and others, Case C-292/97, paragraph 37.
([3]) Judgments in the cases Eturas C-74/14, paragraph 38, E.ON Energie v Commission C 89/11 P, paragraph 72 and VEBIC C 439/08, paragraph 63.
([4]) Menarini Diagnostics S.R.L. v Italy.
([5]) C-12/03P Commission v Tetra Laval (2005).
([6]) Menarini Diagnostics S.R.L. v Italy.

4.2. ***Independence and resources***

4.2.1. The independence guarantee involves exercising powers 'impartially and in the interests of the effective and uniform enforcement' of the rules (Article 4(1)).

4.2.2. Member States should ensure that the staff and members of the NCAs' decision-making bodies perform their duties (Article 4(2)):

— independently from political and other external influence;

— without seeking or taking instruction from any government or other public or private entity;

— avoiding any action that is incompatible with the exercise of their duties;

— in addition:

  — they may be dismissed only if they no longer fulfil the conditions required for the performance of their duties or have been guilty of serious misconduct under national law;

  — the grounds for dismissal should be laid down in advance in national law;

  — they should not be dismissed for reasons related to the fulfilment of their duties and the exercise of their powers.

4.2.3. The EESC expresses its concern about the serious shortcomings in this regard that, according to the Commission, are currently being identified in many Member States. Adequate human, financial and technical resources (Article 5), are fundamental if NCAs are to fulfil their responsibilities. Independence requires substantial autonomy of the state structure ([7]) including:

— judicial control;

— providing information to parliament;

— periodic activity reports;

— monitoring of budgetary allocations.

4.2.4. The EESC considers it essential that the NCAs are genuinely independent from the authorities. To that end, management staff must be independent experts with a proven track record. Moreover, staff turnover should be kept low and members of staff should receive adequate vocational training.

4.3. ***Powers***

4.3.1. NCAs must be equipped with the following powers (Articles 6 to 11):

— **Inspection of business premises without prior notice, with or without a court order, as required by Member State legislation:** this includes, at the very least, the right to enter any 'premises, land and means of transport of undertakings'; to examine the books and other records; to make or obtain copies 'in any form'; to 'seal any business premises and books or records' and to request explanations. If a business refuses to allow an administrative or judicial inspection, the 'authorities can obtain the necessary assistance of the police or of an equivalent enforcement agency', which 'may also be obtained as a precautionary measure'.

— **Inspection of other premises without prior notice and with judicial authorisation:** this shall take place if there is a 'reasonable suspicion' of elements existing that could be relevant to a serious infringement of Articles 101 or 102 TFEU.

— **Requests for information.**

— **Order to bring a detected infringement to an end.**

([7]) 'Independence and accountability of competition authorities,' Unctad 2008.

— **Imposition of interim measures**: these apply 'in cases where there is urgency due to the risk of serious and irreparable harm to competition and on the basis of a prima facie finding of an infringement'. The measure must be granted for a specified term, which may be renewed.

— **Establishing the binding nature of commitments offered by the undertakings.**

4.3.2. In many cases, the damage caused by anti-competitive conduct is difficult — or even impossible — to repair, and the EESC therefore recommends that the powers allocated to the NCAs should also be used in preventive actions.

4.4. ***Infringement fines and periodic penalty payments***

4.4.1. **Infringement fines** that are 'effective, proportionate and fair' may be applied when certain conduct occurs 'intentionally or negligently': refusal to undergo an inspection; breaching a seal; incorrect or misleading answers; false information; or violation of interim measures. **Periodic penalty payments** cover cases of omission, such as the refusal to submit to an inspection, among others (Articles 12 and 15).

4.4.2. Following the usual criteria in criminal law, the fines that Member States must impose will take into account 'both … the gravity and … the duration of the infringement' and the maximum amount of the fines 'should not be set at a level below 10 % of its total worldwide turnover in the business year preceding the decision' (Articles 13(1) and 14). Alternative criteria as regards liability for payment are laid down in the case of associations of undertakings (Article 13(2)).

4.4.3. It should be noted that the extension of liability for the payment of fines severally to all members of associations or groups of undertakings (Article 13(2)) fills a gap in the current legislation ([8]).

4.4.4. Only businesses to which administrative penalties may apply fall within the scope of the proposal. Conduct that may constitute a criminal offence is a matter for the Member States. The Court of Justice of the EU has previously ruled on the compatibility of administrative and criminal penalties ([9]).

4.4.5. The Committee, which has argued that the size of penalties 'should act as a deterrent and […] should be made more severe in the event of a repeat infringement' ([10]), agrees that the ability of the competent authorities to impose penalties is a key component of competition policy. It is also concerned that competition law is currently under-enforced due to the considerable disparities in the legislation and structures of NCAs.

4.5. ***Immunity/reduction of fines (leniency)***

4.5.1. Member States are provided with the power to establish the causes and procedures for immunity from or reduction of fines; however, this takes place within a framework that is set out in detail and includes:

— requirements for immunity (Article 16) and reduction (Article 17);

— conditions for applying these measures (Article 18);

— form of leniency applications (Article 19);

— a marker for a formal application for immunity (Article 20);

— summary applications when presented simultaneously to the Commission and to an NCA (Article 21);

— safeguards for those who request immunity (Article 22).

([8]) Judgment in Case C-97/08 P, AkzoNobel NV v Commission, paragraphs 45 and 77.
([9]) Judgment of 26.2.2013 — Case C-617/10 Åkerberg Fransson.
([10]) Opinion on the 2014 Competition Report (OJ C 71, 24.2.2016, p. 33).

4.5.2. The rationale of the proposal is that, as the aim is to detect secret cartels, the significant disparities that exist between national laws and their effective enforcement create legal uncertainty, weaken the incentives to follow the rules and lead to inefficient EU competition policy. Furthermore, the Member States do not apply the ECN Model Programme ([11]), the fundamental aspects of which will be incorporated into the new rules.

4.5.3. In the EESC's view, it is important that leniency measures be applied uniformly by the NCAs if genuine European competition law is to exist, and the experience of the Commission, which usually applies measures of this kind ([12]), can be regarded as positive. However, these measures should not prevent injured parties (including consumers) from obtaining, by means of collective actions, compensation for the damage sustained.

4.6. ***Mutual assistance***

4.6.1. In light of the new powers provided in this proposal, cooperation between NCAs should include mutual assistance and support in inspection procedures (Article 23), meaning that Member States must ensure that they provide notification of preliminary objections (Article 24) and comply with requests to enforce decisions (Article 25). Powers in the field of disputes have been set out (Article 26).

4.6.2. The EESC considers it necessary to impose these obligations given the transnational nature of competition policy.

4.7. ***Suspension of limitation periods for the imposition of penalties***

4.7.1. The Commission's proposal sets out two specific criteria for the suspension of these periods: 'for the duration of proceedings before national competition authorities of other Member States or the Commission in respect of an infringement concerning the same agreement, decision of an association or concerted practice' (Article 27(1)) and if judicial proceedings are taking place (Article 27(2)).

4.7.2. The EESC notes that the possible conflict with the requirements, which also provide for scenarios in which these periods may be disrupted in the event of judicial proceedings, should be addressed during the transposition of the directive.

4.8. ***Power of NCAs to institute legal proceedings in their own right***

4.8.1. The proposal argues that NCAs should have the necessary legal standing to directly bring actions before a judicial authority, and should be entitled to take part in their own right as an appellant or respondent in judicial proceedings, with the same rights as the other parties (Article 28).

4.8.2. The EESC considers that, at present, not being able to do this makes it difficult for NCAs to take action in some Member States ([13]); this power should therefore be put in place in order to comply with the requirements imposed upon NCAs under EU competition policy.

4.9. ***Admissibility of evidence before NCAs*** ([14])

4.9.1. The EESC points out the importance of NCAs being able to use 'documents, oral statements, recordings and all other objects containing information, irrespective of the medium on which the information is stored' (Article 30) as evidence.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([11]) Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ C 298, 8.12.2006, p. 17).

([12]) See *Cartel leniency in EU: overview*, Thomson Reuters. Examples of reductions and waivers applied by the Commission: Riberebro 50 % (OJ C 298, 8.12.2006, p. 17); Hitachi 30 %, and others; Philips, written off; Hitachi 50 %; Schenker and others 55-40 %; DHL, immunity (C-428/14, DHL/AGCM); Eberspächer 45 % and Webasto, immunity.

([13]) In its reply to the Commission's questionnaire, the German NCA ('Bundeskartellami') cited this as one of the causes of a 'severely dysfunctional' system.

([14]) Limitations on the use of information (Art. 29). The Commission has stated that this Article may be reworded.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled'

(COM(2016) 595 final — 2016/0279 (COD))

(2017/C 345/12)

Rapporteur: **Pedro ALMEIDA FREIRE**

Consultation	Council, 5.4.2017
	European Parliament, 28.6.2017
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	215/3/8

1. Conclusions and recommendations

1.1. The EESC agrees with the compromise proposed by the Presidency which makes a swift ratification of the Marrakesh Treaty ([1]) possible.

1.2. The Committee expects a quick implementation by the EU of the Marrakesh Treaty which is important and necessary for enabling many European citizens who are blind, visually impaired or otherwise print-disabled to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.

1.3. The Committee supports the proposed Regulation ([2]) and the proposed Directive ([3]) to implement the Marrakesh Treaty as they will establish a mandatory exception and ensure the making and exchange of such accessible format copies within the Single Market as well as outside of the EU.

1.4. The Committee welcomes the aim to permit the cross-border exchange of such copies between the EU and third countries that are parties to the Marrakesh Treaty.

1.5. An evaluation of the implementation of the Marrakesh Treaty in the EU should be carried out within a reasonable time frame.

2. Commission and Presidency proposals

2.1. The proposed Regulation has been adopted by the Commission on 14 September 2016, as part of the Copyright package ([4]), which proposes a set of legislative measures with four objectives:

— ensuring wider online access to content in the EU and reaching new audiences;

([1]) Marrakesh Treaty to Facilitate Access to Published Works for Persons who Are Blind, Visually Impaired, or Otherwise Print Disabled.
([2]) COM(2016) 595 final.
([3]) COM(2016) 596 final.
([4]) COM(2016) 593 final, COM(2016) 594 final, COM(2016) 596 final (OJ C 125, 21.4.2017, p. 27).

— adapting certain exceptions to the digital and cross-border environment;

— fostering a well-functioning and fair copyright marketplace;

— allowing blind, visually impaired or otherwise print-disabled persons to have better access to works or other subject-matter.

2.2. With this Regulation the Commission is proposing legislation to implement the Marrakesh Treaty to facilitate access to published works for persons who are blind, have other visual impairments or are otherwise print disabled.

2.3. The Marrakesh Treaty was adopted in 2013 at the World Intellectual Property Organisation (WIPO) with the aim of facilitating the availability and cross-border exchange of books and other print material in accessible formats around the world. It was signed by the Union ([5]) in April 2014.

2.4. The proposed measures are important to ensure that in line with the United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD') ([6]) copyright does not constitute an unreasonable or discriminatory barrier to the full participation in society of all citizens and will allow for the exchange of accessible format copies within the EU and with third countries that are parties to the Treaty, avoiding duplication of work and waste of resources.

2.5. The ratification process was, however, confronted with the legal question of whether the Union had exclusive competence to ratify the Treaty.

2.6. The Commission decided therefore to seek the opinion of the Court of Justice of the European Union in July 2015.

2.7. In the meantime, the Commission adopted its proposal COM(2016) 595 final on the basis of Article 207 TFEU. The consultation of the EESC was therefore not mandatory.

2.8. On 14 February 2017, the Court of Justice ([7]) has confirmed the exclusive competence of the EU and also stated that the Marrakesh Treaty does not fall within the common commercial policy.

2.9. At its meeting of 22 March, the Permanent Representatives Committee agreed on a Presidency compromise proposal in which it was decided to change the legal basis from Articles 207 (common commercial policy) to 114 TFEU. As a consequence, the consultation of the EESC by the Council becomes mandatory.

3. **General comments**

3.1. ***On the legal basis***

3.1.1. Taking into account the recent opinion of the Court of Justice, the EESC cannot but agree with the compromise proposed by the Presidency which makes a swift ratification of the Marrakesh Treaty possible.

3.1.2. In addition, the change of the legal basis makes the EESC opinion mandatory and gives more weight to the comments already made in this respect in our recent Opinion on the Copyright package ([8]).

3.2. ***On the content***

3.2.1. In its Opinion on the Copyright package the EESC already referred to the current proposal. The Committee reiterates that swift ratification by the EU of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which entered into force on 30 September 2016, is important and necessary. The Treaty will enable many European citizens who are blind, visually impaired or otherwise print-disabled to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.

3.2.2. The proposals for a Regulation and Directive, which were part of the Copyright package will allow the EU to fulfil an international obligation incumbent upon it under the Marrakesh Treaty. This is also consistent with the EU's obligations under the UN Convention of the rights of persons with disabilities.

([5]) OJ L 115, 17.4.2014, p. 1.
([6]) UNCRPD.
([7]) OJ C 112, 10.4.2017, p. 3, Opinion 3/15 of the Court (Grand Chamber) of 14.2.2017.
([8]) OJ C 125, 21.4.2017, p. 27.

3.2.2.1. The proposal for a Directive will establish a mandatory exception and ensure its functioning for the making and exchange of such accessible format copies within the Single Market.

3.2.2.2. This exception is for the exclusive use of beneficiary persons as strictly defined in Article 2(2) of the proposed Regulation.

3.2.2.3. The proposal for a Regulation will permit the cross-border exchange of such copies between the EU and third countries that are parties to the Marrakesh Treaty.

4. **Further comments**

4.1. The EESC agrees that the Regulation is the only appropriate instrument to eliminate the existing legal discrepancies in the Member States.

4.2. The Committee emphasises that the Member States should play an important role, as specified in the Directive, to promote and make available the accessible works to the beneficiary persons both in their own countries and in third countries that are part of the Marrakesh Treaty.

4.3. The EESC makes itself available to actively participate in the evaluation process provided both by the Regulation and the Directive.

4.4. In particular, the evaluation should take into account the option in the directive for Member States to apply compensation schemes for rights holders. As also provided for in the text of the directive, it should be closely monitored that such compensation schemes imply no negative effect for the availability and provision of accessible works to the beneficiary group.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax'

(COM(2016) 755 final — 2016/0371 (CNS))

on the

'Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods'

(COM(2016) 757 final — 2016/0370 (CNS))

and on the

'Proposal for a Council Directive amending Directive 2006/112/EC, as regards rates of value added tax applied to books, newspapers and periodicals'

(COM(2016) 758 final — 2016/0374 (CNS))

(2017/C 345/13)

Rapporteur: **Amarjite SINGH**

Consultation	Council of the European Union, 20.12.2016 and 21.12.2016
Legal basis	Article 113 of the Treaty on the Functioning of the European Union
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	5.5.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	123/1/2

1. **Conclusions and recommendations**

1.1. The EESC welcomes the package on the modernisation of VAT on cross-border e-commerce, and endorses both its objectives and its focus on addressing the concerns of SMEs. These proposed rules will have a major impact on companies selling goods and services online, allowing them to benefit from fairer rules, lower compliance costs, and a level playing field with non-EU companies. In the long run, the proposals will also help make the EU VAT system future-proof.

1.2. The implementation of the VAT MOSS has had a significant impact on the reduction of compliance costs. However, these savings have not necessarily been experienced to the same extent amongst different-sized businesses. In particular, SMEs have struggled with several compliance elements of the MOSS, and have expressed significant concerns. The EESC has therefore welcomed the fact that the proposed amendments to the MOSS address these concerns.

1.3. Given the success of the VAT MOSS so far in reducing compliance costs for businesses engaged in cross-border trade, its extension to services, other than those currently included, as well as to intra-EU acquisitions and imports of goods, is a natural step forward. Apart from the potential reduction in compliance costs, the extension will also create a level playing field within e-commerce business, which is likely to have a positive impact on SMEs in particular. The extension of the MOSS to goods creates conditions for the possible removal of the Low Value Consignment Relief (LVCR) scheme, which has created a distortion in competition, whereby businesses established outside the EU have a competitive advantage over those established within the EU. The EESC therefore welcomes the proposed extension of the MOSS.

1.4. The amendments to the VAT rates applicable to e-publications rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market. However, whilst welcoming the elimination of this competitive distortion, the EESC is mindful of the risk that such elimination carries for the VAT base. The EESC also notes that the proposed measures are perceived by the European Commission as a prelude to wider reform of the EU VAT rate structure, and it is concerned about the impact that such de-harmonisation would have upon businesses engaging in cross-border trade, particularly SMEs.

2. **Background**

2.1. The Commission has proposed practical new measures as part of the package on modernising VAT for cross-border business-to-consumers (B2C) e-commerce. The measures are aimed at supporting cross-border e-commerce when it comes to VAT compliance, by removing VAT barriers to online businesses, in particular start-ups and SMEs, as well as combating online VAT evasion by non-EU businesses.

2.2. These measures include in particular:

2.2.1. Amendments to the existing MOSS ('Mini-One-Stop-Shop'), which allows certain businesses to comply with their VAT obligations in any Member State through a digital online portal, hosted by their own tax administration and in their own language. These amendments include the introduction of an intra-EU cross-border VAT threshold and new simplified compliance requirements;

2.2.2. Extension of the existing MOSS to intra-EU supplies of services, other than those to which it currently applies, and to distance sales of goods, both intra-EU and from third-countries;

2.2.3. The removal of current intra-EU distance sales thresholds, as well as VAT exemption for imports of small consignments from outside the EU;

2.2.4. Amendments to existing rules to enable Member States to apply a reduced VAT rate to e-publications, such as e-books and online newspapers, as is already the case with their printed equivalents.

Amendments to the VAT MOSS

2.3. The MOSS system has been fully operational since 1 January 2015, and was set up with the aim of simplifying VAT compliance obligations for businesses engaging in cross-border EU trade. Instead of being required to register, report and pay VAT in each Member State in which they sell their goods or services, the MOSS enables businesses simply to file quarterly EU VAT returns online with their corresponding national authority.

2.4. The proposed amendments were preceded by intensive consultation by the Commission from February to September 2015. The process, which entailed evaluation, consultation, seminars and impact assessments, focused particularly on the impact of the current VAT MOSS rules on SMEs. It revealed specific issues — such as the need for a threshold, use of home-country rules for certain specific VAT obligations like invoicing and record keeping, and audit coordination — as being the main concerns for SMEs, and these are therefore reflected in the proposed amendments.

2.5. Under the proposed rules, a new intra-EU cross-border VAT threshold of EUR 10 000 will be introduced. For companies operating online, whose cross-border sales fall below the threshold, these sales will be treated as domestic sales, with VAT paid to their own tax administration. In terms of compliance, the requirement for two pieces of evidence to be provided by suppliers of electronics services with a turnover of less than EUR 100 000 has been relaxed. In addition, online sellers will be allowed to apply home-country rules in areas such as invoicing and record keeping, thus facilitating VAT compliance, and new coordinated audits will be introduced, preventing these sellers from being subject to separate national audit requests.

Extension of the VAT MOSS

2.6. At present the MOSS applies solely to telecommunications, broadcasting and electronically supplied services. Under the proposed amendments, application of the MOSS would be extended to other intra-EU supplies of services, as well as to distance sales of goods, both intra-EU and from third-countries. Under the proposed rules, this extension would be phased in after the amendments to the existing MOSS rules come into force, with entry into force proposed for 1 January 2021.

2.7. The proposed extension of MOSS to imported goods ordered online will dramatically simplify VAT collection. The Commission believes, therefore, that this extension creates the conditions for the repeal of the small consignment relief scheme, also known as the LVCR, under which the importation of goods of negligible value not exceeding a total value of up to EUR 22, will be exempt from VAT. The proposal therefore envisages the removal of this exemption as of 1 January 2021.

Amendments to VAT rates on e-publications

2.8. Under the current rules, Member States have the option to tax publications on any means of physical support at a reduced VAT rate. However, the VAT Directive prevents Member States from applying the same VAT rates to e-publications as currently apply to physical publications. This view has been confirmed by the Court of Justice in a series of recent judgments, in the context of the application of reduced rates to e-publications by several Member States ([1]).

2.9. Under the proposed rules, Member States will be allowed to align VAT rates for e-publications on the current VAT rates for printed publications, regardless of which rate they apply. This proposal comes after consideration of the different options for bringing the treatment of e-publications in line with that of physical publications, and would allow Member States to apply reduced rates below the 5 % minimum, where they apply a rate below that minimum to physical books.

2.10. The above proposals would amend three legislative instruments, namely:

— Directive 2006/112/EC of 28 November 2006 on a common system for Value Added Tax (VAT Directive) ([2]);

— Regulation (EU) No 904/2010 of 7 October 2010 on administration cooperation and combating fraud in the field of value added tax ([3]);

— Directive 2009/132/of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods ([4]).

2.11. The overall package is estimated to increase Member States' VAT revenues by 2021 by EUR 7 billion annually, and to reduce administration burdens for businesses by EUR 2,3 billion annually.

3. **General Comments**

3.1. VAT is one of the main sources of revenue for EU Member States, currently representing over 20 % of those revenues, an increase of over 10 % since 1995 ([5]). The comparative relevance of the tax for Member States' revenues increased in the wake of the economic and financial crisis, as they turned to VAT policy to address budgetary concerns. Between 2008 and 2014, twenty-three Member States increased VAT rates and/or broadened the VAT base ([6]). VAT plays a significant and increasing role in the sustainability of Member States' public finances, and the preserve of welfare expenditure.

([1]) Cases C-219/13 K Oy, C-479/13 Commission v France, C-502/13 Commission v Luxembourg and C-390/15 RPO.
([2]) OJ L 347, 11.12.2006, p. 1.
([3]) OJ L 268, 12.10.2010, p. 1.
([4]) OJ L 292, 10.11.2009, p. 5.
([5]) R. de la Feria, 'Blueprint for Reform of VAT Rates in Europe' (2015) Intertax 43(2), 154-171.
([6]) Ibid.

3.2. It is crucial that the VAT base is protected from both potential instances of fraud, and its own erosion through the extensive use of reduced rates. In 2014 the VAT gap in the EU-27 was estimated to be EUR 159,5 billion, 14 % of total VAT revenue ([7]). Whilst the VAT gap includes VAT loss due for example to error, bankruptcies and avoidance, evasion is its main component. VAT base erosion in the EU-27 is also high, with nearly 50 % of all consumption untaxed or taxed at lower rates of VAT.

3.3. The EESC therefore welcomes the package on the modernisation of VAT on cross-border e-commerce, and endorses both its objectives and its focus on addressing the concerns of SMEs. These proposed rules will have a major impact on companies selling goods and services online, allowing them to benefit from fairer rules, lower compliance costs, and a level playing field with non-EU companies. In the long run, the proposals will also help make the EU VAT system future-proof.

Amendments to the VAT MOSS

3.4. The gradual implementation of the VAT MOSS, the last stage of which came into force on 1 January 2015, was one of the most significant amendments to the EU VAT system since the abolition of fiscal frontiers in 1993. The system allows businesses operating in various Member States to select one Member State, their home state, as their single contact point for VAT identification, for submission of VAT returns and for payment of VAT due in all Member States.

3.5. An assessment of the implementation of the VAT MOSS, carried out by the European Commission, confirms that the measure has had a significant impact on the reduction of compliance costs. The MOSS has saved businesses EUR 500 million — an average of EUR 41 000 per business — compared to the alternative of direct registration and payment, which represents a 95 % reduction in those costs.

3.6. However, these savings have not necessarily been experienced to the same extent amongst different-sized businesses. Consultations carried out by the Commission indicate that SMEs, although they would potentially benefit from the reduction in registration requirements, have in practice struggled with several compliance elements of the MOSS. These difficulties have been felt more acutely by SMEs established in Member States where the VAT registration threshold is highest, such as the UK.

3.7. The EESC has welcomed the fact that the proposed amendments to the MOSS address these concerns.

Extension of the VAT MOSS

3.8. Extension of the MOSS has been regarded by the European Commission as a high priority since 2011 ([8]). Given the success of the MOSS so far in reducing compliance costs for businesses engaged in cross-border trade, its extension to services, other than those currently included, as well as to intra-EU acquisitions and imports of goods, is a natural step forward.

3.9. Apart from the potential reduction in compliance costs, the extension will also create a level playing field within e-commerce business, which is likely to have a positive impact on SMEs in particular. The extension will remove the discrepancy between e-commerce businesses which can avail themselves of the MOSS under current rules, and those which are also engaged in cross-border e-commerce, but which, due to the nature of the services or goods they supply, could not until now avail themselves of the same compliance benefits. The extension will also benefit e-commerce businesses engaged in a variety of cross-border trade, which until now have been subject to two sets of compliance obligations, namely those under the MOSS and those under the normal regime, and will now be subject to just one set of rules under the MOSS.

([7]) CASE, Study and Reports on the VAT Gap in the EU-28 Member States: 2016 Final Report, TAXUD/2015/CC/131, 2016.

([8]) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT — Towards a simpler, more robust and efficient VAT system tailored to the single market (COM(2011) 851 final of 6 December 2011).

3.10. The extension of the MOSS to goods creates conditions for the possible removal of the LVCR scheme. Whilst this scheme represented welcome simplification in the past, the volume of goods benefiting from the scheme reportedly grew by 286 % in the 1999-2013 period, probably explained by the increase in individuals' online shopping ([9]). This growth has led in turn to an increase in foregone VAT revenue in all Member States.

3.11. The LVCR scheme has also created a distortion in competition, whereby businesses established outside the EU have a competitive advantage over those established within the EU. This competitive advantage has also led to two further unwanted consequences, namely the abuse of the LVRC scheme, and distortions to trade and import patterns.

3.12. The EESC therefore welcomes the proposed extension of the MOSS.

Amendments to VAT rates on e-publications

3.13. The list of products which may be subject to reduced rates of VAT, as set-out in the VAT Directive, dates back to 1992. Technological and consumer behaviour developments in the last twenty-five years have resulted in many legal difficulties regarding interpretation of the items included in that list. These legal difficulties have resulted in extensive litigation at CJEU level.

3.14. In several recent judgments the CJEU has concluded that the items included in the list of physical publications could not be extended to e-publications through legal interpretation. Thus, only legal amendments to the existing rules in the VAT Directive could achieve such an aim.

3.15. The proposed rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market. However, whilst welcoming the elimination of this competitive distortion, the EESC is mindful of the risk that such elimination carries for the VAT base. The inclusion of e-publications in the list of items that can be subject to a reduced rate will result not only in an immediate loss of revenue, but may create the opportunity for the argument to be made that other items should equally be included in the list, thus further eroding the base. In addition, extension of the application of reduced rates below the 5 % minimum to e-publications, where those rates apply to physical books, may give rise to further requests for application of rates below that minimum. Such a development would undermine the existence of a minimum rate, resulting also in further erosion of the base.

3.16. The EESC also notes that the proposed measures are perceived by the European Commission as a prelude to wider reform of the EU VAT rate structure ([10]). Whilst two options are currently under consideration, this wider reform would generally give Member States further freedom and flexibility in the application of reduced rates, by effectively de-harmonising VAT rates.

3.17. The EESC is concerned about the impact that such de-harmonisation would have upon businesses engaging in cross-border trade, particularly SMEs, which would find it difficult to determine VAT rates applying to their products across the EU.

3.18. The EESC is also mindful of the fact that TFEU Article 113, which constitutes the legal basis for approving EU VAT legislation, only confers competence upon the EU institutions to approve VAT-harmonising legislation, with the aim of establishing and improving the Internal Market.

([9]) E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.

([10]) European Commission, Open public consultation on the reform of VAT rates (proposal for a Council Directive amending Directive 2006/112/EC on the Common system of value added tax as regards the rules governing the application of VAT rates).

4. **Specific comments**

Amendments to the VAT MOSS

4.1. For SMEs established in countries with a high threshold, implementation of the MOSS has resulted in them having to register for VAT and comply with VAT obligations for the first time. With many at the risk of being put out of business by the resulting new compliance costs, a group of micro-businesses, a large number of which were established in the UK, has set up a pressure group ([11]), with the aim of alerting the EU institutions and the UK tax authorities to their concerns.

4.2. Setting a threshold of EUR 10 000 allowing SMEs to opt to use the VAT rules of their own country until they reach the threshold is welcome and will, undoubtedly, simplify operations for small and part time businesses. However, whilst welcoming this accommodation for micro-businesses the EESC is mindful that fledgling and growing businesses could quickly surpass this threshold.

Extension of the VAT MOSS

4.3. Significant abuse of the LVRC has been reported in the UK (through the Channel Islands) and Finland (from the Aland Islands), with companies relocating their operations outside the EU in order to avail themselves of the scheme ([12]). This abuse creates a further competitive disadvantage for companies within the EU, and particularly for SMEs, which tend to be more significantly affected. In 2010, a group was set up by UK-based SMEs to campaign against the alleged abuse of the LVCR in the Channel Islands ([13]).

4.4. More recently, another group set up by UK-based SMEs, entitled VAT Fraud ([14]) has drawn attention to problems of alleged fraud perpetrated online by non-EU traders, and linked to the LVCR scheme. Whilst the fraud pertains to goods of a value which falls outside the scheme, it is alleged that the existence of the scheme creates obstacles to VAT enforcement, as customs officials have difficulty determining which supplies fall within the scheme.

4.5. The LVCR scheme has also reportedly affected trade patterns and importation behaviour amongst consumers in several Member States, namely Slovenia, Germany, Sweden, Denmark and the UK ([15]).

Amendments to VAT rates on e-publications

4.6. Underlying the legal difficulties regarding interpretation of the items included in the list of items which can be subject to a reduced rate lies a fundamental dilemma for the EU VAT system: whether to eliminate potential distortions in competition by extending the scope of the list of items which can be subject to a reduced rate, further eroding the base; or whether to continue to limit the scope of those items, protecting the tax base, but allowing distortions to competition.

4.7. The CJEU adopts a casuistic approach to such interpretative difficulties. However, in judgments concerning the inclusion of e-publications in that list the Court has concluded that its scope cannot be extended to those items, thereby adopting a strict legal interpretation of the rules.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([11]) Entitled EU VAT Action (www.euvataction.org).
([12]) E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.
([13]) Entitled RAVAS — Retailers Against VAT Avoidance Schemes (www.ravas.org.uk).
([14]) www.vatfraud.org
([15]) E&Y, Assessment of the Application and Impact of the VAT Exemption for Importation of Small Consignment, Specific Contract No 7, TAXUD/2013/DE/334, Final Report, May 2015.

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 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004'

(Text with relevance for the EEA and Switzerland)

(COM(2016) 815 final — 2016/0397 (COD))

(2017/C 345/14)

Rapporteur: **Philip VON BROCKDORFF**

Co-rapporteur: **Christa SCHWENG**

Consultation	European Commission: 17.2.2017
	Council: 15.2.2017
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Plenary session No	527
Outcome of vote (for/against/abstentions)	135/2/1

1. **Conclusions and recommendations**

1.1. The EESC is of the view that the proposal for a new Regulation on the coordination of social security systems should be aimed at facilitating the movement of jobseekers and workers, and not restricting it. The reason for this is that improved social security coordination facilitates the free movement of workers by providing benefits to them (development of skills and enhanced adaptability) as well as to employers (motivated workforce with technical know-how). It also helps the economy at large by addressing unemployment disparities across EU Member States and promoting a more efficient allocation of human resources, as well as contributing to the EU's growth and competitiveness.

1.2. Rules that work well and are fair for those who are mobile, but also for those who are not, are important factors for the political acceptance of mobility. The EESC contends that the aim of this exercise should be to achieve a fair balance between home and host countries.

1.3. As for the conditions applicable to citizens who are entitled to 'export' long-term care benefits when they move abroad, the EESC finds that the new rules give citizens better protection in cross-border situations. However, the EESC points out that the new rules do not establish a new entitlement to long-term care in every Member State, as this depends on the existence of such services in the host country.

1.4. The EESC notes that the proposal for the revision of the Regulation on Social Security Coordination and the Posting of Workers Directive are both relevant for labour mobility. However, since the two instruments deal with distinct issues, the EESC fears that referring to definitions of the proposed revised posting of workers directive in the regulation on coordination of social security will in fact create less legal clarity in practice.

1.5. The EESC notes that the proposed requirement to work at least 3 months in the host Member State before a worker can qualify for unemployment benefits will delay the 'aggregation of periods' giving the right to benefits. While this may make the rules for destination countries fairer, it may also influence negatively the motivation for mobility.

1.6. The EESC is unclear how the proposal to extend the period for 'exporting' unemployment benefits from the current 3 to at least 6 months can effectively provide employment opportunities for jobseekers, as this will depend on the labour market situation, which differs from one country to another.

1.7. The EESC contends that greater convergence in terms of benefits, aggregation and activation would help improve and facilitate the coordination of social security systems. Also, the public employment services (PES) ought to be more effective in supporting mobile jobseekers to find suitable work.

1.8. The EESC calls for a stronger commitment on the part of the Member States to facilitate the option of allowing mobile citizens who are economically inactive to contribute in a proportionate manner and according to the principle of equal treatment to a scheme for health sickness coverage in the host Member State. Member States should also consider the advantages of receiving mobile citizens in general, even those who are inactive but, in one way or another, still contribute to the economy (and cultural diversity) of the host country.

1.9. Finally, the EESC is of the view that nothing in the proposed new rules should restrict the fundamental rights recognised in the Charter of Fundamental Rights of the European Union.

2. **Proposed changes to social security coordination rules**

2.1. As the cross border labour market continues to evolve, and national social security systems change, there is an obvious need for updating or adjusting existing rules. This, besides the need for simpler and easier methods of enforcement, is the rationale behind the proposed changes as proposed by the European Commission in its communication dated 13 December 2016.

2.2. This proposal seeks to provide clarity and fair and enforceable rules to facilitate labour mobility. The free movement of workers remains one of the key pillars of the internal market. However, national authorities are also being urged to combat abuse or benefit fraud.

2.3. The main changes proposed cover:

i) Exporting unemployment benefits: The period for 'exporting' unemployment benefits (when benefits are 'exported' to another Member State where one is looking for a job) is to be extended from a minimum period of 3 to 6 months, with the possibility of a further extension for the remaining period of entitlement.

ii) When assessing whether a jobseeker qualifies for unemployment benefits, a Member State will be required to verify and consider any previous periods of insurance in other Member States (as it is the case in the current rules). However, this is only possible if the person concerned has worked in that Member State for at least 3 months (new proposal). If the person does not qualify, it will be the Member State where he/she was formerly employed that will be responsible for paying those benefits.

iii) Unemployment benefits for frontier workers: Under the proposed rules, it is the Member State of former employment that will be responsible for paying any unemployment benefits if these workers have worked there for 12 months. However, under the current rules, frontier workers currently pay contributions and taxes to the Member State where they work. For employment periods below 12 months it will be the Member State of residence which pays the unemployment benefits.

iv) Welfare benefits for economically inactive persons: In this case, the proposal aims to codify the recent case law of the European Court of Justice whereby economically inactive citizens moving from one Member State to another can only access welfare benefits if they satisfy the condition of legal residence, as defined in the Free Movement Directive. However, legal residence of economically inactive persons requires that they prove they have sufficient means of subsistence and a comprehensive health insurance. This condition does not apply to active jobseekers: their right of residence in another Member State is conferred directly from Article 45 TFEU.

v) Social security for posted workers: It is stated that the proposed rules aim to strengthen the administrative tools related to the social security coordination of posted workers, to ensure that national authorities have the adequate means to verify the social security status of such workers and to address potential unfair practices or abuses.

vi) Family benefits: The proposal updates the rules on parental leave allowances, which compensate a parent for loss of income or salary during time spent raising a child. The proposal does not modify the existing rules on exporting child benefits. No indexation of child benefits is envisaged either.

3. **Overview of social security systems across the EU**

3.1. Social security systems typically cover areas such as sickness, maternity/paternity, family, old-age, unemployment and other similar benefits and are the exclusive responsibility of the national authorities. This means that each state is responsible for the design of its own social security system. Because of this, the social security benefits received by citizens across the EU vary to a high degree both in terms of actual benefits received and the way systems are organised.

3.2. An issue of serious concern to the EESC is the wide gap in performance between the welfare systems in different EU countries: the best systems help reduce the risk of poverty by 60 %, the least effective by less than 15 % with the EU average being 35 % ([1]). This gap is in part the reason for the varying social conditions faced by citizens across the EU. It is therefore all the more important for the EU Member States to agree on principles for effective and reliable social security systems, as called for by the EESC in its opinions on *Principles for effective and reliable welfare provision systems* ([2]) and on the *European Pillar of Social Rights* ([3]). Common European values and economic development require that a minimum income, basic health care, the provision of suitable social services and social participation are safeguarded in every Member State. This can help boost solidarity in the Member States and also reduce macroeconomic imbalances.

3.3. Free Movement of Workers (FMW) is one of the four fundamental freedoms of movement in the European Union. The EESC considers that the FMW should be promoted more effectively and respected in its various dimensions, since in practice there is no FMW without respecting the social rights of mobile citizens and workers on the basis of the principle of equal treatment, as referred below. The coordination of social security systems is one of such dimensions. The history of its application is generally a success story and has contributed over the last decades to the fact that the many millions of workers who have benefited from it have become the best 'ambassadors' of FMW.

3.4. In order to facilitate the free movement of workers and citizens, better coordination of social security systems is necessary to provide more clarity and assurances with regard to the benefits they are entitled to. To this end, the European Union has rules to coordinate national social security systems. These determine which Member State social security system a citizen or worker is covered by. The rules are also intended to avoid double coverage of benefits in cross-border situations, and, at the same time, they provide safeguards for persons working in another country or seeking work across the EU.

3.5. It should be stressed that the existing rules are about coordination, not harmonisation of social security systems. The rules are contained in Regulations (EC) No 883/2004 and (EC) No 987/2009. The EU rules are founded on four principles:

i) one country: a person is covered by the social security system of only one Member State at a time so that he/she only pays contributions in and receives benefits from one country.

ii) equal treatment: a person has the same rights and obligations as the nationals of the country where he/she is insured.

([1]) http://ec.europa.eu/social/main.jsp?catId=751
([2]) OJ C 13, 15.1.2016, p. 40.
([3]) OJ C 125, 21.4.2017, p. 10.

iii) aggregation: depending on the case, when a person claims a benefit, proof of periods of insurance, work or residence in other Member States is required (for example, to prove that the person satisfies a minimum period of insurance required under national law for the entitlement of benefits).

iv) exportability: if a person is entitled to receive a benefit from one Member State, he/she will be able to receive the benefit even if the person is living in a different Member State.

3.6. The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 cover anyone who moves to another Member State to settle permanently or work or study temporarily. These include persons who cross the border to work. In addition, persons seeking work in another Member State can receive unemployment benefits from their Member State whilst they are seeking work for a specified period.

4. **General comments**

4.1. In 2015, around 11,3 million EU-28 citizens of working age (20-64) were residing in another EU Member State, of which 8,5 million were employed or seeking work (the numbers on both aspects vary between Member States). That accounts for 3,7 % of the total EU's working age population. In the EU there were 1,3 million cross-border workers (who work in a different EU Member State than the one in which they live). The number of posted workers was around 1,92 million. This represented 0,7 % of total EU employment with postings averaging four months.

4.2. Social security coordination facilitates the free movement of workers by providing benefits to the workers and indirectly to employers, as well as the economy at large, contributing to growth and competitiveness. The overwhelming majority of citizens who are mobile in the EU want to improve their livelihood and job prospects.

4.3. From the worker perspective, the right to work in another Member State provides not only work opportunities but also facilitates the development of new skills, enhances adaptability and enriches the worker himself/herself via new work experiences. Movement of workers also helps to addresses labour shortages and skills gaps. It also tends to contribute to the finances of public services in the host Member State and may help ease some of the tax burden arising and compensate for fewer contributions from an ageing population.

4.4. From a macroeconomic perspective, labour mobility helps address unemployment disparities between EU Member States and contributes to a more efficient allocation of human resources. Research also suggests that intra-EU mobility has played a significant role in preventing further instability in the aftermath of the financial crisis and economic recession.

4.5. When conducted under fair conditions, labour mobility can be beneficial for workers, businesses and society as a whole. It can represent a major opportunity for the personal, economic and social development of citizens and workers and must therefore be facilitated. Rules that work well and are fair for those who are mobile, but also for those who are not, are important factors for the political acceptance of mobility. The aim of all this should be to achieve a fair balance between countries of destination and home countries.

4.6. In the light of the foregoing, the EESC believes that any proposed change should be aimed at facilitating the movement of jobseekers and workers, and not restricting it. The EESC is also of the view that social security coordination rules should facilitate access to jobs for people with different skills sets. Equal treatment between EU workers and national workers regarding active labour market measures are key to overcoming social divisions.

5. **Specific comments**

5.1. With regard to the coordination system for frontier workers, the EESC takes note of the proposal to shift the responsibility for the payment of unemployment benefits to the Member State of the last working activity, but believes that the requirement of having worked in that Member State for a minimum period of 12 months might limit the positive effects resulting from this change. However, the EESC acknowledges that the proposal also presents a challenge for Member States becoming responsible for paying the benefits.

5.2. As for the conditions applicable to citizens who are entitled to 'export' long-term care benefits when they move abroad, the EESC finds that the new rules give citizens better protection in cross-border situations. The new rules are particularly relevant in view of demographic ageing and the promotion of greater independence and mobility for disabled persons, with an increasing number of citizens moving from one Member State to another needing long-term care benefits. However, the EESC points out that the new rules do not establish a new entitlement to long-term care in every Member State, as this depends on the existence of such services in the host country.

5.3. The EESC is of the view that the new rules will make the procedure for recovery of unduly paid social security benefits easier. Member States will be able to benefit from a uniform instrument for enforcement of claims for unduly paid social security benefits and clearer procedures for mutual cross-border assistance.

5.4. The EESC notes that the proposal for revision of the EU Regulation on Social Security Coordination and the Posting of Workers Directive are both relevant for labour mobility. However, the two instruments deal with distinct issues. Whereas the Posting of Workers Directive deals with the terms and conditions (including remuneration) of employment of posted workers, the Regulation on Social Security Coordination aims to determine which social security system applies. The new proposal does not change the scope of the EU rules on social security coordination, nor of the Posting of Workers Directive. The EESC thus fears that referring to definitions of the proposed revised posting of workers directive in the regulation on coordination of social security, which aims to facilitate their application, will in fact create less legal clarity in practice. Referring in a regulation (which is binding and directly applicable in all Member States) to a directive (only binding for Member States regarding the result to be achieved) raises legal doubts.

5.5. The EESC notes that there is a need to ensure uniform conditions for application of the specific rules on coordination of social security regarding posted workers. This includes the determination of situations in which A1 forms shall be issued, elements to be verified before issuing and the withdrawal when contested. Given the fact that these aspects can be crucial for the practical application of Articles 12 and 13 of Regulation (EC) No 883/2004, the EESC is concerned about conferring such unclearly defined powers on the EC. Feedback to the EESC on the implementation of this delegation and afterwards an evaluation of the impact of the new procedures would be welcome, as the posting of workers is a really sensitive issue. The EESC is also concerned about the cumulative effect of the new rules on posting, the previous mentioned technical amendments in the social security regulation and the growing number of national initiatives to control workers from other EU countries. The growing complexity through the combination of these different regulations is likely to restrain the transnational mobility and should be closely monitored at European level. Moreover, there is also a need to respect social security rules related to posted workers.

5.6. According to the new rules, an EU mobile worker must work at least 3 months in the host Member State before he/she can qualify for unemployment benefits there. The EESC finds that this proposal sets restrictions for access to unemployment benefits for mobile workers in the host country, compared to current conditions (according to which it is sufficient to work only one day to have that right). By taking this stance, the proposal is actually delaying the 'aggregation of periods' (regardless of where one's last place of residence is) giving the right to benefits. On the one hand, this might negatively influence the motivation for mobility, but, on the other hand, it may make the rules fairer for destination countries.

5.7. According to the proposed new rules, the minimum period during which jobseekers can export unemployment benefits earned in one Member State to another will be extended from the current 3 to at least 6 months, whereas the current regulation leaves the decision – 3 or 6 months – to the benefit-exporting Member State. The EESC considers this change as an acknowledgment on the part of the Commission of the difficulties in finding a job quickly in another Member State. However, the EESC is unclear how the proposal to extend the time for 'exporting' unemployment benefits can effectively provide employment opportunities for jobseekers, as this will depend on the labour market situation, which differs from one country to another. The EESC also doubts the usefulness of this proposal at a time when unemployment, and in particular youth unemployment, remains high in several EU Member States.

5.8. The EESC believes that the proposed new rules do not address the existing shortcomings of a coordinated social security system that was originally designed for Member States with relatively similar levels of purchasing power parities and social security systems. More effective measures are therefore required to bring about convergence in regard to the duration of unemployment benefits, the amount of benefits received, and the period of aggregation for the activation of

unemployment benefits. This convergence would help improve and facilitate the coordination of social security systems. The question of how to reach this convergence needs to be considered separately from this opinion. In principle, at least, the proposed new rules related to the 'export' of unemployment benefits provide for stronger cooperation between public employment services (PES) at all levels. The revision will clarify the obligations of the employment service in the host Member State to support jobseekers with job search activities and to monitor and report on their activities to the Member State responsible for paying the unemployment benefits. However, the EESC believes that PES ought to do more to support mobile jobseekers to find non-precarious jobs, especially considering the limited time allowed to find a job, and thereby contributing to reaching greater convergence as referred to in the previous paragraph.

5.9. The EESC takes note of the fact that, in the case of mobile EU citizens moving from one Member State to another (the host Member State) and who are not working or not actively seeking work, the proposed new rules can make access to specific social security benefits dependent on the individual providing proof that he/she has a legal right of residence under EU law, which is conditional on having sufficient means of subsistence and comprehensive health insurance). In other words, Member States must comply with the conditions set out in the Free Movement Directive (Directive 2004/38/EC). Member States should also consider the advantages of receiving mobile citizens in general, even those who are inactive and do not pay into social security systems, but, in a way or another, still end up contributing to the economy (and cultural diversity) of the host country.

5.10. It is in fact laid down in recital 5b of the EC's proposal that Member States should ensure that economically inactive EU mobile citizens are not prevented from having comprehensive health insurance cover in the host Member State. This also means that such citizens should be allowed to contribute in a proportionate manner to a scheme for health coverage in the host Member State. The EESC calls for a stronger commitment on the part of the Member States to facilitate this option.

5.11. The EESC is of the view that nothing in the proposed new rules should restrict the fundamental rights recognised in the Charter of Fundamental Rights of the European Union, notably the right to human dignity (Article 1), the right to social security and social assistance (Article 34), and the right to health care (Article 35).

5.12. In conclusion, whilst acknowledging that a need for a balance between receiving and sending Member States insofar as job seeking is concerned cannot be ignored, the EESC concludes that the proposed new rules will not necessarily facilitate the movement of jobseekers. The most fragile and weaker segments of European societies will remain as vulnerable as they are today, as will the socioeconomic divisions between and within the EU Member States.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Next steps for a sustainable European future European action for sustainability'

(COM(2016) 739 final)

(2017/C 345/15)

Rapporteur: **Etele BARÁTH**

Consultation	European Commission, 8.12.2016
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Plenary session No	527
Outcome of vote (for/against/abstentions)	124/0/7

1. **Conclusions and recommendations**

1.1. The EESC is disappointed by the Communication *Next steps for a sustainable European future* as it gives the impression that all the main objectives and requirements of the UN 2030 Agenda for Sustainable Development have already been covered and addressed by the existing EU policies. The Communication does not introduce into EU policies the paradigm shift brought about by the 2030 Agenda towards a new model of development that is economically more sustainable, socially more inclusive and environmentally more viable in the long term. As pointed out by the European Political Strategy Centre ([1]), and also by the EESC in previous opinions, such a paradigm shift is urgently needed in order for the 17 Sustainable Development Goals (SDGs) to be properly implemented in the EU, taking into account the rising social inequalities and high unemployment rates in Europe as well as the unsustainable environmental footprint of its economy.

1.2. The EESC has always welcomed the Commission's display of leadership when the UN 2030 Agenda for Sustainable Development was created. Now that the 17 Sustainable Development Goals need to be put into practice, the EESC feels that such concrete leadership is lacking on the part of the EU, as it has not presented an ambitious roadmap for action on the implementation of the SDG with a time horizon of 2030 nor has it demonstrated willingness to critically review and change its current policies.

1.3. So far, the 2030 Agenda has not been used as an opportunity to set out a new, proactive, transformational and positive narrative for Europe, as the EESC, the EP and many voices from civil society have called for: a new vision of a more sustainable and socially inclusive Europe that benefits its citizens and leaves no one behind; a forward-looking vision, building on the values which have made Europe a successful model: solidarity and human rights, social justice and equality, democracy and participation, entrepreneurship and environmental responsibility. Neither the Commission White Paper on the Future of Europe nor the Rome Declaration on the occasion of the 60th EU anniversary sufficiently acknowledge the value of European sustainable development for European citizens.

([1]) EPSC Strategic Notes, Sustainability Now! A European Vision for Sustainability, 20 July 2016; EESC opinion on *A European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73); EESC opinion on *Sustainable Development: A Mapping of the EU's internal and external policies* (OJ C 487, 28.12.2016, p. 41).

1.4. The EESC regrets the fact that the Commission has not launched a participatory process leading to an overarching and integrated strategy for a sustainable Europe in 2030 and beyond. Such a strategy is needed in order to provide the necessary long-term time horizon, policy coordination and coherence for implementing the UN 2030 Agenda. It should be part of a new, single long-term strategic policy framework for the period after 2020.

1.5. The EESC is concerned about the lack of coordination between the EU and the Member States in the implementation of the 2030 Agenda. The aforementioned overarching strategy should serve as a common framework for coordinated action.

1.6. The EESC appreciates the work that the Commission has carried out in identifying the potential contribution that the Commission's ten priorities can make to the implementation of the 2030 Agenda. However, the EESC stresses that the SDG mapping of EU policies needs to be complemented by a profound analysis of the real gaps that are currently in evidence in the EU as regards SDG implementation. Only a reality check will enable the EU to identify areas where prior action is needed and to critically review the effectiveness of current EU policies when it comes to implementing the SDGs.

1.7. The EESC welcomes the Commission's decision to establish a multi-stakeholder platform on the implementation of the Sustainable Development Goals in the EU ([2]). The EESC points out the need to ensure that non-governmental stakeholders are able to cooperate with institutional representatives in this platform on an equal footing in order to transmit the multi-stakeholder approach of the UN 2030 Agenda into EU policy on sustainable development. The platform must involve a broad range of non-governmental stakeholders in the full cycle of SDG implementation in the EU, from designing new policy initiatives, long-term strategies and awareness raising activities, to reviewing and monitoring policy implementation and the exchange of best practice. The platform should also facilitate multi-stakeholder cooperation and partnerships. The EESC will support the work of the platform by nominating a member to represent the EESC on the platform and provide expertise as well as by facilitating outreach to civil society and contributing with other activities.

1.8. With regard to fostering sustainable development, the EESC feels that the multi-annual financial framework post-2020 needs to be aligned with the sustainable development priorities in the EU. It ought to significantly increase the proportion of own resources and revenue, and make implementation more effective and efficient.

1.9. In the EESC's view it is essential to introduce, in addition to the generally accepted GDP indicator which has, until now, proven relevant, other indicators capable of measuring not only economic growth but also its impact and results with regard to the well-being of citizens and the environment ([3]). This is due to the fact that the viability of the desired development process by 2030 can only be guaranteed by ensuring and monitoring complex social and environmental changes.

2. **Introduction**

2.1. With the UN 2030 Agenda for Sustainable Development, world leaders agreed in 2015 on an unprecedented broad action plan to end poverty, protect the planet, ensure human rights and guarantee prosperity for all. The 17 Sustainable Development Goals (SDGs) for 2030 require transformational changes from all countries, both developing and developed.

2.2. Based on the outcome of several conferences, in 2016 the EESC set out its recommendations for the implementation of the 2030 Agenda in the EU with a set of three opinions ([4]).

([2]) C(2017) 2941 final.

([3]) EESC opinion on *New measures for development-oriented governance and implementation — evaluation of the European Structural and Investment Funds and ensuing recommendations* (OJ C 487, 28.12.2016, p. 1); see also OECD, *Measuring wellbeing and progress: Well-being Research* (http://www.oecd.org/statistics/measuring-well-being-and-progress.htm).

([4]) EESC opinion on *A European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73); EESC opinion on *Sustainable Development: A Mapping of the European Union's internal and external policies* (OJ C 487, 28.12.2016, p. 41); EESC opinion on *The 2030 Agenda — A European Union committed to support sustainable development goals globally* (OJ C 34, 2.2.2017, p. 58).

2.3. With the Communication *Next steps for a sustainable European future* ([5]) the Commission has laid out its approach to implementing the 2030 Agenda as part of the EU's internal and external policies. The Communication was accompanied by several other documents, in particular a Communication on a new European Consensus on Development and a Communication on a renewed partnership with ACP countries. The EESC has delivered its views on these Communications more specifically in separate opinions ([6]).

3. **General comments**

3.1. According to the introduction to the Communication, the EU is fully committed to acting as a frontrunner in implementing the 2030 Agenda ([7]).

3.2. However, the Commission has not risen to the challenge of showing leadership by presenting an ambitious roadmap for implementing the SDGs.

3.3. The Communication does not achieve its purpose, as set out in the Commission's 2016 work programme, of presenting 'a new approach to ensure Europe's economic development and social and environmental sustainability beyond the 2020 timeframe and to implement the SDGs in EU internal and external policies in an integrated manner'.

3.4. According to the Communication, the EU's response to the 2030 Agenda includes two approaches: the full integration of SDGs into current EU policies and a reflection on the long-term implementation of the SDGs beyond 2020.

3.5. The EESC acknowledges the efforts of the Commission, as reflected in this Communication, to link SDGs with current EU policies and the Commission's ten work priorities. However, the Communication focuses too much on the current business of EU policies. The Commission does not understand the 2030 Agenda as a call to critically review and change its own policies. The Communication does not reflect the paradigm shift that the SDGs stand for ([8]): a new model of development that is economically more sustainable, socially more inclusive and environmentally more viable over the long term, and that ensures that the resources of our planet will be shared fairly with a growing world population ([9]).

3.6. So far, neither the Commission nor the Council has used the 2030 Agenda as an opportunity to set out a new, proactive, transformational and positive narrative for Europe, as the EESC, the EP ([10]) and many voices from civil society have called for; a new vision of a more sustainable and socially inclusive Europe for the benefit of its citizens and leaving no one behind ([11]). Neither the Commission White Paper on the Future of Europe nor the Rome Declaration by the leaders of 27 Member States, the Commission, the European Council and the European Parliament on the occasion of the 60th EU anniversary sufficiently reflect the value of long-term sustainable development for European citizens and the need for a united Europe to deliver on this.

3.7. Moreover, the Communication does not provide the urgently needed framework for future action on implementing the 2030 Agenda. So far, the Commission is not planning to launch a participatory process to set up an overarching and integrated strategy for a sustainable Europe in 2030 and beyond, as the EESC has called for ([12]). Currently, Europe's strategic frameworks operate with 2020 as their horizon. This is unacceptable, not only because the UN's Agenda identifies a time horizon of 2030 and the even longer-term perspective of the Paris climate agreement, but also considering the length of

([5]) COM(2016) 739 final.
([6]) EESC opinion on *The 2030 Agenda — A European Union committed to support sustainable development goals globally* (OJ C 34, 2.2.2017, p. 58).
([7]) COM(2016) 739 final, p. 3.
([8]) 'We need to turn around our economies' Speech given by Commission Vice-President Frans Timmermans at the UN summit on 27 September 2015.
([9]) OJ C 487, 28.12.2016, p. 41, para 3.4.
([10]) Resolution of 12 May 2016 http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0224+0+DOC+XML+V0//EN.
([11]) Common appeal to European leaders by European Civil Society Organisations and Trade Unions, 21 March 2017 'The Europe we want' https://concordeurope.org/wp-content/uploads/2017/03/EuropeWeWant_Statement_English_201703.pdf?1855fc; Statement by Solidar on 'Our Common Future' http://www.solidar.org/en/news/statement-our-common-european-future.
([12]) OJ C 487, 28.12.2016, p. 41, para 1.5.

processes of economic and social modernisation. A single overarching strategy for the post-2020 era should be set up, building on the European Commission's ten work priorities, the Europe 2020 strategy with its seven flagship initiatives and the 11 thematic targets of EU cohesion policy, and integrating the multi-annual financial framework post-2020.

3.8. The Commission does not fully practice the multi-stakeholder approach set out in the 2030 Agenda. In contrast to the process leading to the adoption of the 2030 Agenda, the Commission's approach so far has not been very transparent and inclusive.

4. **Specific comments**

4.1. ***The mapping of European policies contributing to the SDGs (chapter 2.1 of the Communication)***

4.1.1. This mapping appears to be mere paperwork: it is a compilation of EU policies which address in one way or another issues related to the 17 SDGs. The mapping exercise does not sufficiently reflect the realities in Europe. It doesn't justify the Commission's conclusion that all 17 SDGs are addressed through European action, since no assessment has been made as to whether these policies are actually effective or undermined by other conflicting measures. For example: the EU 2020 Strategy is mentioned as addressing the SDGs on poverty and inequality yet there is no mention of the fact that the relevant EU 2020 headline targets are not going to be reached.

4.1.2. Therefore, the mapping of EU policies has to be complemented with a detailed gap analysis in order to assess where the EU really stands as regards SDG implementation ([13]). Only a reality check would enable European policy makers to identify the right priorities for implementing the SDGs. The conclusions the Commission has drawn from the mapping exercise lack credibility and are not based on facts.

4.1.3. Together with the Communication, Eurostat published an initial statistical overview on the current situation in EU Member States as regards the SDGs ([14]). However, the Commission has made no attempt to create the necessary links between the mapping exercise, the statistical facts and the identification of political priorities for implementing the SDGs.

4.1.4. The EESC hopes that the introduction of a full monitoring framework for the implementation of the SDGs in the EU will allow for a more fact-based approach to identifying the main gaps and challenges for the EU as regards the 2030 Agenda.

4.1.5. As the EESC has already pointed out, the areas where the EU needs to do most in order to achieve the SDGs are in reducing its environmental footprint and creating a more socially inclusive Europe: SDG 12 (sustainable consumption and production); SDG 13 (climate action); SDGs 14 and 15 (ecosystem conservation); SDG 2 (sustainable agriculture); SDG 9 (investing in infrastructure and innovation); SDG 10 (reducing inequalities); SDG 8 (decent work and employment); SDG 1 (poverty reduction); SDG 5 (gender equality); SDG 4 (education) ([15]).

4.2. ***The contribution of the Commission's ten priorities to the 2030 Agenda (chapter 2.2 of the Communication)***

4.2.1. The Communication demonstrates how the Commission's ten work priorities can contribute to the implementation of the SDGs. However, the Commission should also have the courage to revise/adapt its work priorities if needs be, in order to make full use of any potential synergies with the work of implementing the SDGs.

4.2.2. In the EESC's view, more attention should be paid to the cultural dimension of sustainable development and the role of communication in promoting the 2030 Agenda.

([13]) OJ C 487, 28.12.2016, p. 41, para 1.7.
([14]) Eurostat, Sustainable Development in the European Union, 2016.
([15]) OJ C 487, 28.12.2016, p. 41, para 4.1.

4.3. ***Governance (chapter 3.1 of the Communication)***

4.3.1. The EESC recommends the introduction of a framework for governance and coordination alongside the long-term strategy for the implementation of the 2030 Agenda, in order to ensure coherence between centralised and decentralised measures, as well as to involve organised civil society at national and regional levels.

4.3.2. The EU Semester should be developed into an instrument of vertical, multi-level coordination with regard to implementing the SDGs within Member States ([16]). Unfortunately, in its Communication the Commission does not make use of the opportunity to further develop the EU Semester in that direction.

4.3.3. The EESC considers that, although since 2010 sustainable development has been mainstreamed into the Europe 2020 strategy, coherence between economic, social and environmental objectives has not been achieved. Mechanisms ensuring policy coherence for sustainable development need to be strengthened.

4.3.4. The EESC welcomes the more integrated approach found in the Commission's new structure and the coordinating role of the FVP in taking forward the work on implementing the SDGs. However, the coordinating units within the Commission will need to be equipped with sufficient capacities in order to drive these processes forward with the appropriate vigour.

4.3.5. It is up to EU leaders to make use of the potential for better governance, to strengthen management, to understand the importance of a cross-cutting coordination method aimed at improving interactions and possibly to hand control over to the socioeconomic players during the preparation phase, so as to render 'participation' more effective. They will therefore be able to benefit from the formidable latent forces that will come into effect during the implementation process.

4.3.6. The Commission's Communication unfortunately does not address the issue of how to recognise and improve this process.

4.4. ***Financing (chapter 3.2 of the Communication)***

4.4.1. The establishment of the post-2020 multi-annual financial framework must be used as an opportunity to align the spending of EU funds with the implementation of the sustainable development priorities in the EU.

4.4.2. The EESC agrees that the EU should further develop its financial support system, which improves economic performance at territorial, regional and local levels and promotes the common good, while also taking into consideration the needs of sustainability. Economic prosperity should form the economic basis of the SDGs, but rules should be put in place to ensure that the social and environmental objectives are met. The EESC feels that reforming the European tax system could consolidate the increase in budget resources and encourage better implementation of the 2030 Agenda.

4.4.3. The Commission places particular emphasis on issues related to sustainable financing. Of particular importance in the EESC's view is the need to create the right framework conditions for private and public investors for the massive long-term investment in infrastructure modernisation and innovation that is required in order to facilitate the transition to a more sustainable economy ([17]).

4.5. ***Measuring progress (chapter 3.3 of the Communication)***

4.5.1. The EESC appreciates the Commission's intention of carrying out detailed regular monitoring of the SDGs within the EU context, drawing on a wider range of ongoing monitoring processes across the Commission, Agencies, EEAS and Member States. However, specific information about what this monitoring system would look like is missing.

4.5.2. The EESC welcomes ESTAT's work on a set of indicators for monitoring the implementation of the SDGs in the EU. The EESC stresses that decisions about monitoring and in particular the design of the indicators have substantial political implications. The continued development of the indicators must therefore be discussed and civil society consulted in a transparent way.

([16]) OJ C 487, 28.12.2016, p. 41, para 1.11; (EESC opinion on *Annual Growth Survey 2017*, OJ C 173, 31.5.2017, p. 73)

([17]) EESC opinion on *Sustainable Development: A Mapping of the European Union's internal and external policies* (OJ C 487, 28.12.2016, p. 41); see also EESC opinion on the *Green Paper on long-term financing of the European Economy* (OJ C 327, 12.11.2013, p. 11); see also The Green Book, UK government https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf.

4.5.3. The EESC expects that, following the publication of a regular SDG monitoring report by ESTAT and a sufficient timespan allowing civil society organisations to consult their constituencies, a dialogue will be held via the multi-stakeholder platform on the conclusions arising from the monitoring process and the necessary policy review measures.

4.5.4. Several EESC studies have confirmed the view that it is essential to introduce, in addition to the generally accepted GDP indicator which has, until now, proven relevant, another indicator capable of showing not only economic growth but also its impact and results (gross domestic result). The monitoring of the desired development process leading up to 2030 must be based on a complex set of economic, social and environmental indicators ([18]).

4.5.5. The monitoring framework should also be linked to the EU Semester.

4.5.6. The UN 2030 requires governments to establish a framework for monitoring *and review*, thus setting up instruments for the full policy cycle of strategy-making, implementation, monitoring and review of strategies. The review stage has not been taken into account in the Communication. The reason for this might be the fact that an overarching strategy and action plan for SDG implementation, which could be regularly reviewed, is missing.

4.6. ***Shared responsibility and a multi-stakeholder approach***

4.6.1. The SDGs are a multi-stakeholder agenda. They can only be put into practice if civil society, businesses, trade unions, local communities and other stakeholders take an active role and ownership. Participatory governance mechanisms need to ensure that civil society is involved at all levels: from local and national to European and UN levels. The SDGs require institutions and stakeholders to cooperate in an integrated way across different sectors.

4.6.2. In a recent decision, the Commission launched a multi-stakeholder platform on the implementation of the Sustainable Development Goals in the EU ([19]). The EESC welcomes this new project and offers its help in making the platform a success.

4.6.3. However, the EESC is disappointed that the Commission, in its Communication, did not respond to the EESC's proposal to create a European Sustainable Development Forum in partnership with the European Commission, and its recommendations on how to design such a forum ([20]) which were based on the outcome of presentations about the proposed forum at conferences, Council working parties, the Commission, and stakeholder consultations, in which participants expressed support for the forum.

4.7. The EESC appreciates that the Commission, in its decision establishing the multi-stakeholder platform, has expanded the platform's tasks with regard to following up on SDG implementation and exchanging best practices and included an advisory role for civil society representatives in the reflection work for the long-term implementation of the SDGs as well as involvement in the monitoring and review of implementation policies. The platform should also facilitate multi-stakeholder cooperation and partnerships. The EESC believes that this kind of participatory platform needs to play a crucial role in a new kind of European governance, which should be characterised by shared ownership.

Brussels, 5 July 2017

The President
of the European Economic and Social Committee
Georges DASSIS

([18]) See more on: Genuine progress indicator (GPI), Happy Planet index, the 'footprint index', etc.
([19]) C(2017) 2941 final.
([20]) EESC opinion on *A European Sustainable Development Civil Society Forum* (OJ C 303, 19.8.2016, p. 73).

Opinion of the European Economic and Social Committee on the 'Communication from the Commission Ecodesign Working Plan 2016-2019'

(COM(2016) 773 final)

(2017/C 345/16)

Rapporteur: **Cillian LOHAN**

Consultation	Commission, 27.1.2017
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Plenary session No	527
Outcome of vote (for/against/abstentions)	130/0/1

1. **Conclusions and recommendations**

1.1. The scope of the Ecodesign Working Plan 2016-2019 is too limited to be a strong driver for wholesale change in behaviour through the supply chains of goods and services at a pace that would reflect the ambition of the Circular Economy Action Plan.

1.2. The ecodesign of goods and services needs to go beyond just energy considerations. Although these are important, there is a need to have a focus on the full lifecycle of products, including their durability, ease of maintenance and repair, potential for sharing and digitisation, reuse, upgradeability, recyclability and actual uptake after use in the form of secondary materials in products entering the market.

1.3. Ecodesign needs to incorporate the principles of the circular economy, in the context of digitisation, sharing and the functional economy, in order to have consistency across the various strategies that are intended to deliver a new economic model.

1.4. The component parts of a product should be easily recoverable for reuse and/or remanufacture and drive the creation of a strong secondary raw materials market.

1.5. Labelling requirements can drive improved ecodesign strategies and help consumers in decision making, thus becoming a driver for behavioural change. Labelling should include a life expectancy of a product, and/or its important components.

1.6. The EESC reiterates it support for the use of Extended Producer Responsibility as a tool to promote the transition to circular economy business models, and emphasises that this too can play a role in the promotion of ecodesign.

2. **Background**

2.1. The Ecodesign Working Plan 2016-2019 contributes to the Commission's new initiative on the Circular Economy. The overarching goal is to promote a transition to a circular economic model that takes into consideration the whole lifecycle of products and their materials.

2.2. It follows on from previous Ecodesign Working Plans for the periods 2009-2011 and 2012-2014. Its legislative context is that of both the framework Directive 2009/125/EC Ecodesign and the framework Directive 2010/30/EC Energy Labelling. Regular Working Plans are foreseen in Article 16(1) of the Ecodesign Directive.

2.3. It is envisioned as a means of strengthening Europe's competitiveness and promoting economic growth while boosting job creation.

2.4. There was some expectation that any review of the Ecodesign Directive or update of the Working Plan would result in a broadening of the scope of the previous ecodesign initiatives.

3. **Ecodesign Working Plan 2016-2019 Overview**

3.1. The Ecodesign and Energy Labelling legislative framework is identified as having a dual purpose ([1]). The first is to ensure that *via* ecodesign progressively more efficient products are permitted on the EU's market. The second is focussed on empowering and encouraging consumers to buy the most efficient products through energy labelling.

3.2. The current Working Plan sets out the implementing measures adopted, including 28 Ecodesign Regulations, 16 energy Labelling Delegated Regulations, and three recognised Voluntary Agreements.

3.3. Other areas of work include the ecodesign measure for air heating and cooling products which will take the form of a regulation, and a series of amendments to regulations to improve product testing and reduce the scope for cheating through ecodesign and energy labelling. These initiatives are complementary to this working plan, and are referenced but not specifically contained within it.

3.4. The assessment and presentation of existing and ongoing work is focussed on energy labelling and achieving an element of ecodesign only in the context of efficiency of performance.

3.5. New product groups have been added to the list of product groupings that are the focus of existing legislation or reviews. These are:

— Building automation and control systems

— Electric kettles

— Hand dryers

— Lifts

— Solar panels and inverters

— Refrigerated containers

— High-pressure cleaners.

4. **Ecodesign principles**

4.1. Ecodesign can contribute to the decoupling of economic growth from resource consumption through a decreased use of materials and energy, higher recycling rates and reduced waste generation ([2]). The power of a circular economy model is that the creation of economic prosperity, social benefits and environmental gains go hand in hand. Ecodesign can be an important driver for social sustainability.

4.2. Although the Ecodesign Directive has been used to improve the energy efficiency of products, it could also be used more intensively to stimulate circular product design, for example by ruling out design strategies that hinder the repair or exchange of faulty parts ([3]).

4.3. Ecodesign delivers product-service systems and products made with fewer resources, using recycled and renewable resources and avoiding hazardous materials, as well as utilising components that are longer lasting and easier to maintain, repair, upgrade and recycle. Two approaches can be distinguished: product redesign based on incremental improvements to

([1]) OJ C 82, 3.3.2016, p. 6.

([2]) Ellen MacArthur Foundation, *Towards the circular economy: Opportunities for the consumer goods sector*, 2013. Document available at: https://www.ellenmacarthurfoundation.org/assets/downloads/publications/TCE_Report-2013.pdf

([3]) European Environment Agency, *Environmental indicator report 2014: Environmental impacts of production-consumption systems in Europe*, 2014. Document available at: https://www.eea.europa.eu/publications/environmental-indicator-report-2014

existing products and new product design which seeks to develop new resource-efficient products that can be repaired, upgraded and recycled ([4]). The implementation of the Ecodesign directive has mostly pushed the first incremental approach to date, but it should now step up the application of the second approach, in conjunction with the development of revised, appropriate labelling, and *via* support from the European standardisation organisations' ongoing work in these areas.

4.4. A major element of circular design is that a product can become a service with a shift in emphasis from ownership to usership, from selling a product to performance based contracting, e.g. Product-Service System (PSS) and Service-Level Agreements (SLAs).

4.5. In the agricultural and food production sector, it should be noted that sustainable food production systems, such as in particular organic ones, are both examples of circularity and ecodesign.

4.6. The recently launched joint initiative between the EESC and the European Commission on establishing a multistakeholder European Circular Economy Stakeholder Platform can facilitate the mapping of best practices in the field, and identify policy barriers to transition to ecodesign.

5. **Gaps and omissions**

5.1. ***Integrated approach***

5.1.1. The ecodesign of goods and services needs to go beyond just energy considerations. Although these are important there is a need to have a focus on the full lifecycle of products, including their durability, ease of maintenance and repair, potential for sharing and digitisation, reuse, upgradeability, recyclability and actual uptake after use in the form of secondary materials in products entering the market. Ecodesign needs to be part of an integrated approach, where both energy efficiency and performance of products is considered in conjunction and on equal footing with efficiency and performance in terms of use of resources and materials.

5.1.2. The current Working Plan acknowledges the limitations of focussing primarily on energy performance. The need for a more comprehensive ecodesign strategy is clear for both consistency and clarity. The Ecodesign Directive itself is not limited to the energy performance of energy-related products but also addresses the wider scope of the material parts of such products, and the wider impact and costs of a lack of resource efficiency.

5.1.3. The principles of the circular economy require goods and services that are durable, reusable, repairable and recyclable. Ecodesign needs to incorporate these principles, in the context of digitisation, sharing ([5]) and the functional ([6]) economy, in order to have consistency across the various strategies that are intended to deliver a new economic model ([7]). The risks associated with the current inconsistency can lead to uncertainty for the business sector, which in turn inhibits innovation or investment in business models that are based on a more comprehensive circular economy model. It will also lead to developments aiming for resource efficiency at the cost of excessive energy use and *vice versa*. The ongoing and future selection of products, which has so far been based on energy inefficiency, should be extended with products and services with a high resource inefficiency.

5.1.4. A strong secondary raw materials market is essential for the development of a circular economy. Ecodesign should be contributing to the design of products and services that allows for the separation of component parts of a product. That is, the component parts of a product should be easily recoverable for reuse and/or remanufacture. Design should allow for this recovery of secondary raw materials to supply clean and high quality materials to the market.

([4]) United Nations Environment Programme and Delft University of Technology, *Design for sustainability — A step-by-step approach*, 2009. Document available at: http://wedocs.unep.org/bitstream/handle/20.500.11822/8742/DesignforSustainability.pdf?sequence=3&isAllowed=y

([5]) OJ C 303, 19.8.2016, p. 36.

([6]) OJ C 75, 10.3.2017, p. 1.

([7]) European Environment Agency, *Circular by design — Products in the circular economy*, report No 6-2017, June 2017. Document available at: https://www.eea.europa.eu/publications/circular-by-design. The EESC is currently looking at the overall potential of new sustainable economic models in a dedicated opinion (SC/048) due to be adopted in the second semester 2017.

5.1.5. The use of design as a driver for a strong secondary raw materials market needs to occur in the context of the importance of durability and modularity in design also.

5.2. ***Behavioural change***

5.2.1. A range of strategies should be used to change consumer behaviour. Labelling alone will not be sufficient to achieve widescale behavioural change. Previous EESC opinions have already specified the need for using economic instruments ([8]), product lifespan labelling ([9]) and behavioural economics ([10]) (in particular nudge thinking ([11])) as part of a toolkit for achieving the transition.

5.2.2. The requirement of behavioural change is not limited to consumers and end users. The business sector needs support through incentives and certainty on policy direction in order to encourage change. This will be especially crucial in the SME sector, where training and support tools can boost the understanding and application of the principles of ecodesign, and ensure that any transition comes with reallocation of workers as appropriate to minimise displacement.

5.2.3. The EESC reiterates its support for the use of Extended Producer Responsibility as a tool to promote the transition to circular economy business models, and emphasises that this too can play a role in the promotion of ecodesign.

5.2.4. The EESC's opinion dedicated to the Circular Economy Package ([12]) refers to the role of new ownership models, which would include leasing product services. This can also drive ecodesign as a commercial imperative, with benefits for both the environment and for society as a whole.

5.3. ***Review clauses***

5.3.1. Most of the Ecodesign and Energy Labelling implementing measures have review clauses which are due in the coming years. These will specifically examine the resource efficiency, repairability, recyclability and durability of products.

5.3.2. The EESC highlights the importance of applying these principles to the ongoing studies of the existing product list, and not only to the new product groups that are to be included in this Working Plan.

5.3.3. Applying these principles should not only be externalised to the reviews, but also should now be integrated into the Ecodesign Working Plan.

5.4. ***Achieving a current relevant Ecodesign Working Plan***

5.4.1. The EESC notes that the current Ecodesign Working Plan was revisited in the light of the Circular Economy Action Plan. However, the consultation with the Consultation Forum regarding the draft Ecodesign Working Plan proposals, as required by Article 18 of the Ecodesign Directive, was held at the end of October 2015. This was before the launch of the Circular Economy Action Plan.

5.4.2. The Consultation Forum should take note of the official position taken by the organised civil society through the work done at the EESC.

5.4.3. ICT products are included in the Working Plan solely as a 'separate track' group due to the complications and difficulties associated with fast moving products, and the uncertainty of future market developments. It is noted that labelling for these products typically takes too long to develop (on average 4 years) and that voluntary agreements are not delivering environmental, economic and social gains with sufficient rigour and speed.

([8]) OJ C 226, 16.7.2014, p. 1.
([9]) OJ C 67, 6.3.2014, p. 23.
([10]) European Environment Agency, *Circular by design — Products in the circular economy, op. cit.,* p. 31.
([11]) OJ C 75, 10.3.2017, p. 28.
([12]) OJ C 264, 20.7.2016, p. 98.

5.4.4. The separate treatment of ICT products within the Working Plan is significant. Specific clear direction and ambition needs to be set for this sector in order to drive innovation in ecodesign of these products. Applying ecodesign to mobile phones for example, could make mobile phones the ambassadors for ecodesign, using a communications device to communicate to a wide audience the practicalities of ecodesign and the consequences and benefits to them of it.

5.4.5. The EU-US Energy Star Agreement is due to expire in 2018. This sets the same voluntary efficiency requirements for office equipment in both jurisdictions. There may be risks associated with the extension of this agreement given the new political dynamics in the USA. The review should consider the competitive advantages of a strong support for ecodesign for business in Europe. The EU has an opportunity to be a world leader in this field. The importance of reciprocity and international agreements should not be underestimated in achieving the mainstreaming of ecodesign.

5.4.6. There is an expressed indication that a more comprehensive section on the contribution of ecodesign to the circular economy within the Plan will be developed. This recognition of the need to broaden the scope is welcome but needs to be accompanied by specific short delivery times.

5.4.7. The development of a circular economy toolbox for ecodesign, such as the Circular Design Guide recently published by the Ellen MacArthur Foundation, can facilitate change but will need to have the support of strong appropriate legislation, backed up with background research, extensive stakeholder consultation and standardisation support. From both the consumer perspective and the business perspective, the product price and economic incentives will determine the uptake of such a toolbox. The polluter-pays principle can underpin best practice in this area.

5.4.8. The challenges faced in terms of market surveillance and international cooperation should not be underestimated. The EESC notes that there is an increased need at Member State level for implementation and reporting through market surveillance, and that if this is not forthcoming, there may be the need for stronger surveillance mechanisms to be implemented at national level, coordinated either indirectly or directly via oversight at EU level. The utilisation of different surveillance or inspection mechanisms to those currently commonly used in ecodesign and energy labelling may also require consideration, in order to minimise the presence of 'free-rider' manufacturers and importers on the EU's market, and to protect and reward the investments made by companies who are following good and transparent practices in ecodesign, labelling and provision of product information and declarations.

5.4.9. Labelling is critical when it comes to consumers and transparency. However, labelling is not a cure-all, and may especially not be the most appropriate tool when dealing with business to business products/services. Labelling, where appropriate, should reflect life expectancy, and not just focus on energy performance. For example, a building may have a high rating due to its energy performance, but may also warrant greater recognition for the materials used in its construction. Or a large complex product (e.g. some heating, cooling or ventilation product system) may warrant further recognition for the materials used and also their repairability, replaceability, durability and recyclability.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — The role of waste-to-energy in the circular economy'

(COM(2017) 34 final)

(2017/C 345/17)

Rapporteur: **Cillian LOHAN**

Co-rapporteur: **Antonello PEZZINI**

Consultation	European Commission, 17.2.2017
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Plenary session No	527
Outcome of vote (for/against/abstentions)	140/0/2

1. **Conclusions and recommendations**

1.1. The EESC supports the adherence to the waste hierarchy when making decisions on waste management ([1]), including waste-to-energy options.

1.2. There should be a coordinated strategy of spreading the message of the first step on the waste hierarchy, which is the prevention of the production of waste in the first place.

1.3. The EESC espouses the principle of sustainability-proofing of EU public money in the light of the Sustainable Development Goals (SDGs) ([2]) and that any public funding should be improving the well-being of the citizens of Europe. Public funding should also adhere to the principle of not supporting any activity that causes harm to citizens.

1.4. Shortcomings from existing directives on waste treatment must be closed in any future legislation in order to ensure that the transition to a circular economic model is fair, consistent and systemic.

1.5. It is important not to create infrastructural barriers to the achievement of higher recycling rates by investments in outdated waste-to-energy processes.

1.6. Although separate collection of waste is a priority, especially for Member States with a high dependency on landfill, this must also correspond with an increase in recycling rates in order to have a value in achieving a transition to improved circularity.

([1]) EESC Opinion Circular Economy Package, point 4.3 (OJ C 264, 20.7.2016, p. 98).
([2]) EESC Opinion Sustainable development: a mapping of the EU's internal and external policies, point 4.3.5.5 (OJ C 487, 28.12.2016, p. 41).

1.7. Member States with a large number of incinerators at the moment represent an inconsistency with the ambition of higher recycling targets proposed by the Circular Economy Action Plan ([3]). The challenge is to transition these Member States out of incineration dependency and into a diverse range of waste management solutions, through push and pull policy factors including:

— introducing taxes;

— phasing out support schemes;

— a moratorium on new facilities and decommissioning older ones.

1.8. The transition to a circular economy has been hindered in the EU by a lack of the right price signals. This is accentuated by continued unjustifiable subsidies for the unsustainable production systems, specifically for the fossil fuel sector ([4]). The EESC welcomes the explicitly stated link between access to Cohesion Policy funds and both national waste management plans and the European Circular Economy Action Plan. The link to the European Fund for Strategic Investment could be stronger.

1.9. Biogas offers opportunities on many fronts at an EU level, in job creation, emission reduction, enhancing fuel security and more. The legislative and policy framework which best supports the optimisation of the associated opportunities should be developed using the best practice examples from around Member States and beyond.

1.9.1. Biodigestion for producing automotive biomethane is in line with the Paris Agreement. A recent assessment by the Commission ([5]) shows that biogas production in the EU could at least double and possibly triple from today's levels to 2030.

1.10. Behavioural change and cultural change are required and can be achieved through education at all levels of society.

2. **Background**

2.1. On 2 December 2015, the Commission adopted an EU Circular Economy Action Plan, offering a transformative agenda with significant new jobs and growth potential and aiming at fostering sustainable consumption and production patterns, in line with EU commitments under the 2030 Agenda for Sustainable Development. This communication focuses on energy recovery from waste and its place in the circular economy. Waste-to-energy is a broad term that covers much more than waste incineration.

2.2. The main aim of this communication is to ensure that the recovery of energy from waste in the EU supports the objectives of the circular economy action plan and is firmly guided by the EU waste hierarchy. The communication also examines how the role of waste-to-energy processes can be optimised to play a part in meeting the objectives set out in the Energy Union Strategy and in the Paris Agreement. At the same time, by highlighting proven energy-efficient technology the approach to waste-to-energy set out here is meant to provide incentives for innovation and help create high-quality permanent jobs.

2.3. This Opinion establishes the EESC position on each of the three sections of the Communication, namely:

— positioning waste-to-energy processes in the waste hierarchy and the role of public financial support;

([3]) Communication of the European Commission, *Closing the loop — An EU action plan for the Circular Economy* (COM(2015) 614 final), 2 December 2015.

([4]) David Coady, Ian Parry, Louis Sears, Baoping Shang, *How Large Are Global Energy Subsidies?*, IMF Working Papers, WP/15/105, May 2015.

([5]) European Commission, *Optimal use of biogas from waste streams An assessment of the potential of biogas from digestion in the EU beyond 2020*, March 2017.

— waste-to-energy processes for treating residual waste: finding the right balance;

— optimising the contribution of waste-to-energy processes to the EU's climate and energy objectives in the circular economy.

It further establishes any additional considerations that warrant inclusion from the perspective of civil society and based on existing positions adopted by the EESC.

2.4. The EESC highlights the need to address the immediate needs of the EU in terms of managing its waste in the context of the existing legislation and in the context of the existing waste management infrastructure. While some suboptimal practices will continue the overall long-term drive is towards a low waste production model, where waste prevention, reuse, remanufacture and recycling dominate the post-use phase of material flows. The challenge is to encourage a speedy and constant just transition towards the long term goals.

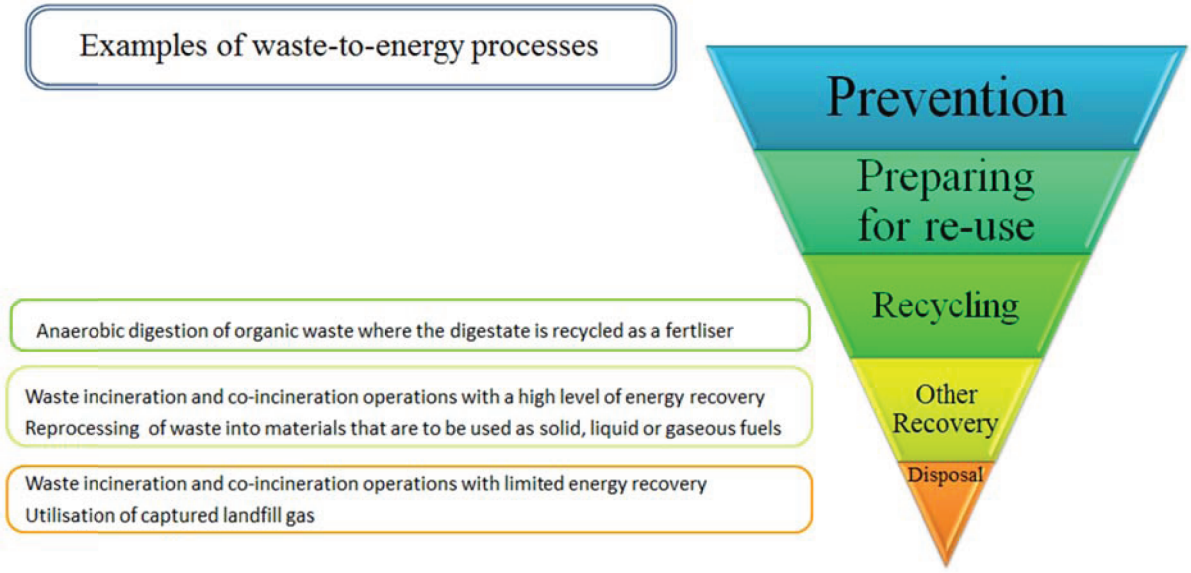
2.5. With an urban waste production average of ca. 480 kg/inhabitant across the EU in 2015, the amount landfilled can vary from country to country from 3 kg landfilled in the most virtuous one to over 150 kg in the least virtuous one.

3. **Positioning waste-to-energy in the waste hierarchy and the role of public financial support**

3.1. The EESC supports the adherence to the waste hierarchy when making decisions on waste management ([6]), including waste-to-energy options.

3.2. It is important to note that waste-to-energy is not always an option that is in line with the circular economy ambitions or principles. For example, incinerating waste materials that could have been prepared for reuse or recycled is not the optimum choice in terms of resource efficiency or best use of raw materials. Equally transporting waste over vast distances at high energy costs in order to achieve comparatively less energy returns through a waste-to-energy process would result in a net energy cost and related climate impact. There are other examples.

3.3. The diagram shows the relationship between the waste-to-energy processes in the Communication and the waste hierarchy.



([6]) EESC Opinion Circular Economy Package, point 4.3 (OJ C 264, 20.7.2016, p. 98).

3.4. The waste hierarchy itself is not enough to determine the suitability or otherwise of waste-to-energy processes. The EESC espouses the principle of sustainability-proofing of EU public money in the light of the SDGs, and that any public funding should be improving the well-being of the citizens of Europe. Public funding should also adhere to the principle of not supporting any activity that causes harm to citizens.

3.5. It is important that the weaknesses of the Waste Framework Directive do not leak through to Circular Economy initiatives, for example, the possibility of a Member State being excluded from separate collection obligations due to a technical or financial inability to implement it. The focus should be on using public funding to overcome technical difficulties, or using economic policy instruments to remove the financial constraints to implementing the best practice option. For materials with toxic substances there are justifiable grounds for disposal or energy recovery as preferable to reuse or recycling.

3.6. This Communication is a strong development from the Circular Economy Action Plan, and it sets out a high ambition for improved efficiency in waste-to-energy processes and increased focus on the waste hierarchy as determining the circularity of different processes. However the legislation on which this Communication is built, specifically the Waste Framework Directive, has historic weaknesses that will continue to cause difficulties and weaken the Communication if not addressed. It is necessary to review the classification of waste, perhaps based on opportunities offered by new technologies in waste-to-energy plants (e.g. a damaged tomato is not put on the market whereas an unsold tomato is a waste), possibly including also sludge out of urban sewage for biodigestion processes. The ambition to address these issues in the Circular Economy Action Plan must be reflected in necessary legislative amendments at all relevant levels.

3.7. The positioning of waste-to-energy processes on the waste hierarchy can be misleading due to the constraints of how the processes are treated by legislation. Positioning is defined according to definitions which are set out in legislation rather than scientific analysis of the actual impact of such waste-to-energy processes.

3.8. There are also technical aspects of the calculation methodology associated with definitions and thresholds in the Waste Framework Directive. These are the calculation methods that determine the positioning of the different waste-to-energy processes on the waste hierarchy. These detailed calculations should be re-examined by the Commission in order to ensure that they now are robust in the context of the Circular Economy in particular, but also the Sustainable Development Goals, the Energy Union and the Paris Agreement.

3.9. The separate collection obligations that are part of European waste legislation ([7]) are a critical aspect of achieving improved waste management.

3.10. Technological advances will continue to offer better opportunities for maximising efficiency in products and energy flows, leading to innovative solutions for more efficient processes.

3.11. Ecodesign of goods and services, extended in scope to be all-inclusive, as part of a pan European system, will result in a reduction to a minimum of waste as a circular economy is achieved. The ecodesign element of this is essential to provide clean repairable, reuseable, recyclable, modular products and will ultimately lead to the elimination of waste as we currently understand it.

3.12. The above points will mean increasingly less mixed waste availability as a feed source for incinerators, and therefore at a national level subsidies for these should be phased out and no new investments in this area considered, except when it comes to modernising existing infrastructure and making it more resource- and energy-efficient.

([7]) Directive 2008/98/EC, in particular articles 11 (paper, metal, plastics, glass and construction and demolition waste) and 22 (biowaste) (OJ L 312, 22.11.2008, p. 3).

4. **Waste-to-energy processes for treating residual waste — finding the right balance**

4.1. It is important not to create infrastructural barriers to the achievement of higher recycling rates by investments in outdated and energy-inefficient waste-to-energy processes.

4.2. In 2013, 2,5 Mt of mostly refuse-derived fuel (RDF) was shipped between Member States for the purpose of energy recovery ([8]).

4.3. Waste-to-energy assessments have to be cognisant of this transport element as once included in the measurement of the emissions associated with different waste management approaches, the transport aspect can determine the actual impact of the process in terms of emissions.

4.4. There is a geographical split in Europe in terms of distribution of incinerators. Germany, the Netherlands, Denmark, Sweden and Italy have most of the functioning active incinerators in Europe. In general, many Member States continue to have an over-reliance on landfill. This needs to change to meet the new challenges and targets set out in the waste legislation associated with the Circular Economy Action Plan.

4.5. Member States with high reliance on landfill and low or no incineration should firstly focus on separate collection. Separate collection at source is critical for the supply of good quality high value waste to the recycling and this needs to be encouraged.

4.6. However, there are many examples at Member State level of separate collection rates being high, but corresponding recycling rates are not proportionate. This apparent contradiction needs focussed policy tools to be addressed.

4.7. This Communication encourages national governments to focus funding support and strategies in directions other than incinerators by examining payback time, availability of feedstock, and capacity in neighbouring states.

4.8. Utilising a neighbouring incinerator may represent the best option in some cases, but before doing so, a full life cycle analysis should be carried out including, critically, the associated costs of transport, both economic and environmental.

4.9. Apart from some very specific circumstances and given technological advances, it is unlikely that choosing to incinerate could represent the most resource efficient or best practice solution to addressing waste management challenges.

4.10. Member States with a large number of incinerators at the moment represent an inconsistency with the ambition of higher recycling targets. The challenge is to transition these Member States out of incineration through push and pull policy factors including:

— introducing taxes;

— phasing out support schemes;

— a moratorium on new facilities and decommissioning older ones.

4.11. The EESC highlights that choosing to impose a general tax on incineration without providing affordable accessible alternatives for the end user will simply result in higher costs for the civilian. The use of taxes as an economic instrument needs to be focussed and clever.

4.12. There needs to be an efficient procedure in each Member State for the application for and allocation of permits to carry out waste management activities.

([8]) European Topic Centre on Waste and Materials in a Green Economy (ETC/WMGE), *Assessment of waste incineration capacity and waste shipments in Europe*, January 2017.

5. **Optimising the contribution of waste-to-energy processes to meeting the EU's climate and energy objectives in the circular economy**

5.1. The EESC agrees that only by respecting the waste hierarchy can waste-to-energy maximise the circular economy's contribution to decarbonisation, in line with the Energy Union Strategy and the Paris Agreement. Biodigestion for producing automotive biomethane is in line with the Paris Agreement. Vehicles powered with biomethane can provide an effective means to help decarbonise transport in Europe.

5.2. To optimise the contribution of waste-to-energy processes to the EU's climate and energy objectives within the circular economy, there is a need to ensure that the most efficient techniques and technologies are used when waste-to-energy processes are required. This is consistent with the Commission's proposed changes to the Renewable Energy Directive; however, these criteria should be encouraged for all new plant, irrespective of size, including smaller plant of less than 20 MW.

5.3. Taxation on waste collection has an ever growing impact on families' and businesses' resources; it should therefore be used in a forward-looking way and keeping in mind the protection of the environment.

5.4. The public and the private sector should have the possibility to collaborate on long-term projects with a view to making a culture of circularity more concrete. Corporate Social Responsibility can also play an important role in the transition to more sustainable waste management options.

5.5. The transition to a Circular Economy has been hindered in the EU by a lack of the right price signals. This is accentuated by continued unjustifiable subsidies for the unsustainable production systems, specifically for the fossil fuel sector ([9]). The EESC welcomes the explicitly stated link between access to Cohesion Policy funds and both national and regional waste management plans and the European Circular Economy Action Plan.

5.6. The link to funding from the European Fund for Strategic Investment could be stronger to ensure that these investments prioritise opportunities that promote the objectives for the Circular Economy Action Plan. Some forms of incentive could be explored with a view to creating an appropriate chain downstream of facilities, such as distribution of fuel and/or secondary raw materials, or creating further products for potential use.

6. **Other opportunities**

6.1. ***Biomethane***

6.1.1. The options to produce biogas through anaerobic digestion is mentioned in the Communication. This is an opportunity for different Member States and should be expanded upon. A recent assessment by the Commission ([10]) shows that biogas production in the EU could at least double and possibly triple by the year 2030 from current levels.

6.1.2. Biogas is a functioning working model in many Member States, notably Italy and Germany. As working examples these countries can also offer valuable lessons learned from the practicalities of implementation.

6.1.3. Currently, the cost of biomethane is higher than the cost of fossil methane. However, the use of biomethane is justified by the indirect costs incurred by mutagenic and carcinogenic agents, e.g. NO_x and oil smokes produced by fossil fuels ([11]).

6.1.4. Above all, the possibly higher cost of biomethane is in line with the goals enshrined in the Paris Agreement on reducing the emissions of greenhouse gas out of traditional fuels ([12]).

([9]) David Coady, Ian Parry, Louis Sears, Baoping Shang, *How Large Are Global Energy Subsidies?*, IMF Working Papers, WP/15/105, May 2015.
([10]) European Commission, *Optimal use of biogas from waste streams An assessment of the potential of biogas from digestion in the EU beyond 2020*, March 2017.
([11]) COM/2017/011 final — 2017/04 (COD).
([12]) 'L'opera loda l'artefice', Machiavelli said.

6.1.5. It is critical that feedstocks used in anaerobic digestion have low or no indirect land use change (ILUC) impacts and do not negatively impact food production. Biogas facilities are best located in close proximity to a supply of feedstock (agricultural waste primarily) and as a waste management and energy needs solution. Constructing anaerobic digesters and thereby creating demand for a new supply of feedstock, either waste or crops, must be avoided.

6.1.6. The location of the biogas facility is critical. There needs to be an identified efficient use of the energy produced so that efficiently produced energy is not in turn wasted. It is also essential to note that anaerobic digestors are not a wholesale solution for all agricultural regions in the EU, and their promotion should be limited to where there is a readymade feedstock that is currently problematic waste.

6.1.7. However development of a well-planned biogas production and use infrastructure can be a very efficient way of dealing with farm waste, dealing with potentially environmentally damaging substances and facilitating safe disposal. It can also address heating and transport fuel requirements for communities.

6.1.8. Anaerobic digestion can help address public health issues, provide fertiliser for land, represent emission reduction and be a practical example of circularity.

6.1.9. Anaerobic digestion can be most effective when the circular economy principles are applied, specifically the concept of small loops, where the feedstock for the digester is sourced locally, and the energy output is used locally (with an exception where fuel is used in trucks as gas). Investments must support the objective of reducing waste travelling to as close as possible to zero kilometres.

6.1.10. The employment and economic boosts associated with the development of an integrated biogas element to a national or regional energy mix should be analysed and highlighted. Options to facilitate and speed-up administrative procedures authorising the construction of biowaste digestor projects should also be considered.

6.1.11. Policy and economic support for projects that meet all the criteria will drive innovation and can be one of the many tools that help the transition to a low carbon economy.

6.1.12. The review of mandate M/475 by the CEN should be expanded so that biomethane from sources not currently authorised, such as landfill gas, sewage treatment plant gas, from sludge and from unsorted urban and other waste, can be injected into natural gas networks. Biomethane of this kind is already readily available.

6.1.13. The European Fund for Strategic Investments is crucial to the introduction of anaerobic digestion processes for projects that are not yet financially viable.

6.1.14. Incentives, of the type traditionally used for the fossil fuel industry, should be encouraged for the use of vehicles powered by biogas. These incentives should benefit the end user offering affordable and accessible alternative transport options to the consumer.

6.2. ***Cultural change and education***

6.2.1. There is a need to recognise the challenge faced by cultural differences. Behavioural changes in terms of both separating waste at source should be addressed as a need for cultural change. Many tools can be employed, not the least of which is nudge thinking ([13]), to achieve this.

6.2.2. There should be a coordinated strategy of spreading the message of the first step on the waste hierarchy, which is the prevention of the production of waste in the first place.

([13]) EESC Opinion Applying Nudge Thinking to EU Policy-Making (OJ C 75, 10.3.2017, p. 28).

6.2.3. Behavioural change can also be achieved by developing programmes on these topics at school level. This should apply to all levels of school, from kindergarten and primary schools through to universities and workplace training to educate and inform children and citizens as a long term approach.

6.2.4. Universities and public bodies can help create legitimacy for new technologies and practices and as such can function as models of best practice and regional ambassadors for waste-to-energy processes ([14]).

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([14]) Examples exist across a range of Member States, one of which is situated at University College Cork in Ireland which has its own small-scale anaerobic digesters that function for research.

Opinion of the European Economic and Social Committee on the 'Proposal for a directive of the European Parliament and of the Council amending directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment'

(COM(2017) 38 final — 2017/0013 (COD))

(2017/C 345/18)

Rapporteur: **Brian CURTIS**

Consultation	Council, 20.2.2017
	European Parliament, 1.2.2017
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	15.6.2017
Adopted at plenary	5.7.2017
Plenary session No	526
Outcome of vote (for/against/abstentions)	139/0/4

1. **Conclusions and recommendations**

1.1. The EESC believes the amendment to this Directive is both timely and necessary to prevent barriers to trade and the distortion of competition in EU.

1.2. The EESC notes that a widespread stakeholder consultation and an impact assessment took place, the results of which are reflected in the Commission proposal.

1.3. The EESC supports the exclusion of pipe organs from the Directive's scope for economic reasons, as well as for cultural reasons, this will help avoid an estimated loss of up to 90 % of jobs in the sector and an annual loss of up to EUR 65 million by 2025.

1.4. The EESC supports the exclusion of non-road mobile machinery powered through a traction drive from the Directives scope. This will support industry development in the sector by removing distortion in the treatment of machinery.

1.5. The EESC is of the view that to achieve the waste hierarchy's highest priority, waste prevention, this directive alone is not sufficient. The EESC recommends that a combination of the RoHS directive along with the Ecodesign Directive and the WEEE Directive would need to be used together to achieve these goals.

2. **General comments**

2.1. ***Reasons for and objectives of the proposal***

2.1.1. Directive 2011/65/EU (RoHS 2) sets out rules on the restriction of the use of certain hazardous substances in electrical and electronic equipment (EEE). RoHS 2 provisions apply to all EEE placed on the EU market regardless of whether they are produced in the EU or in third countries. RoHS 2 affects mainly industrial manufacturers, importers and distributors of EEE, as well as EEE customers.

2.1.2. RoHS 2 addresses the waste hierarchy's highest priority, waste prevention. Waste prevention includes measures that reduce the content of harmful substances in materials and products. Decreasing the amount of hazardous substances in electrical and electronic waste benefits the management of such waste as a result. It promotes the reuse of products and the recycling of used materials, which supports the circular economy.

2.1.3. RoHS 2 is necessary to prevent barriers to trade and the distortion of competition in the EU, which could happen in case of disparities between the laws or administrative measures on restricting the use of hazardous substances in EEE in various Member States. It also contributes to the protection of human health and to the environmentally sound recovery and disposal of electrical and electronic waste.

2.1.4. RoHS 2 is a recast of the earlier RoHS Directive 2002/95/EC (RoHS 1). Both RoHS directives have stimulated a reduction in hazardous materials all over the world: several countries, including China, Korea and the US, have developed RoHS like legislation. RoHS 2 introduced new definitions and expanded the scope to cover medical devices and monitoring and control instruments. The impact of these provisions was assessed with the Commission's proposal in 2008. However, RoHS 2 also introduced further changes: the 'open scope'. Through a new category 11: 'Other EEE not covered by any of the other categories'. Those changes make the Directive applicable to all EEE (except equipment that is explicitly excluded) and give a broader interpretation of EEE, based on a new definition of the dependency on electricity. These 'open scope' provisions were not specifically assessed when introduced in RoHS 2.

2.1.5. The Commission has a mandate to examine the need to amend the Directive's scope in respect the open scope introduced with the 2011 recast. The Commission has carried out this assessment and identified a number of issues related to the scope of RoHS 2 that need to be addressed to avoid the legislation having unintended effects. In the absence of a Commission proposal, the following problems would arise after 22 July 2019:

— the interdiction of secondary market operations (e.g. reselling, second-hand market) for new-in-scope EEE. This is known as the 'hard-stop';

— the stopping of the possibility to repair with spare parts a subset of new-in-scope EEE once legally placed on the market before that date;

— the different (distorting) treatment of cord-connected non-road mobile machinery in comparison to otherwise identical machinery powered by a battery or an engine (currently excluded from RoHS scope);

— the de-facto prohibition of pipe organs placement on the EU market (as not RoHS compliant due to the lead used to produce the wanted sound).

These four problems could affect the EU market, manufacturers and citizens and trigger negative economic, environmental, social and cultural impacts.

The Commission's proposal therefore tackles scope problems that cannot be resolved by either substance substitution or exemptions and guidance, e.g. for specific product groups with permanent compliance problem or where scope provisions generate market distortions, namely:

— secondary market operations for RoHS 2 EEE which fell outside the scope of RoHS 1;

— spare parts for RoHS 2 EEE which fell outside the scope of RoHS 1;

— traction-drive cord-connected non-road mobile machinery;

— pipe organs.

The proposal also addresses lessons learnt from implementing RoHS 2, in line with its overall objectives and legal clarity requirements.

2.2. ***Impact assessment***

2.2.1. The Commission's impact assessment report stated that restoring the secondary market and increasing spare part availability for some electrical and electronic equipment (EEE) will have the following positive impacts:

— A reduction of costs and administrative burden both for business, including SMEs, and for public authorities;

— Additional market opportunities given to the repair industries and secondary selling;

— Positive social impact, including for EU hospitals, which would save about EUR 170 million after 2019, due to maintaining the possibility to resell and buy used medical devices;

— Environmental benefits in terms of reduced overall waste generation: the possibility of prolonging the use of EEE will postpone their end-of-life and disposal, thus delaying the generation of hazardous waste (WEEE). In most cases, the environmental impact of producing additional spare parts is negligible in comparison with the advantage of keeping the entire equipment in use. This measure will prevent the creation of more than 3 000 tonnes of hazardous waste per year in the EU, which would support the circular economy initiative. The longer lifetime of EEE would also lead to additional savings of energy and raw materials.

3. **Consistency with existing policy provisions**

3.1. By addressing secondary market operations, the proposal aims to reinstate RoHS 2 full coherence with the EU's general principles of product legislation.

3.2. RoHS 2 allows EEE that was outside the scope of RoHS 1, but which would not comply with RoHS 2, to continue to be made available on the market until 22 July 2019. After that date however, both the first placing on the market and secondary market operations (e.g. reselling) of non-compliant EEE will be prohibited. EEE affected by this 'hard-stop' of secondary market operations are medical devices, monitoring and control instruments and other new-in-scope EEE. This barrier to secondary market operations is not consistent with the general harmonisation of EU product legislation. For this reason, the Commission proposes to remove the hard-stop of secondary market operations.

3.3. RoHS 2 creates an exception (to the general substance restriction) for cables and spare parts for the repair, reuse, updating of functionalities or upgrading of capacity of the groups of EEE gradually becoming subject to its scope. However, newly in scope EEE other than medical devices and monitoring and control instruments are not listed. This leads to the impossibility to use spare parts after 22 July 2019 and to an unjustified difference in treatment. The Commission therefore proposes to introduce a specific provision to exclude spare parts from substance restriction, so to allow the repair at any time of all EEE in RoHS 2 scope, which were placed on the EU market.

3.4. RoHS 2 lists 10 specific kinds of equipment that are excluded from the 'open scope' provisions. One kind of equipment that is excluded ('non-road mobile machinery made available exclusively for professional use') only includes machinery with an on-board power source. This provision leads to types of machinery that are otherwise identical to be under two different regulatory regimes for the only reason of their power source being different (on board or external). The Commission proposes to amend the definition of 'non-road mobile machinery made available exclusively for professional use' to also capture traction-driven machinery.

3.5. The Commission also proposes to add pipe organs to the list of excluded equipment due to the lack of alternatives for substitution.

3.6. Under RoHS 2, exemptions to substance restriction should have a defined limited duration.

3.7. Although Article 5(5) does not provide a specific deadline for the Commission's decision on applications for new exemptions, the timeframe for the Commission to decide on applications to renew an exemption is set for at the latest 6 months before the exemption expires, and this has proven to be unfeasible in practice. Combined with the requirement that an application for renewal must be made no later than 18 months before the exemption expires, the deadline means

that the Commission must make its decision on applications to renew existing exemptions within 12 months after the application is submitted, unless specific circumstances justify a different deadline. Complying with this deadline is de facto unfeasible due to the several mandatory procedural steps needed for the evaluation of an application for renewal. Therefore, the provision fixing a timeframe for the Commission to decide on application for renewing exemptions should be removed.

4. **Consistency with other EU policies**

4.1. The changes subject to the current proposal do not alter the fundamental approach of RoHS 2 and its consistency with other legislation. RoHS 2 and the REACH Regulation are consistent in terms of policy interaction.

4.2. RoHS 2 is also consistent with other product-related legislation, such as Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment and Directive 2000/53/EC of the European Parliament and of the Council on end of life vehicles. Other EU legislation may contain independent obligations in relation to the use phase of EEE, but there are no overlaps with RoHS 2 requirements.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — The EU Environmental Implementation Review: Common challenges and how to combine efforts to deliver better results'

(COM(2017) 63 final)

(2017/C 345/19)

Rapporteur: **Mihai MANOLIU**

Consultation	23.3.2017
Legal basis	Articles 33 and 114 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	24.1.2017
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	15.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	139/1/4

1. **Conclusions and recommendations**

1.1. In the EESC's view, the EU Environmental Implementation Review (EIR) reveals that poor, fragmented and uneven implementation of the EU environmental legislation is a serious problem in many EU Member States. Behind the root causes of poor implementation identified in the EIR there would appear to be a lack of political will on the part of many Member-State governments to make substantial improvement a political priority and to provide sufficient resources. The EIR country reports demonstrate just how much the EU must do to achieve the objectives and milestones established in the 7th Environmental Action Programme (7th EAP):

— to protect, conserve and enhance the Union's natural capital;

— to turn the Union into a resource-efficient, green and competitive low-carbon economy;

— to safeguard the Union's citizens from environment-related pressures and risks to health and well-being.

1.2. The EESC underlines that proper implementation of the EU's environmental *acquis* is in the interest of European citizens and has real economic and social benefits. Citizens' health needs a healthy environment. Functioning ecosystems are a prerequisite for agricultural and many other economic activities. Even implementation of environmental standards across the Member States ensures a level playing field for businesses. Moving the economy towards environmentally responsible practices provides important potential for economic modernisation and innovation, business and employment opportunities and good employment conditions.

1.3. The Member States are chiefly responsible for implementation, while the Commission plays an important role in ensuring that implementation is carried out in an appropriate and even manner.

Political will, integration of environmental and other policies, and active involvement of civil society in the decision-making and review processes are the key prerequisites for the successful implementation of environmental legislation at Member-State level.

1.4. European citizens value the EU for its high environmental standards. Poor implementation of these standards undermines the EU's credibility in terms of making sure that these standards are applied equally by all EU Member States.

1.5. The EESC welcomes the EIR as a new approach and an important step in an ongoing process which is intended to establish a joint commitment by the Commission and the Member States to improve the implementation of environmental policies and legislation. This process must be continued with due regard for synergies, a comprehensive approach, transparency and inclusiveness.

1.6. The EESC endorses the integrated policy approach of the EIR and points out that this must also apply to the integration of environmental and social policies. The implementation of environmental objectives can only be improved if social impacts — the consequences for the labour market and consumers, particularly vulnerable groups — are carefully addressed and taken into account in a proactive way. Market-based instruments, such as environmental tax reforms, are important tools to achieve the objectives laid down in environmental legislation. In this context, the EESC points out that the commitments to phase out environmentally harmful subsidies must be put into effect.

1.7. The EIR should be further developed in the coming years by extending its scope to other environmentally relevant fields of legislation, such as climate and chemicals legislation.

1.8. Environmental implementation should be considered together with other policy areas in an integrated manner. In order to facilitate cross-cutting solutions, joint discussions by the Council of Environment Ministers and other Council configurations should be arranged. The relationship between the European Semester and the EIR should be further clarified so as to ensure that the potential of various instruments is harnessed in an optimal way.

1.9. The EESC welcomes the Commission's efforts to set up structured dialogues with Member State governments based on the findings of the country reports. In order to be effective, these dialogues must be transparent and provide a clear outcome and follow-up. A set of prerequisites for effective dialogue processes should be considered and laid down for all parties involved.

1.10. The EESC points out that effective implementation of environmental protection measures hinges partly on civil society — employers, workers and other representatives of society — being granted an active role, by enabling the general public to monitor the proper implementation of environmental legislation through free access to environmental information, participation in the environmental policy-shaping process and access to justice. People must have access to accurate reports on the implementation of environmental legislation in the places where they live and work. All positive developments in the field of environmental protection have included significant involvement by civil society, the watchdog of democracy.

1.11. The EESC regrets that civil society's key role is not sufficiently reflected in the EIR. Stronger involvement of civil society would have the potential to strengthen the EIR project. Civil society organisations at national level must be given the opportunity to contribute their expertise and insight to the country reports as well as to the structured country dialogues and the follow-up to them. The EESC is ready to facilitate civil society dialogue at EU level.

2. **Introduction**

2.1. In May 2016, the Commission launched the Environmental Implementation Review (EIR) ([1]) in order to improve the implementation of EU environmental legislation in the EU Member States. The EIR is an information-based and cooperative policy instrument which does not introduce any legal requirements or reporting obligations. It is designed to be an ongoing process with biannual country reports by the Commission and dialogues with the Member States.

([1]) COM(2016) 316 final.

2.2. In February 2017, the Commission published the first set of 28 Member State country reports and a communication on the EIR with a summary of the findings and conclusions and the measures that the Commission will undertake.

3. **General comments**

3.1. The EU has a comprehensive *acquis* of environmental legislation. However, proper implementation is a serious problem. The EIR country reports demonstrate the fragmented and uneven implementation of environmental legislation in EU Member States. The EIR correctly describes the benefits of proper implementation for the quality of life of European citizens, a level playing field for businesses, and job creation ([2]). The costs of non-implementation are estimated at EUR 50 billion/year ([3]).

3.2. The 7th Environment Action Programme (7th EAP) adopted by the European Parliament and the Council in 2013 ([4]) has made better legislative implementation one of its top priorities. The EESC appreciates the fact that the Commission is putting this into practice with the EIR.

3.3. The country reports summarise information which is not entirely new. However, their clear added value lies in the fact that, for the first time, implementation gaps are addressed in a comprehensive and crosscutting way, covering major fields of environmental legislation and all the Member States. This new level of assessment makes it possible to analyse common root causes and structural obstacles to ensure better implementation and develop remedies and enabling tools.

3.4. The approach taken by the EIR also makes it possible to move away from reacting to poor legislative implementation by means of infringement procedures to proactive measures by addressing the root causes of poor implementation. However, the EU Member States are chiefly responsible for the implementation of EU environmental legislation. It must be acknowledged that in many cases a lack of political will on the part of many Member State governments to make substantial improvement a political priority and to provide sufficient resources for it appears to lie behind the root causes for poor implementation identified in the EIR ([5]). Therefore, the EESC would appreciate it if the EIR could help to place the need for better implementation on the political agenda in EU Member States and Council meetings.

3.5. The Commission must tackle poor implementation of EU legislation by Member States through appropriate and stringent measures, including infringement procedures. The EESC is worried that so far, these measures have not been effective. European citizens value the EU partly for its high environmental standards. Therefore, poor implementation of these standards undermines the credibility of the EU in the eyes of its citizens.

3.6. The country reports are a good basis for a structured dialogue between the Commission and each Member State; they also allow Member States to learn from each other, identify common problems and learn from best practice, acting on the principle that sharing is power.

3.7. As citizens, local communities and companies are the real actors when it comes to carrying out environmental measures, civil society must play an active role in the EIR. Making civil society a partner in this endeavour is imperative.

3.8. The EESC appreciates the fact that the Commission considers civil society involvement to be an important asset for EIR follow-up. However, the EIR is still quite vague about how civil society should be involved. Civil society participation has to be ensured throughout the EIR, not only during follow-up. This aspect of the EIR should be developed.

([2]) COM(2017) 63 final, p. 2.
([3]) European Parliament, At a glance, Environmental Implementation Review.
([4]) OJ L 354, 28.12.2013, p. 171.
([5]) EESC opinion on the Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ C 161, 6.6.2013, p. 77, paragraph 1.2).

4. **Specific comments**

4.1. ***Scope of the EIR***

4.1.1. So far, the EIR covers the circular economy and waste management, nature and biodiversity, air quality and noise as well as water quality and management — a comprehensive field of environmental legislation. Other sectors closely related to these policy fields should be integrated into the next round. This applies in particular to climate mitigation and adaptation which are key for many environmental policies, such as the protection of nature and biodiversity and water management. The implementation of chemicals legislation is crucial for a healthy environment, well-being and a clean circular economy.

4.2. ***Country reports***

4.2.1. The country reports provide a very good overview of the environmental challenges facing each Member State and its performance in the implementation of environmental legislation. The EESC also appreciates the fact that the country reports refer to the Sustainable Development Goals related to those challenges. This demonstrates that improving environmental performance is part of a bigger sustainable development approach, pursuing economic, social and environmental progress in an integrated, holistic and balanced way.

4.2.2. The country reports also provide added value for citizens and civil society organisations in the respective countries: not only do they provide non-governmental stakeholders with a good overview of the situation in their own country, they also enable them to compare performance with other Member States and identify shortcomings and untapped potential. The country reports must be regarded as a valuable tool for civil society in European Member States to hold their governments accountable for ensuring a healthy environment. They enable civil society to push for better implementation of environmental legislation.

4.2.3. However, this potential could be further strengthened by involving civil society still more in the preparation of the country reports, structural dialogues and follow-up, as well as in the review of the reports in the next biannual cycle. Civil society organisations have significant expertise that can feed into the identification of the major environmental challenges facing their country. They should therefore be consulted from the outset.

4.2.4. In order to establish the EIR as a continuous process, it will be important to track progress in the implementation of the recommendations of the previous rounds of country reports and summarise the results in the following EIR round.

4.3. ***Root causes of poor implementation and enabling tools for improvements***

4.3.1. The EESC appreciates the fact that the Commission sees the EIR as an opportunity to analyse common root causes of poor implementation. The initial assessment in the communication should be continued with the Member States, factoring in the first-hand experience and knowledge of non-governmental stakeholders as well as research by academics, think tanks and the EU Network for the Implementation and enforcement of Environmental Law (IMPEL).

4.3.2. The Commission has already identified important common root causes: ineffective coordination between local, regional and national authorities, lack of administrative capacity and insufficient financing, lack of knowledge and data, insufficient compliance assurance mechanisms and the lack of integration and policy coherence.

4.3.3. The Commission mentions some examples of better policy coordination and integration, such as a coordinated approach to clean air policy and policies on mobility. The EESC endorses this integrated policy approach and points out that this must also apply to the integration of environmental and social policies. The implementation of environmental objectives can only be improved if social impacts — the consequences for the labour market and consumers, particularly vulnerable groups — are carefully addressed and taken into account in a proactive way.

4.3.4. Ultimately, the lack of political will is behind many of these problems ([6]). It will therefore be important that the EIR succeeds in its objective of addressing the implementation of environmental legislation as a political issue and places it on the EU agenda.

4.3.5. The EESC also emphasises that the authorities' competences and knowledge are prerequisites for proper implementation. In addition, awareness raising and communication are vital for helping civil society take part in the EIR process.

4.3.6. The Commission mentions market-based instruments and investments as enabling tools for improving the objectives included in the environmental legal frameworks. The EESC has pointed out in a previous opinion the potential of environmental tax reforms shifting tax burdens from labour to resource use for achieving both job creation and economic innovation, as well as reducing adverse environmental impacts ([7]).

4.3.7. In the same opinion, the EESC complained about ongoing environmentally harmful subsidies. Little progress has been made. Both tax reform and the phasing out of environmentally harmful subsidies are mentioned by the Commission in its communication as important enabling tools for better implementation. However, no approach is being presented to change this deadlock.

4.4. ***The way forward***

4.4.1. As pointed out by the Commission, the responsibility for proper implementation of the EU environmental *acquis* lies primarily with the Member States. However, there are certainly also important issues at EU level that can hamper or support proper implementation. Smart integration of environmental objectives and other policy fields has to start at EU level with smart and consistent regulation and the earmarking of funds. The greening of the CAP is a good example of that and there are lessons to be learned. More policy coherence for sustainable development at EU level could also contribute to improving environmental performance in EU Member States. The EIR should also be used as a mechanism for obtaining feedback on whether the EU policies or legislation being implemented need to be corrected or updated.

4.4.2. Based on the findings of the first round of the EIR, the Commission offers to facilitate Member States' efforts by setting up a structured implementation dialogue with each Member State, providing tailored support to Member States' experts by their peers in other Member States and discussing common structural issues in the Council. The EESC welcomes these measures — although we have doubts as to whether they will be sufficient to improve the overall quality of Member States' environmental performance.

4.5. ***Structured dialogues***

4.5.1. The introduction of structured dialogues similar to the approach in the European Semester process has already been envisaged in the 7th EAP ([8]). The communication lacks information about the practical arrangements for these dialogues, which should not be left to the discretion of Member State governments. A set of prerequisites for effective dialogue processes should be considered and laid down for all parties involved.

4.5.2. Balanced participation by a wide range of non-governmental stakeholders as well as regional and local authorities must be ensured. They must be invited well in advance and provided with appropriate information in order to be able to prepare their contributions.

4.5.3. In order to be effective, these dialogues must be organised in a result-oriented manner. The results and next steps, the commitments of the participants and timelines should be clearly established and monitored. The 7th EAP mentions 'partnership implementation agreements' between the Commission and the Member States. This instrument should also be considered in the EIR. Commitments can also come from non-governmental stakeholders, such as industry, retail or agriculture.

([6]) EESC opinion on the Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', 7th Environment Action Programme (OJ C 161, 6.6.2013, p. 77).

([7]) EESC opinion on the Market-based instruments towards a resource efficient and low carbon economy in the EU (own-initiative opinion) (OJ C 226, 16.7.2014, p. 1).

([8]) 7th EAP, point 59.

4.6. ***Peer-to-peer support***

4.6.1. The EESC welcomes the organisation of peer-to-peer support between Member States' experts. The rich and long-standing experience of the EU Network for the Implementation and enforcement of Environmental Law (IMPEL) should be taken into account.

4.6.2. The exchange of single experts should be complemented by broader programmes of mutual support between Member States, similar to the Phare 'Twinning' projects which successfully supported adaptation to the EU *acquis* during the 2004-2007 EU enlargement process. The introduction of peer-review programmes should also be considered — similar to the OECD programme of Environmental Performance Reviews ([9]).

4.7. ***Discussion on common structural issues in the Council***

4.7.1. The Commission intends to discuss common structural obstacles to proper implementation in the Council. This would place the issue of implementation on the political agenda. Information is lacking about how this will be arranged.

4.7.2. With the 'greening' of the European Semester, attempts have been made in recent years to use this central governance coordination mechanism between the Commission and the Member States to improve environmental performance as well. This would bring problems in environmental performance directly to the attention of heads of government and would facilitate integrated solutions.

4.7.3. However, the greening of the European Semester has not been very successful so far. The Commission does not want to replace the greening of the Semester process with the EIR. However, in this case the relationship between the Semester and the EIR should be further clarified so as to ensure that the potential of each of these instruments is harnessed in an optimal way.

4.7.4. Discussions during meetings of the Council of Environment Ministers alone will probably not be sufficient. In order to facilitate integrated and cross-cutting solutions, joint discussions with other Council configurations should be pursued, such as joint discussions with the Ministers for Transport or Employment and Social Affairs.

4.8. ***Legal means of legislative enforcement***

4.8.1. The Commission has clarified correctly that the EIR should not replace legal action to improve the implementation of environmental legislation; this does not fall within the scope of the EIR. However, the EIR's more cooperative approach will only be successful if the option of legal consequences and sanctions is applied credibly and effectively. This applies to infringement procedures by the Commission in the event of breaches of environmental legislation, as well as to the legal means by which citizens and civil society hold governments at Member State and EU level accountable.

4.8.2. The EESC would like to remind the Commission and the Member States that certain measures enhancing the enforcement of environmental legislation were included in the 7th EAP and have not been addressed so far:

— extending binding criteria for effective Member State inspections and surveillance to the wider body of Union environmental legislation,

— ensuring consistent and effective mechanisms at national level for the handling of complaints about the implementation of Union environmental legislation.

4.8.3. The EESC will assess the forthcoming Commission communication on citizens' access to justice in environmental matters in a separate opinion.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([9]) https://www.oecd.org/site/peerreview/environmentalperformancereviews.htm

Opinion of the European Economic and Social Committee on the 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Energy prices and costs in Europe'

(COM (2016) 769 final)

(2017/C 345/20)

Rapporteur: **Laure BATUT**

Consultation	European Commission, 17.2.2017
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	127/15/4

1. **Recommendations**

1.1. The European Economic and Social Committee (EESC) would point out that the European 'Energy' package proposes to place 'consumers centre stage' and calls for this concept to be defined and put into practice. Consumers can only play their new role if they can rely on clear texts which provide them with the resources they need to be able to act. The EESC believes that a vision for the future of what the public and European firms have to gain in this enterprise, on a more equal footing with one another, is necessary for the 'energy union' to be a success.

1.2. The EESC feels that acting on energy demand by making the public and professionals more aware of what is at stake (through education and training) can make them responsible for the choices they make and their energy behaviour. Energy efficiency can be entered in energy balance sheets, and can help to reduce consumption and so have an impact on costs, even when prices are increasing. However, energy efficiency alone cannot resolve the problems linked to climate change, security of supply or energy poverty ([1]). Energy efficiency and non-consumption do not in themselves constitute sources of energy.

1.3. The EESC would advocate broadening the review of data in the years to come by including studies on more energy sources and recommends taking an interest in three kinds of energy consumption: household, industry and service industry consumption.

1.4. The report should also contain an assessment of responses to the demand for energy so as to find out the rate at which needs are met at sustainable prices (TFEU Article 14).

1.5. The EESC recommends that the report look into the resources firms and/or consumers spend on R & D and on putting into practice the results of research into energy storage possibilities; this should be reflected in the price of energy and the cost of funding networks.

1.6. The cost of environmental damage should be assessed and the information easily accessible to all parties.

1.7. The EESC recommends that a glossary be included at the beginning of the Commission's two-yearly reports on energy prices and costs, so as to ensure that they can be understood by all consumers.

([1]) EESC opinion on the 'Clean Energy for all Package', OJ C 246, 28.7.2017, p. 64.

1.8. Also for the purposes of transparency, the Committee would ask that the Commission add an information sheet per Member State studied, setting out five points of reference for each energy source:

— the annual gap between wholesale and retail market prices;

— the 'raw material', 'network' and 'tax' components of consumer prices;

— the profit rate secured every year by the firms in the value chain, especially by national suppliers;

— the percentage and breakdown of European aid to states and firms; and

— the share of regulated tariffs and social tariffs in all retail prices.

2. **Introduction**

2.1. In 2014, the European Commission drew up an initial report on the prices and costs of energy in the European Union (EU); the shortcomings in the data compiled at the time led it to propose that a regulation ([2]) be drawn up on European statistics on gas and electricity prices.

2.2. The goal is to check the state of progress with the internal market for energy, which is not yet complete, and to help devise measures to boost energy efficiency and energy supply security in this area of shared competence.

3. **Summary of the Commission's report**

3.1. The Commission report in hand is therefore the second one on this subject. It assesses the energy price situation in the gas, electricity and oil product sectors and the consequences thereof for households and industry; it also emphasises the EU's strategic policies for achieving the energy union.

4. **Electricity prices**

4.1. The Commission mentions requirements for influencing electricity prices: improving energy efficiency and pursuing the use of alternative energy sources, in which the Union aspires to be world leader.

4.2. In fact, EU Member States' net imports of electricity from fossil fuels have increased, as has their dependence on these imports; this has rekindled the tricky debate on shale oil and gas.

4.3. Wholesale electricity prices have fallen regularly since 2008 and have converged in the internal market, and this has triggered a drop in coal and gas prices. However, many country-specific factors have prevented this fall in prices passing through to retail prices, which continue to rise: the **average price for households** has gone up by 3,2 % in the same period:

— the 'energy' component fell by 15 % between 2008 and 2015;

— the 'network' component rose by 3,3 % per annum during this period;

— The 'taxes and levies' component, which breaks down into 10 sub-components ([3]), including VAT, social tariffs, employment, compensation, security of supply, concession fees, etc., rose by 10 percentage points, from 28 % to 38 % of the price.

4.4. **The price of electricity for industry** went up by less: by between 0,8 % and 3,1 % per annum from 2008 to 2015. 'Large' energy consumers were able to obtain modified tariffs.

4.5. The Commission points out that there are **quite considerable disparities between Member States**, varying by a factor of up to three for households, due to the 'taxes and levies' factor (5 % in Malta, 59 % in Denmark).

4.6. On average, electricity in Europe is more expensive than in the United States, but much cheaper than in Japan.

([2]) OJ L 311, 17.11.2016, p. 1.
([3]) COM(2016) 769 final, p. 6, footnote 8.

5. **Gas prices**

5.1. Gas constitutes 23 % of EU primary energy consumption, 15 % of which fuels electricity production; this represents 'a third of both households' and industry's final energy needs'.

5.2. The EU is 69 % dependent on gas imports and on the few suppliers that there are, so it finds itself forced to follow trends in world price fluctuations.

5.3. Wholesale prices have fallen by 50 % since 2013, amongst other things because of weak global demand, American production of shale gas and the fact of gas prices being indexed to oil prices.

5.4. Retail prices have increased by 2 % per annum **for households** since 2008. Here, too, the 'taxes and levies' component is sizeable and has increased by 4,2 % per annum, which, together with network costs, explains the considerable disparity between Member States, where the highest price (in Sweden) is four times the lowest (in Romania).

5.5. For **industry** and the 'large' industrial consumers, prices have fallen, and it is the 'energy' component that is the most important in price formation, hence the pass-through of wholesale to retail prices, allowing greater convergence in the internal market.

5.6. Globally, Europe's convergence is average, having displayed a downward trend since 2013, although remaining above American and Russian prices.

6. **Oil prices**

6.1. Crude oil prices declined by 77 % from May 2014 to January 2016 — in the space of 19 months — and then rose again, remaining at half of 2014 price levels.

6.2. **Retail prices** were affected to a lesser extent because the euro depreciated in relation to the dollar, and taxes and levies still represent a large proportion of the price.

The Union has set minimum rates of excise duty ([4]), but Member States generally opt to exceed them: in 2015 **taxes** accounted for 63 % of the average retail petrol price and 57 % of the diesel price, with disparities between Member States.

6.3. In short, the prices of the three energy sources have fallen since the previous report and the drop has passed through to the wholesale price. The fall has also passed through to the retail price for petroleum products, while prices for gas and electricity have increased due to the rise in network costs and above all in taxes and levies.

7. **Household expenditure on energy**

7.1. For the three energy sources, household **consumption** has remained **relatively stable** since 2008.

The rise in retail electricity and gas prices (excluding transport) has meant that **household energy expenditure has risen**. There are major disparities between Member States in the proportion of resources spent on energy, and poorer households are obviously harder hit: 8,6 % in 2016, as compared to 6,2 % in 2004. Household consumption fell by 4 % over the period.

7.2. The Commission underlines how necessary social measures targeting vulnerable consumers are for combating energy poverty.

8. **Industry energy costs**

8.1. For 14 energy-intensive industrial sectors, energy costs for industry **fell** between 2008 and 2013, and in recent years, the energy cost share of production costs has averaged at between 5 and 10 %. This is due to the fall in energy prices for large consumers, tax exemptions and reductions, but not especially to energy efficiency measures.

8.2. The Commission deems the Union's economy not to be highly energy intensive in global terms and that a competitive and properly functioning energy market should deliver the energy that households and industry need in the most cost-effective manner, avoiding inflationary effects and without government subsidies which unjustifiably distort the market: EUR 113 billion spent in 2012, of which EUR 17,2 billion were direct subsidies; EUR 263 billion in taxes collected in 2014, equivalent to 1,88 % of EU GDP.

([4]) OJ L 283, 31.10.2003, p. 51.

9. **General comments**

9.1. Energy is a core element for economies and households. Energy consumption is responsible for CO_2 emissions, which are detrimental to the climate and living beings. The Union has begun the transition to a low-carbon economy. Understanding the mechanisms for costing and pricing energy should be one factor in securing a better transition and combating energy poverty ([5]).

9.2. The Commission report shows that there is no *one single* energy price in the Union, but *several* prices for the different energy strands, which vary in line with geographical location, national practice, and the time and manner of consumption.

9.3. An Energy Price Monitor (European Climate Foundation) for households is published in several European countries, and the Commission, for its part, has been publishing its own reports for two years.

10. **The various strands**

10.1. Oil, coal and gas, which provide the bulk of world energy consumed, together with biomass, nuclear power and electricity, can neither be stored nor transported to the same extent:

— oil can be transported easily: its price may be homogeneous in broad geographic areas;

— gas has to be liquefied: it requires costly infrastructure supported by a variety of entities;

— electricity, a product 'derived' from other sources of energy, cannot be stored, requires production and transportation infrastructures, and its end costs are different for users and for industry.

10.2. Energy prices have an impact on a sector's competitiveness, depending on the levels of energy directly consumed and those of energy consumed indirectly at an intermediate stage in the production of a good. Low energy costs can have an effect on competitiveness (see American shale gas) without, however, being a structural factor in productivity.

10.3. Many Member States import energy from their Union neighbours or other neighbouring countries: the geopolitical situation has repercussions for security of supply and the price.

10.4. The price per barrel of oil is always quoted in dollars: the exchange rate — and therefore the global competitiveness of the European economy — plays a role in competition and in price formation for end consumers.

10.5. The price that industry and households pay for energy has an impact on global demand. In EU trade, trade in goods mostly takes place within Europe and comprises manufactured goods which are sensitive to variations in energy prices.

11. **Prices and costs**

11.1. ***Price***

11.1.1. Cost or price? In common language, the two terms are often used interchangeably. The Commission report [COM(2017) 769] would have been clearer if it had started with this point.

11.1.2. The more obvious one of the two is *price*. Price is the expression of the exchange value of one unit of an energy good or service. In a completely 'free' market, this would be the point of equilibrium between supply and demand.

11.1.3. In a sophisticated world market, there are as many prices as there are markets. And at each stage in a transaction, external factors will have an influence (externalities). Then Member States' internal policy factors come into play, such as the structure of a sector, taxation, climate, households' purchasing power, industrial competitiveness, etc.

11.1.4. The energy union could, while respecting the subsidiarity principle, smooth out these factors which contribute to differences between Europeans and unfairness.

([5]) OJ C 341, 21.11.2013, p. 21.

11.2. ***Costs***

11.2.1. They correspond to the price of raw energy materials needed for the production of a good or a service and for making this available to consumers ('Les prix et les coûts des sources d'énergie' ['Prices and costs of energy sources'], Jean-Marie Martin-Amouroux, 20.02.2017). There can be quite significant differences in costs, depending on the production chain of the type of energy chosen (SWD/2016/420 final).

11.2.2. For SMEs, which make up 90 % of the EU's economic landscape, even if they are not listed as large consumers of energy, the cost of the energy they acquire and that of the energy incorporated in the primary products they process may have a significant impact on the cost price of goods produced and on their sale.

11.2.3. Moreover, the cost of energy is not a factor that can be easily changed; it is expenditure that cannot be avoided. When it is a major factor in production costs, it affects the sale price, consumers' purchasing power is affected and it can slow down growth (as is the case with cars). For industry, sources of energy are still substitutable: if oil becomes too expensive, they move over to gas, etc.

11.2.4. The question of energy costs brings us to matters of European diplomacy and to the definition of a European industrial policy, and not just for those industries in energy-hungry sectors.

12. **Specific comments**

12.1. The report in hand is part of a package entitled 'Clean Energy for All Europeans' ([6]), in which the Commission takes stock of energy prices and costs in Europe. The EESC regrets that the prospect of energy transition is not asserted more firmly in the package. It would be easier to understand the differentiated costs flowing from the different sources of electricity production. The energy content of a good depends on the whole chain of production and energy costs. Industrial competitiveness is at stake here, and more: industries' capacity to create sustainable jobs and conserve the environment.

12.2. The various European texts on this subject have meant that the EU has become a common point of reference in countries' efforts to reduce greenhouse gases, for energy efficiency and for the promotion of renewable energy sources. However, the choice of the energy mix is up to Member States. There are differences between them, particularly in terms of taxation and their approach to combating climate change. This situation is responsible for dumping, which is what makes governance of the energy union so difficult ([7]).

12.3. An approach based on competition only, reflecting the mantra of the 1980s, does not take into account either the worldwide realities of the sector or the policy shift in the Union: consumers have been placed at the centre of the system, and we can no longer bemoan market failings or the extensive range of public intervention to support the energy market — which are in fact little more than subsidies — or the sizeable tax base for public revenue. This could be called redistribution compensating for the social cost of energy, which has become intolerable for many people.

12.4. The rise in energy prices, particularly in electricity prices, can cause jobs to be relocated. It is vital that public policy be stable for employees, firms and investors.

12.5. There are still patent inequalities between people and between Member States. These exist between firms too, between large consumers and the others, and between individuals and firms. Liberalisation of the European market, which put an end to national monopolies in order to introduce competition for the benefit of consumers, has given rise to increases in final gas and electricity bills and has failed to prevent the creation of non-competitive oligopolies. The Committee is of the view that the notion of equality between 'consumers', also known as equalisation, could be adopted as a European-level concept.

12.6. One Commission communication deals with efforts to accelerate clean energy innovation ([8]), The 'energy system has reached a tipping point', where 'renewables are increasingly cost-competitive'. The European Council has adopted measure on decarbonising the economy and securing an integrated European energy market. Renewables contribute to a growing share of electricity production, and energy intensity rates — which measure energy consumption in relation to economic performance — are falling, particularly in developed economies.

([6]) COM(2015) 80 final.
([7]) EESC opinion on Energy Union Governance (OJ C 246, 28.7.2017, p. 34).
([8]) EESC opinion on Accelerating clean energy innovation (TEN/619), not yet in the Official Journal.

12.7. The communication in hand is putting forward a legislative package centred on three major objectives:

— making energy efficiency a priority;

— becoming the world number one in renewables; and

— stipulating fair treatment for consumers.

12.8. The Union's approach to price- and cost-related questions should change radically, take the situation of vulnerable consumers into account and stipulate to what extent public policy has to finance renewable energy sources so that households are not too hard hit by the resulting tax measures. The Commission refers to a more intuitive regional approach, closer to consumers' concerns, in order to progress towards a single market.

12.9. It underlines how necessary social measures benefiting vulnerable consumers are for combating energy poverty. This is all well and good, but these measures are not funded from the profit margins of the large companies in the energy sectors, but by other members of the public and their taxes, and from Member States' budgets.

12.10. The Committee would highlight the fact that the report provides a great deal of information collected from many players, but does regret the fact that this **transparency**, both on prices and on costs, is not reaching households: for renewables, network costs can make up 50 % of the price (Report from the *Centre d'analyse stratégique*, 2012, France). Sound statistics, as the proposal for a Commission regulation (referred to in footnote 1) is proposing to collate, are necessary for consumers to be able to make choices and decisions. They should include the cost of damage to the environment and be easily accessible to those for whom these measures are being taken and who wish to understand why and how they obtain energy and pay for it.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

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 1008/2008 on common rules for the operation of air services in the Community'

(COM(2016) 818 final — 2016/0411(COD))

(2017/C 345/21)

Rapporteur: **Jacek KRAWCZYK**

Consultation	European Parliament, 16.2.2017
	Council of the European Union, 13.2.2017
Legal basis	Article 100(2) of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	135/1/1

1. **Conclusions and recommendations**

1.1. The proposed amendment to Regulation (EC) No 1008/2008 (the proposal) is limited in scope to Article 13(3)(b). The amendment, if approved, would preface this paragraph with the words 'unless otherwise provided for in an international agreement concluded by the Union …'

1.2. The Committee endorses the Commission's intention to seek to resolve a conflict in the legislation between Article 13(3)(b) of Regulation (EC) No 1008/2008 and the EU-USA Air Transport Agreement (ATA) on wet-lease agreements. Eliminating inconsistencies and limitations on wet-lease agreements which are not reciprocal, or in those which are not provided for in the ATA and remain unclear, would limit opportunities for EU airlines and possibly give rise to excessive and divergent interpretations. The Commission should take seriously concerns that undue wording could actually deviate from the intentions of the EU Aviation Strategy and pave the way for new unintended hybrid business models.

1.3. Given the highly technical nature of the proposal and its limited scope, and in view of further proposed broader clarifications of Regulation (EC) No 1008/2008 on Public Service Obligations (PSOs) and ownership and control provisions, singling out this specific amendment might seem questionable. However, the Commission had already set aside the time-limitation on the wet-lease arrangements in its Evaluation Roadmap ([1]) for separate scrutiny. Furthermore, specific aspects of the ATA and the protracted discussions on this issue at the ATA Joint Committee (Joint Committee) mean that it does warrant a distinct resolution. Finally, this issue is of such a specific nature that it should not be dealt with in the same context as politically complex issues such as, for example, ownership and control. Addressing this proposed amendment on a standalone basis is therefore justified. We note the Commission did not consider an impact assessment to be necessary on this occasion. However the EESC recognises concerns over the proposal raised by trade unions and other civil society organisations.

([1]) Evaluation of Regulation (EC) No 1008/2008 on common rules for the operation of air services in the Community, dated 21 November 2016 (DG MOVE/Unit E4, see chapter C1).

1.4. The EESC expresses concern that, without further clarifications of the proposed introductory sentence to Article 13 (3)(b), negotiators and possibly stakeholders could construe the amendment as opening the door for abandoning restrictions on 'extraordinary circumstances' as a matter of policy, thereby impacting not only the intended negotiation of a new wet-lease agreement with the USA, but with any given third country as well. The EESC is confident that if the highly restrictive nature of the suggested amendment both in terms of scope and substance is clarified in an appropriate manner, inclusive consultations with the broadest possible range of stakeholders, both from industry and civil society, will ensure that unintended consequences of the amendment to Article 13(3)(b) of Regulation (EC) No 1008/2008 can be avoided and the discussions limited to the EU-USA wet-lease agreement. It is important that the Commission, when consulting stakeholders, ensures that all relevant parties including the recognised social partners and other civil society organisations are included.

1.5. The EESC is looking forward to the more extensive future review of Regulation (EC) No 1008/2008 that has been announced and underlines the need for an inclusive consultation with the broadest possible range of stakeholders, both from industry and civil society. The EESC is prepared to actively promote such a debate.

1.6. Given the absence of reliable data from both sides on the current use of wet leasing, when actually negotiating a wet-lease agreement, both sides should ask for all wet-leases to be registered with the Joint Committee for statistical purposes. This register should possibly include records of social conditions to ensure not only fair employee working conditions but also travellers' rights, which might be influenced.

2. **Regulatory context**

2.1. The proposed amendment to Regulation (EC) No 1008/2008 is intended to be limited in scope to Article 13(3)(b) and ATA. This paragraph in its current wording stipulates that, in addition to meeting all safety standards equivalent to those imposed by the Community ([2]), a Community carrier's right to wet-lease aircraft registered in a third country is limited to meeting seasonal capacity needs ([3]) or overcoming operational difficulties ([4]) or is limited in situations of exceptional need to a period of seven months which can be renewed for a further seven months ([5]). The amendment, if approved, would preface this paragraph with the words 'unless otherwise provided for in an international agreement concluded by the Union …'. The suggested wording therefore does not impact on the rights of the licensing authority, nor the essential requirement to meet the Community's safety standards.

2.2. The EU's only international agreement with a third country of relevance in this context is the ATA with the USA. It should be clarified through Interpretative Guidelines that the rationale for the amendment as suggested is to remedy conflicting legislation in Article 13(3)(b) and the ATA. If this is clarified accordingly, then the suggested amendments would therefore only have relevance for one specific international air service agreement, and not contain basic changes to the policy and regulations covering wet-lease arrangements in general.

2.3. As the Commission points out in its Explanatory Memorandum to the proposal, the initiative has a very specific aim and a limited scope; therefore, the Commission is not proposing an impact assessment. Given the concerns about possible excessive interpretations of the suggested amendment, and resulting discussions with the USA and possibly other third countries in the medium-term, the Commission should consider substantiating its proposal not to include an Impact Assessment. It needs to be absolutely clear that the impact of the suggested modification to Regulation (EC) No 1008/2008 would result from the content of the commercial wet-lease agreements between the parties, and not from the proposed legislative change.

([2]) Art. 13(3)(a), Reg. (EC) No 1008/2008.
([3]) Art. 13(3)(b)(ii), Reg. (EC) No 1008/2008.
([4]) Art. 13(3)(b)(iii), Reg. (EC) No 1008/2008.
([5]) Art. 13(3)(b)(i), Reg. (EC) No 1008/2008.

2.4. The Commission's Roadmap on the 'Establishment of unrestricted wet-lease agreements between the EU and the USA through a wet-lease agreement between the parties' ([6]) highlights the background for this legislative proposal, which aligns the agreed principles of cross-border transferability of aircraft between the EU and the USA and thereby overcomes a stalemate in the discussions between the EU and the US in the Joint Committee.

2.5. The proposal meets the Community airlines' industry requirements. The ATA that was signed in 2007 provides for an open wet-lease regime between the two parties. The time to overcome operational difficulties and to deal with seasonal capacity constraints is limited by terminology; the limitation of two periods of 7 months for 'exceptional needs' can be seen in a historical context ([7]), but appears arbitrary and undermines commercial opportunities to redeploy aircraft efficiently to new operators. Given that the usual term of a typical wet-lease agreement is 36 months, the 7 + 7 months limitation imposes legal and commercial uncertainties on EU carriers.

2.6. The Commission claims that the proposed amendment does not have a significant impact on labour requirements. Wet-lease agreements in general are a highly sensitive subject for labour organisations. The cost constraints imposed by non-EU carriers based in countries with low social standards and subsequent cost bases — and even differences in social legislation within the EU — have made wet leasing a key area for constant monitoring by the social partners. If a Pandora's Box were to be opened by unintended and unfounded interpretations of this amendment, the wet-lease issue could quickly escalate into a major issue, and instead of remaining a 'technical correction' of conflicting legislation. Labour requirements will thus have to be evaluated in light of future developments, both in the EU-US talks on a wet-lease agreement under the umbrella of the ATA, and in subsequent market practice.

2.7. By referring to international agreements, the proposed wording of the amendment paves the way for a specific agreement on wet leasing between the EU and the USA without having to reopen negotiations on the whole of the ATA. The option pursued by the Commission is therefore one which will resolve conflicting provisions in a targeted, efficient and swift manner, as well as re-establishing planning stability for the commercial parties and avoiding possible retaliation from US parties. However, this can only be achieved if the Commission clarifies appropriately that the amendment is designed to enable negotiations with the USA by resolving a conflict in the legislation relating to that one country.

2.8. The EESC has commented positively in the past on the ATA and its implementation. As stated in the previous EESC opinion, 'an Open Aviation Area concept (…) permits wet leasing of aircraft under non-discriminatory, transparent conditions' ([8]).

3. **Assessment of the proposal**

3.1. The Commission has assessed various options for resolving the issue ([9]).

3.1.1. Amending the existing ATA would be very time-consuming. Past experience reveals that the Parties to the ATA agreed to apply the ATA provisionally as of March 2008; the Council's decision following ratification by the Member States' Parliaments was taken in 2016. It would be disproportionate and unjustifiable, given the opportunities the industry might lose, if such a tedious procedure were to be unravelled for the purpose of amending the wet-lease provisions.

3.1.2. The EU cannot legally make US-specific derogations from the provisions of Regulation (EC) No 1008/2008 to meet EU and US requirements with respect to wet leasing. Member States are bound by all the provisions of EU Regulations.

3.1.3. A joint agreement on reciprocal restrictions, although clear, would contradict the spirit of the Agreement and harm the airline industry's commercial interests.

([6]) Roadmap dated 7 March 2016 DG MOVE/E.1.

([7]) The limitation was introduced in Regulation (EC) No 1008/2008 to avoid the ambiguity of preceding EU Regulations (EEC) No 2407/92, (EEC) No 2408/92 and (EEC) No 2409/92 (which (EC) No 1008/2008 replaced) on the exact meaning of exceptional needs.

([8]) OJ C 306, 16.12.2009, p. 1.

([9]) EC Roadmap for the Establishment of unrestricted wet-lease arrangements between the EU and the US through a wet-lease agreement between the parties, page 7.

3.1.4. The preferred solution, as underscored repeatedly by stakeholders, is a wet-lease agreement between the EU and the USA which would fully comply with the ATA and not contradict national or EU provisions. All issues pertaining to the details of such an agreement have been under discussion since January 2014. It is to be expected that consensus could be achieved rapidly. There is an understanding that such a technical agreement would be based on current traffic rights, as per the ATA, and not create new rights or alter existing ones. The Commission should clarify appropriately that the intention of the amendment is not to change, modify or add further traffic rights between the EU and the USA. Such an agreement would, however, necessitate an amendment to Article 13 of Regulation (EC) No 1008/2008, which established a 7 + 7 month limitation for wet-leases on EU carriers wet leasing from non-EU airlines. The intended wording fully complies with the requirement to reflect that Article 13 should only apply to the extent that the conditions contained in 13(b) are not otherwise provided for in an international agreement.

3.2. The Commission's evaluation concludes that the proposed action is appropriate, proportionate and legally feasible, as well as being in the interest of the Member States and the EU industry, with no downsides for any stakeholder.

4. **Background**

4.1. The Commission's proposal deals only with wet leasing. Wet leasing is usually a means of providing capacity during peak traffic seasons, annual heavy maintenance checks and overcoming ad hoc operational difficulties within the fleet. A wet-lease is a leasing agreement in which one airline (lessor) operates the flights providing the aircraft and crew to another airline (lessee). The aircraft is operated under the air operator certificate and therefore under the operational responsibility of the lessor.

4.2. Wet-lease arrangements are considered industry-wide to be an asset in operational flexibility which should not be arbitrarily restricted. Along with the EU airline sector and most, if not all, Member States, the US airline sector and the US administration expect a resolution to the issue for current and future operations of wet-leased aircraft under the bilateral relationship.

4.3. The Commission's proposal should not modify the policies or principles pertaining to wet leasing. It should aim solely to resolve a regulatory conflict between EU Regulation (EC) No 1008/2008 and the ATA.

4.4. The EESC strongly recommends that the Joint Committee gather statistics on the wet leasing that takes place under ATA. This register should possibly include records of social conditions to ensure not only fair employee working conditions but also travellers' rights, which might be influenced.

5. **Specific comments**

5.1. The EESC accepts the Commission's rationale for amending Regulation (EC) No 1008/2008 to allow for unrestricted wet leasing agreements on reciprocal basis between EU and US carriers on international flights under the ATA. However the proposed new wording must not permit — neither under the ATA nor under any future air traffic agreement with a third country — a long-term wet-lease arrangement for reasons other than those included in Article 13 of the Regulation. The EESC agrees that the proposal relating to the ATA is a more flexible arrangement — on a reciprocal basis — for wet leasing during periods of typically up to 36 months. Such arrangements would have no impact on social conditions. However, the EESC would be very concerned if the proposed amendment to wet-lease restrictions was used to secure longer-term sub-contracting arrangements to drive down labour or consumer conditions/rights. We therefore urge the Commission when concluding the terms of the envisaged EU-US wet-lease agreement to include wording that prohibits such practices. The proposal must not be interpreted as a means to lease aircraft by airlines, which may either deliberately or accidentally avoid long-term national social legislation.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Building a European Data Economy'

(COM(2017) 9 final)

(2017/C 345/22)

Rapporteur: **Joost VAN IERSEL**

Consultation	European Commission, 17.2.2017
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
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Plenary session No	527
Outcome of vote (for/against/abstentions)	148/0/7

1. Conclusions and recommendations

Conclusions

1.1. The EESC welcomes the Communication 'Building a European Data Economy', which concerns maintaining data as a central and critical enabler of the new economy ([1]).

1.2. The Communication discusses non-personal and/or fully anonymised data. Where data qualify as personal data, the data protection framework, in particular the General Data Protection Regulation (GDPR), will apply.

1.3. The main issue is to build a Europe-based data ecosystem as an indispensable vector of economic and social progress, as well as robust competitiveness in a world that is in the process of radical transformation with strong competitors in the United States and Asia. In order to foster connectivity and storage opportunities, public-private investment in infrastructure is greatly needed across the continent.

1.4. Establishing a data ecosystem requires first of all awareness-building in business, public services, in society and among the Member States. There is a need for greater trust and openness and a willingness among all players to share data.

1.5. The EESC underlines that much more is at stake than legal and practical provisions. European core competences must urgently be adjusted in the context of the current transformation process. Europe is trailing in this strategic field. A pro-active mindset in business is needed to open up to increasing flows of data and develop the ability to process big data. Flexible and more adaptable business models must be put in place.

1.6. Instruments to enable innovation, while protecting the legitimate interests of business and citizens, include EU-wide platforms and workshops, field labs, the creation of hubs of excellence, community-building, 'Factories of the Future',

([1]) Communication 'Building a European Data Economy', COM(2017) 9 final, 10 January 2017. See also the motivational letter of 2 December 2016 from 14 heads of state or government on the free movement of data 'Non-paper on the Free Flow of Data initiative'.

testing grounds, exchanges, application programming interfaces, coaching among companies, model contracts, interaction between science and business, and Joint Technology Initiatives, as well as cPPPs in which the public and private sector take part, for instance in large-scale demonstrators.

1.7. Private equity and a more mature European venture capital market are indispensable.

Recommendations

1.8. The Commission should carry out a precise analysis of the state of play and of defensive attitudes to the free flow of data in the Member States in order to remove unjustified barriers by putting the right legal and technical provisions in place. Removing unjustified barriers to free flow of data should be an integral part of a Europe-wide industrial policy. Opening up of national markets should also be covered by the European Semester.

1.9. SMEs and innovation in particular suffer from data localisation. The EESC strongly supports the Commission's proposal that any data storage in the Member States should be guided by the principle of free movement. The EESC asks for a roadmap and deadlines for opening up national markets. The European Semester should also cover this issue.

1.10. Public research is a very important source of data. The Commission should encourage wider dissemination across Europe.

1.11. As a matter of principle, contractual freedom in the private sector should be respected. A general EU framework for standards is desirable but standards should in no way hamper innovation. Portability should be promoted.

1.12. Liability is a thorny issue: revision of the product liability directive may be required and special legal provisions for machine-to-machine (M2M) may have to be considered.

1.13. The Commission should be invited to give due consideration to aspects of data in various languages in the free flow of data and access to data.

1.14. The human factor is crucial. EU programmes must be put in place to prepare employees and young people for future developments. Education and on-the-job training are paramount in order, for example, to meet the overwhelming need for more data analysts.

1.15. These processes must be properly monitored in business, as well as by the Commission and at national level, so that a real European level playing field takes shape.

2. **Context**

2.1. There is a distinction between personal and non-personal data — personal-related and non-specific mass data. Both are part of the digital market but target different areas and are covered by separate EU regulatory provisions ([2]).

2.2. The communication on big data ([3]), a follow-up to the communication 'Towards a thriving data-driven economy' ([4]), discusses non-personal or anonymous data.

2.3. Personal and non-personal data overlap in specific cases due to possible interactions between the two fields and the interaction between the private and the public sector. Take the health sector, for instance, where the personal interests of patients, business interests and the public interest partly overlap.

2.4. The changes are multifaceted and unpredictable. Ongoing processes relating to the vertical and horizontal ramifications of data are generating ever more opportunities to collect, analyse and process data. Big data is a crucial building block for a future 'customer-driven economy'.

([2]) OJ C 71, 24.2.2016, p. 65.
([3]) Communication 'Building a European Data Economy', COM (2017) 9 final, 10 January 2017.
([4]) COM(2014) 442 final, 2 July 2014 (OJ C 242, 23.7.2015, p. 61).

2.5. Data has considerable consequences for production lines, interaction of services and manufacturing, and value chains. It reinforces the fragmentation of value chains.

2.6. Growing numbers of start-ups and scale-ups illustrate the key role of data. SMEs are very much dependent on a conducive international (European) context and on financing.

2.7. A customer-driven economy is the result of big data, machine-to-machine (M2M) communications and the free flow of data. It generates sophisticated products and services. All sectors and all levels within companies are adapting to these changes. But there are considerable differences between sectors, as well as between big and small companies, and different positions of companies in value chains, varying dependencies among companies, different outlooks in manufacturing and servicing, and consequently a variety of views among businesses.

2.8. If the EU fails to realise the full potential of digitalisation, a major part of EUR 605 billion of added value will be at risk in the run-up to 2025. On the other hand, the upsides are even more impressive: a study for the German Federation of Industry projected that EUR 1,25 trillion of additional value could be created in Europe by 2025.

2.9. Similar processes are under way globally. Comparative studies prove that the EU is lagging in this field, despite its current outstanding economic performance worldwide in a number of sectors.

2.10. There are substantial cultural differences between American and European business. In Europe, the main driver of data is mostly in parts of the manufacturing industry ([5]). By contrast, the big data industry in the United States is mainly driven by service and data-based companies, the so-called GAFA, and, since recently, NATU ([6]). The United States has a large and dynamic internal market and excellent financial conditions. Business has a risk-taking mentality. In addition, US businesses have at their disposal fast networks and huge storage capacity. Likewise, the number of big Chinese platforms is steadily rising.

2.11. While Europe is trailing, the EC communication remarkably does not refer to Europe's main international competitors, although they are the main reason why Europe must urgently develop its output and policy coordination. In the US and China, national goals were defined quite recently with a view to gaining and ensuring a dominant economic position worldwide. They are, followed by others, deliberately supporting and promoting big data as a tool to consolidate the competitive edge of American-based and Chinese companies. In the United States, the Obama administration adopted a very clear approach to the American Third Industrial Revolution, the equivalent of Industry 4.0 in the EU, as a basis for reinforcing American competitiveness and economic dominance. An *America first* strategy will probably intensify this policy. Further development of big data must also be considered a geopolitical factor here.

3. **Free flow of data between Member States**

3.1. Among the reasons why the 'European digital economy had been slow in embracing the data revolution compared with the USA and also lacked comparable industrial capacity' ([7]), the Commission points rightly to the link between barriers to free movement of data and trailing European market development.

([5]) The Digital Transformation of Industry, Bundesverband der Deutschen Industrie, 1 February 2015.

([6]) GAFA stands for Google, Apple, Facebook and Amazon, which have a total combined turnover of USD 468 billion. NATU stands for Netflix, Airbnb, Tesla and Uber. GAFA currently has a combined market value of USD 2,3 trillion. This almost matches the market value of the top 50 EURO STOXX companies, or EUR 2,9 trillion. This fact underscores the financial power of the big data/platforms business and its enormous value creation.

([7]) COM (2017) 9 final, p. 2.

3.2. While US data protection is mainly based on the principle of deliberate provision of data and — when it comes to private data — falls within the sphere of consumer protection, most European countries have data protection laws in place and have often enshrined data protection as a constitutional right. On the one hand, Europe's data security approach can be seen as a competitive advantage; on the other, the using and processing of big data seems to be so limited that it is hindering innovation.

3.3. There must come an end to market fragmentation. The Commission must be mandated to examine how and to what extent divergences in approaches between Member States must be removed in order to narrow differences in development and approaches.

3.4. Given the ever-increasing amounts of data due to the 'internet of things' (IoT), 'Factories of the Future' and autonomous connected systems, measures on a European scale are especially necessary and of strategic importance. The legal and technical basis for free flows of data across Europe is a cornerstone for building a vast and robust digital economy ([8]).

3.5. An EU industrial policy must be put in place. Unjustified barriers to the free flow of data must be abolished. An internal market is incompatible with 28 different industrial policies, each with its own tools and objectives. This is not different in the digital age ([9]). The Commission and governments should therefore act as moderators, with a long-term vision defining the playing field and framework conditions on the basis of public-private partnership ([10]).

3.6. The Commission rightly points to arguments used by national authorities to restrict flows of data. Localisation measures that effectively reintroduce digital 'border controls' ([11]) must be replaced by a satisfactory European framework.

3.7. The EESC recommends a detailed analysis be conducted of the current state of play in the Member States and the huge discrepancies that exist in Europe. Leading-edge manufacturing in Germany is most advanced in data production, followed by advanced manufacturing clusters in other — big and small — countries. On the other hand, service-based big data in France and the UK, and some smaller economies, for example, is also growing strongly.

3.8. Free flow of data is seriously hampered by Member States' defensive attitudes. To date at least 50 legal and administrative barriers have been identified. There are also substantial differences in public procurement requirements between the Member States. Different cultures and traditions prevail. National industrial policies generate different legislative environments; there is no common industrial framework. Mistrust around non-personal data may also be engendered by different approaches to the way personal data must be legally treated. Defensive attitudes in government and in business in various countries tend to reinforce each other.

3.9. By contrast, only enhanced trust between Member States will create a single market evolving as a safe haven for data and a fertile ground for innovation.

3.10. National objectives such as promotion of innovation and progressive creation of added value are best served by creating a common market for big data, ensuring secure data storage by state-of-the-art ICT management on a large scale, and pooling of potentialities.

3.11. Besides having a counterproductive impact on transparency and hampering innovation, data localisation has a negative effect mainly on SMEs with cross-border operations. The EESC therefore strongly supports the Commission's proposal that 'any Member State action affecting data storage or processing should be guided by a principle of free movement of data within the EU' ([12]).

([8]) See also the 2016 letter of 14 governments on this issue 'Non-paper on the Free Flow of Data initiative'. Is it a bad omen that none of the big countries except for Britain signed the letter?

([9]) OJ C 71, 24.2.2016, p. 65 and OJ C 389, 21.10.2016, p. 50.

([10]) FME-CWM, a Dutch association for the technology industry, recommends a ministerial top team to coordinate digitalisation in the Netherlands, 16 March 2017.

([11]) COM (2017) 9 final, p. 5.

([12]) COM (2017) 9 final, p. 7.

3.12. The EESC insists that the issue of opening up national markets to Europe-wide data dissemination should also be covered by the annual European Semester, including the country-specific recommendations. Openness of public data across Europe will complete the single market and create a level playing field. The GDPR helps to create common ground ([13]).

3.13. Regions and urban areas also have dynamic data at their disposal. Regional platforms with public and private players will foster regional economies and can strengthen regional clusters in the international context. Regions and cities should be persuaded to act in an open spirit. Here too the EU can play an important role in exchanging best practice and providing state-of-the-art know-how to regional entities.

3.14. Public research is a very important source of data. As taxpayers' money is involved, it is important to ensure that such data is more widely distributed. SMEs in particular can benefit from reservoirs of data resulting from research.

3.15. Such public data often interferes with privately run operations. Contractual arrangements with the commercial sector obviously entail a different treatment of data. Examples include non-personal data produced in transportation, in the energy sector, by satellites, in land registers and in other public services.

3.16. Given the deplorably wide discrepancies in Europe, the EESC points out that an unrestricted flow of data across Europe could also contribute to convergence between national economies, which is of considerable interest for both the more advanced economies and those lagging behind. Public administrations can be asked to support and to coach each other to put the right mechanisms in place.

3.17. The Communication does not discuss aspects of data in various languages related to the free flow of data or data access. As language data could also be only machine-generated, in the view of the EESC the Commission should intensify its efforts to support research and innovation, and deployment for automatic translation of data expressed in various languages in all official EU languages.

3.18. The EESC underlines the need for a holistic approach and to foster a common sense of purpose in the Competitiveness Council and beyond in order to create mutual trust. Trust is essential. Opening the European market to the free flow of non-personal data also has a deep political impact. A wide variety of issues arise here, such as strengthening the basis of the single market and innovation in big and small companies, improving prospects for economic growth and jobs, promoting economic convergence between Member States, and competitiveness.

4. **Data access and transfer of data in the market**

4.1. The communication looks at a large number of possible interactions between companies of all sizes in the field of data (business-to-business, or B2B). Public services should also be taken into account. The diversity of data is endless and its development therefore unpredictable.

4.2. The Commission rightly prioritises the objective of access to large and diverse datasets by market players of any kind. It highlights many obstacles to free access and notes that 'exchange of data currently remains limited' ([14]).

4.3. The reasons for companies keeping data for themselves are self-evident. Products and services are produced on the basis of company production schemes or, more broadly, company strategies, which are not shared with others. Contractual freedom must be respected and ensured as a matter of principle ([15]).

([13]) General Data Protection Regulation, May 2016 (OJ C 229, 31.7.2012, p. 90).
([14]) COM (2017) 9 final, p. 10.
([15]) See also Orgalime's comments on the upcoming European Commission initiative on 'Building the EU Data Economy', 21 September 2016, and 'DIGITALEUROPE's Initial Views on Building the European Data Economy Communication', 14 February 2017.

4.4. The picture is very diverse. Large companies often have their own research at their disposal, with a broad panorama of possible applications. Smaller companies have by definition limited scope. But in all cases the arguments for sharing data with other companies are overwhelming, with direct advantages for all companies involved.

4.5. As a rule, intellectual property rights do not cover M2M data. This being the case, EU law is in force for specific applications that need legal protection. In other cases, this data and the way in which it is handled, remains subject to contractual solutions, for instance ownership of data and prices.

4.6. The legal framework on data should ensure protection of rights of companies to the same extent as the protection of physical goods.

4.7. There is little need for new legislative measures. Existing regulation covers most areas and can, if needed, be redrafted according to the special requirements of the digital era.

4.8. Given the current dynamics and the unpredictability of developments, an eventual general framework of standards should in no way hamper innovation. Existing standards often limit innovations, and new standards can hardly be set without better knowledge of developments. Thus new ways to regulate are necessary. Portability should be promoted.

4.9. Liability is a thorny issue ([16]). Some directives are in place, and as the scope of technology broadens they may have to be revised, for instance to make the Product Liability Directive also fit for the IoT and for Artificial Intelligence. M2M may require special legal provisions on liability. Taking into account the large variety and continuously changing relationships between companies in respect of data, the EESC believes that existing regulation is for a large part satisfactory. Any new regulation should foster innovation and certainly not hinder it.

4.10. A larger flow or transfer of data can be achieved via contracts among businesses, by making use of existing or new platforms and workshops, preferably on an international basis, application programming interfaces ([17]), and by stepping up targeted relations between science and companies. Science should also be represented in platforms and workshops. Many of these are already in place for Industry 4.0, for instance regional field labs. Dissemination of data produced by research centres and financed by public funds should be made mandatory ([18]).

4.11. The EESC favours 'testing grounds' and open market places for data trading to encourage those who are leaning towards greater openness. Areas of common ground can be identified and consolidated. One organisation should be made responsible for identifying needs for testing fields and facilitate fruitful and high-quality cooperation between the agencies involved.

4.12. The EESC draws attention to a very useful initiative launched in 2014 by the Commission and the Big Data Value Association ([19]). A recent statement by both partners highlighted four major instruments to be implemented by PPP:

— large-scale demonstrators ('lighthouse projects') in industrial sectors,

— data integration and experimentation ('innovation spaces'),

— technical projects in key areas,

— networking, community-building and policy support.

([16]) COM (2017) 9 final, pp. 14 and 15.
([17]) COM (2017) 9 final, p. 12.
([18]) The Walloon region is planning a decree on this matter.
([19]) This initiative brings the Commission, industry and research institutes together in a 'Public Private Partnership (PPP) in order to cooperate in data-related research and innovation, enhance community building around data and to set the ground for a thriving data-driven economy in Europe' (joint statement of the European Commission and the Big Data Value Association).

This is an exemplary approach for further European initiatives. As well as research PPPs, there are joint technology initiatives focused on innovation.

4.13. European model contracts for cooperation could be an option.

5. **Awareness and mindset in business**

5.1. Apart from regulatory and practical provisions, a robust digital economy requires a climate of greater openness in European business. It is, above all, a matter of the awareness and mindset to respond proactively to the paradigm shift.

5.2. The world economy as a whole is in deep transformation. All industries — big and small — must be involved in this process, in which no opposition should be made between existing industries and younger sectors, no opposition between 'old' and 'new'. European core competences must be transformed faster and more effectively, and all industries must be empowered to take part in that process.

5.3. The process itself is largely bottom-up and thus a matter for the business sector and companies. In addition to valuable tools the Commission presents ([20]) to make markets more sensitive to making proactive adjustments, the EESC points to the need for a change of mentality in large parts of European business.

5.4. Data is a sensitive issue in companies and will be increasingly so in future. Only a limited number of companies are favourable to open data. A list of examples to be set up by the Commission will be useful. Moreover, many companies still wrongly believe that their current sophisticated manufacturing level will guarantee market positions in the future.

5.5. The differences between the US and Europe are striking. Engineering traditions in Europe tend towards a closed mentality. Advanced engineering and a high level of sophistication in handling data are decisive for competitive advantage. The US is highly advanced in B2C (business-to-consumer), and more open minded about free access. Europe is very advanced in high-quality production and B2B, while companies want to remain in control of their own data.

5.6. Serious consideration must be given to whether Europe has the capacity right now to deal properly with big data. In other words, EU companies have to face the challenge that capacity to transform data into business is largely present in the US, which means that data they will have to deal with are stored on the servers of US companies, including the appropriate algorithms to generate new ideas ([21]).

5.7. There is an urgent need for change. The best way forward is to adopt a strategy of preservation of the current strengths of manufacturing, while increasingly opening up to flows of data. The process of change cannot take place overnight, but only by way of incremental steps. European business must find the most effective European way: not fighting against the tide, but changing in an acceptable way ([22]).

5.8. Many European companies have to catch up both by fostering their ability to work with data and by improving manufacturing. Strange as it may sound, in a number of companies openness and transparency with respect to big data should begin by changing internal procedures and internal company approaches.

5.9. A key issue is that of flexible and more easily adaptable business models that gradually replace the traditional landscape of vertically integrated manufacturing businesses ([23]). Such business models must enable companies to operate more effectively in the environment of an ever-increasing number of products and services and full integration of manufacturing and services. Companies must sometimes accept disadvantages in order to gain more advantages.

([20]) COM (2017) 9 final, pp. 11 to 13.
([21]) A prime example is the car industry, the European powerhouse: by contrast with totally new concepts like Google that will not sell cars, but, in interface with the client, mobility and mobility packages.
([22]) See 'White Paper Digital Platforms — Digital regulatory policy for growth, innovation, competition and participation' White Paper, German government, Federal Ministry for Economic Affairs and Energy, March 2017.
([23]) Future development of the car industry is a telling example: see EESC Report CCMI/148, 22 February 2017.

5.10. Exchanges should be organised to discuss the tension between preserving the company identity of data and the indispensable need for innovation in an international context as well as to look for the most effective approaches in business to open up. The Commission can be most helpful to Europeanise these exchanges.

5.11. Ideas have to be generated to create some hubs of excellence as a counterbalance to Silicon Valley and the big American universities.

5.12. A case in point is the need to deepen the underdeveloped European capital market. Handling big data in a dynamic way requires not only successful start-ups, but notably scaled-ups, of which there are too few. A more dynamic Europe-based venture capital market is therefore indispensable. Measures to enhance and foster its development, following best practices such as the Israeli example, should be explored and adapted.

5.13. The UK has a vibrant data-generating economy. The EESC believes that European and British industry should continue to work closely together on transparent and open data generation.

6. **Society and the labour market**

6.1. Views in previous EESC opinions ([24]) concerning the effects of Industry 4.0 on society and the labour market are as relevant in the era of free flow of data. Some aspects need to be underscored.

6.2. The dynamics of data development and dissemination require full understanding by society, and in particular by workforces across European businesses. Up-to-date communication is needed to promote sufficient knowledge and public acceptance of the deep transformation process. Social partners have their role to play.

6.3. The human factor is crucial. There should be social dialogue at all levels for the necessary adjustments and to put programmes in place that prepare employees and young people for the new reality. Many more data analysts and data scientists are needed.

6.4. This also points to the challenge of developing new kinds of organisations for training and cooperation of workers in all layers of society whose work will diminish. Current social systems are not adapted to these challenges, with a few exceptions such as 'buffer companies' as used, e.g. in Finland, to transfer former white-collar employees to on crowd working and at the same time maintain their social insurance. All have to be aware that we are working in a different landscape now.

6.5. Labour market developments and social inclusion are also part of a wider concept of industrial policy. Studies oscillate between projecting job losses of up to 50 %, especially among white-collar employees, and a 20 % increase in new jobs as a result of digitalisation and state-of-the-art manufacturing. All parties concerned should focus on the transition in order to remove obstacles to adjustment and facilitate outcomes that create new opportunities for people, notably in service development.

6.6. Education and on-the-job training at all levels of the workforce are of great interest in every sector and in every country. This should cover more than just technical areas.

6.7. The EESC points to the supporting role the Commission can play in showing the way forward and identifying problems and opportunities. EU-based workshops and exchanges, including on best practices, should be organised among business, social partners and governments. Common ground and common approaches have to be found and developed amidst the variety of different cultures in Europe.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([24]) OJ C 13, 15.1.2016, p. 161.

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)'

(COM(2017) 10 final — 2017/0003 (COD))

(2017/C 345/23)

Rapporteur: **Laure BATUT**

Referral	European Parliament, 16.2.2017
	Council of the European Union, 9.3.2017
Legal basis	Articles 16 and 114 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	14.6.2017
Adopted at plenary	5.7.2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	155/0/5

1. **Conclusions and recommendations**

1.1. The EESC regrets very much that these texts are voluminous and entangled, and that to understand them it is necessary to go back and forth between them, such that it is unlikely that anyone other than a select few will ever read and apply them and that their added value is not evident to the public, a principle that is missing from the entire proposal for a regulation. We recommend that a factsheet be published online with a description of the texts for the general public which makes them accessible for everyone.

1.2. The EESC notes that from the options proposed in the impact assessment the Commission has chosen the one that would entail 'measured' reinforcement of privacy. Is this to guarantee a balance with the interests of industry? The Commission does not specify which aspects of a 'far reaching' reinforcement of privacy would have harmed industry interests. This position has the effect of already watering down the proposal at the drafting stage.

1.3. The EESC recommends that the Commission:

(1) consider that, henceforth, everything can become a piece of data and be the subject of electronic communication, with repercussions for the privacy of natural and legal persons;

(2) clarify the proposal's application of the Charter of Fundamental Rights and human rights (in Articles 5, 8 and 11), as well as the possibilities for restriction introduced by national legislation (recital 26);

(3) Review Articles 5 and 6 of the proposal. In allowing electronic communications, the internet and mobile telephony are services of general interest to which access must be universal, available and affordable, without consumers being forced to consent to their data being processed as a requirement imposed by providers in order to benefit from these services. It is therefore necessary to stipulate an obligation to systematically propose to users the option of refusing cookies, tracking systems, etc., based on clear information;

(4) clearly establish that the *lex specialis* proposed for completing the general data protection regulation (GDPR) respect the general principles of the afore-mentioned text and not diminish established protection, and that any processing, including web audience measuring, be subject to the principles of the GDPR (Article 8);

(5) guarantee regulatory stability for the public and for businesses and, to that end, clarify the regulation's text and the content of its implementing measures in order to avoid having too many delegated acts;

(6) develop a strategy which can demonstrate to all consumers that the Union is remaining faithful to its principles of respecting human rights, and that its intention is to ensure that not only electronic communications operators, but also OTT — Over-The-Top — services, respect people's privacy;

(7) avoid health representing a wide open breach in protection, offering potential for the exploitation of people's privacy and personal data by electronic communications operators for the purposes of profiteering;

(8) pay attention to the sharing economy, and the transfer and use of data by means of electronic communications platforms, often located outside the EU;

(9) take into account the internet of things (IoT), which is most intrusive and may be a vehicle for privacy breaches when data are sent via electronic communications;

(10) take account of what follows data transfer and protect the data that people store, for most of such data is private (whatever the interface, including cloud computing);

(11) clarify the protection of machine-to-machine (M2M) data transfer and devote a whole article to it, not just one recital 12;

(12) set up a European portal (DG Justice) that is universally accessible and comprehensible to help the public find their way through the maze of texts and exercise their rights, giving access to European and national texts, appeals procedures and case law (for example, clarifying recital 25 and Articles 12 and 13);

(13) provide the supervisory authorities with the resources needed to carry out their tasks (European Data Protection Supervisor (EDPS), national authorities);

(14) allow consumers to bring class actions before the courts in order to ensure their rights are upheld at European level, by going further in a new directive than in Recommendation C(2013) 401&3539 ([1]).

2. **Aspects of the legislative context**

2.1. Electronic communications networks have expanded considerably since Directives 95/46/EC and 2002/58/EC ([2]) on the protection of privacy of natural and legal persons in the electronic communications sector.

2.2. The **General Data Protection Regulation (GDPR) adopted in 2016** (Regulation (EU) 2016/679) became the basis for the measures concerned and laid down the main principles, including those for judicial and criminal data. In accordance with this regulation, personal data may only be compiled under strict conditions, for legitimate purposes, and respecting confidentiality (Article 5 of the GDPR).

2.2.1. In **October 2016**, the Commission presented a proposal for a European Electronic Communications Code ([3]) (300 pages long), which has not yet been adopted, but to which reference is made for certain definitions which are not set out in the GDPR or in the proposal in hand.

2.2.2. Two proposals dated January 2017 stipulate certain aspects which are based on the GDPR: the proposed regulation on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies (**COM(2017) 8 final**, EESC rapporteur on this subject: Mr Pegado Liz); and the proposed regulation in hand (**COM(2017) 10 final**), on respect for private life and the protection of personal data.

2.3. The three aforementioned texts will **apply as of the same date — 25 May 2018** — and aim to harmonise rights and monitoring procedures.

2.4. Note that, in order to facilitate this approach, it has been decided to protect privacy using a European regulation and no longer a directive.

([1]) 11.06.2013-IP/13/525 and Memo13/531-DG Justice.

([2]) Directive 2002/58/EC, amongst other things, prohibits the use of spam (Article 13) by setting up — following the 2009 modification — the opt-in principle, according to which operators must obtain the consent of recipients before sending 'marketing messages'.

([3]) COM(2016) 590 final, 12.10.2016, proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (EECC), p. 2; (OJ C 125, 21.4.2017, p. 56).

3. **Introduction**

3.1. Civil society would like to understand whether, in this all-digital world which is taking shape, the Union is bringing added value which guarantees forums where private life can thrive without fear.

3.2. Data being generated continuously means that all users are traceable and identifiable everywhere. Data processing carried out in centres which are mostly located physically outside Europe is a cause for concern.

3.3. Big Data has become a currency, and the smart processing thereof means that natural and legal persons can be 'profiled', their data 'marketed' and money made, often without a user's knowledge.

3.4. However, it is above all the appearance of new players in the data-processing sector, over and above internet access providers, which must lead to a review of the relevant texts.

4. **Summary of the proposal**

4.1. The Commission's intention with this proposal is to establish a balance between consumer and industry interests by:

— authorising the use of data by operators while allowing the end-user to keep control by giving their explicit consent;

— requiring operators to say what they intend to do with such data;

— selecting Option 3 of the impact assessment, which favours 'measured' reinforcement of privacy, rather than Option 4, which would entail 'far reaching' reinforcement.

4.2. The proposal is aimed at the deployment of the GDPR, which is of general application, as are confidentiality of private data and the right of erasure, with regard to the specific aspect of respect for privacy and the protection of personal data in telecommunications; the intention is to establish stricter rules for protection of privacy, as well as coordinated monitoring and penalties.

4.3. The proposal does not lay down specific measures with regard to 'breaches' in personal data caused by the users themselves, but does confirm the principle of the confidentiality of electronic communications data at the outset (Article 5).

4.4. Providers may process the content of electronic communications:

— to provide a service to an end-user who has given his or her consent; or

— to provide a service to the end-users concerned (Article 6(3)(a) and (b)) who have given their consent.

4.5. They are obliged to erase the data or make it anonymous after receipt by the intended addressees.

4.6. Under Article 4(11) of the GDPR, the 'consent' of a data subject means any freely given, specific, informed and unambiguous indication of that data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

4.7. The proposal maintains the requirement for **consent to be expressly given**, as defined in the GDPR, burden of proof being on the operator.

4.8. 'Processing' is itself based on consent. The controller has to 'be able to demonstrate that the data subject has consented to processing of his or her personal data' (GDPR Article 7(1)).

4.9. Some limitations (on obligations for and rights to) confidentiality could be provided by EU law or national law to safeguard public interest or guarantee an inspection exercise.

4.10. Natural persons must have given their consent to appearing in a publicly available directory, with the means to verify or correct the data that concern them (Article 15).

4.11. A right to object will enable all users to block the use of data concerning themselves which has been entrusted to a third party (for example a trader) and then each time a message is sent (Article 16). The new rules will give users more control over their parameters (cookies, identifiers) and unsolicited communications (spam, messages, texts, calls) will be able to be blocked if the user has not given his or her agreement.

4.12. As regards the identification and blocking of unwanted calls (Articles 12 and 14), the regulation underlines that these rights also apply to legal persons.

4.13. The structuring of a monitoring system is in accordance with the GDPR (Chapter VI on supervisory authorities and Chapter VII on cooperation between supervisory authorities).

4.13.1. It is the Member States and their national authorities responsible for data protection who will have to ensure compliance with the rules on confidentiality. Other supervisory authorities will, as part of mutual assistance, be able to draft objections that might be submitted to national supervisory authorities. They will cooperate with the latter or with the European Commission in the framework of a consistency mechanism (GDPR Article 63).

4.13.2. For its part, the European Data Protection Board (EDPB) is responsible for ensuring consistent application of the regulation in hand (GDPR Articles 68 and 70).

It may be asked to publish guidelines, recommendations and best practice so as to facilitate application of the regulation.

4.14. Remedies are possible for natural and legal persons who are final users so they can assert interests adversely affected by infringements; they may receive compensation from the infringer for damage suffered.

4.15. The amounts envisaged for administrative fines are intended to act as a deterrent, since for those offending they can be as high as ten million euros and, for firms, up to 2 % of the total worldwide annual turnover of the preceding financial year, whichever is higher (Article 23). Where there is no provision for an administrative fine, Member States set penalties and notify the Commission thereof.

4.16. The new text on respect for privacy and the use of personal data will **apply as of 25 May 2018**: on the same date, therefore, as the 2016 GDPR and the regulation on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies, and the proposal for a directive establishing the European Electronic Communications Code (COM(2016) 590 final), if these texts are adopted.

4.17. Scope of the lex specialis implementing the GDPR

— ***Ratione jure*: legal basis**

The legal basis is provided by TFEU Articles 16 (data protection) and 114 (single market), as well as Articles 7 and 8 of the Charter of Fundamental Rights. The regulation supplements the GDPR regarding data which can be considered as personal data.

— ***Ratione personae*: players**

These are the end-users, natural and legal persons, as defined in the draft European Electronic Communications Code, on the one side and, on the other, all the providers of communications services, not just the traditional ones, but above all new players whose new services do not offer users any guarantees. 'Bypass' techniques in Over-the-Top communications services (instant messaging services, texts, Voice over IP techniques, multiple interfaces, etc.) currently fall outside the scope of existing texts.

— ***Ratione materiae*: data**

The proposal contains no provision on the retention of data in cloud computing and leaves it up to the Member States to take action, in accordance with GDPR Article 23 (restrictions on the right to object) and European Court of Justice case law (see point 1.3 of the explanatory memorandum).

Users will have to give their consent to the retention of data and metadata (date, time, location, etc.) generated in systems; failing this, the data concerned will have to be made anonymous or erased.

— ***Ratione loci*: where?**

The establishments carrying out processing activities in the EU Member States, or one of their branches located in a Member State, will be designated 'leader' in monitoring activities, national monitoring authorities will play their role, and the European Data Protection Supervisor (EDPS) will supervise the whole process.

4.18. EU objectives: the digital single market

— One of the objectives of the digital single market is to create a framework for secure digital services and to promote user trust for the purpose of developing e.g. e-commerce, innovations, and in turn jobs and growth (point 1.1 of the explanatory memorandum).

— The proposal for a regulation under discussion is also intended to effect a form of harmonisation between the texts and to ensure coherence between Member States.

— Every three years, the Commission will carry out an evaluation of the regulation, the findings of which are to be presented to the European Parliament, the Council and the European Economic and Social Committee (Article 28).

5. **General comments**

5.1. The Committee welcomes the fact that a coherent package of rules is being put in place simultaneously throughout the EU to protect the rights of natural and legal persons linked to the usage of digital data by means of electronic communications.

5.1.1. It welcomes the fact that the Union is playing its role as advocate of the public's and consumers' rights.

5.1.2. It stresses that, while we are aiming for harmonisation, interpretation of many of the concepts falls to the Member States, and this is turning the regulation into a sort of directive, which leaves a great deal of room for the marketing of private data. The domain of health in particular provides an open door for the collection of huge quantities of private data.

5.1.3. Articles 11(1), 13(2), 16(4) and (5), and 24 are provisions that could be described as 'transposition' provisions which would be appropriate for a directive, but not for a regulation. Operators are allowed too much leeway for the purposes of improving the quality of services (Article 5 and 6). This proposal should be an integral part of the proposal for the European Electronic Communications Code directive (COM(2016) 590 final).

5.1.4. The EESC regrets very much that these texts are entangled and voluminous, such that it is unlikely anyone other than a select few will ever read them. In effect, it is necessary to constantly go back and forth between them. Moreover their added value is not evident to the public. The fact that the proposal is difficult to read and highly complex runs counter to the spirit of the Regulatory Fitness and Performance (REFIT) programme, and to the 'Better Regulation' objective; it will make it difficult to interpret and will create loopholes in the protection arrangements.

5.1.5. For example, the proposed regulation contains no definition of the concept of 'operator'; for this it is necessary to refer to the draft European Electronic Communications Code ([4]), which has not yet entered into force and which will modify the rules of the sector as part of the single digital market, namely framework directive 2002/21/EC, the 'authorisation' directive 2002/20/EC, the 'universal service' directive 2002/22/EC, and the 'access' directive 2002/19/EC, as amended; and to Regulation (EC) No 1211/2009 setting up the Body of European Regulators for Electronic Communications (BEREC), the radio spectrum decision 676/2002/EC, Decision 2002/622/EC establishing a group on radio spectrum policy, and Decision 243/2012/EU setting up a multiannual radio spectrum policy programme (RSPP). The main reference remains of course the GDPR (see point 2.2 above), which the proposal in hand aims to complement and to which it is therefore subsidiary.

5.2. The EESC in particular stresses the content of Article 8 concerning the protection of the information stored in the terminal equipment and the potential exceptions, fundamental because it leaves to the information society opportunities for access to private data, and to that of Article 12 on presentation and restriction of calling and connected line identification. These articles are difficult for the average reader to understand.

5.2.1. The 1995 directive (Article 2) defines 'personal data' as 'any information relating to an identified or identifiable natural person ("data subject")'. The regulation in hand, which broadens data protection to include metadata, will henceforth apply to natural as well as legal persons. It is important to reiterate that the purpose of the proposal is twofold: on the one hand to protect personal data and on the other to ensure free movement of electronic communications data, equipment and services in the EU (Article 1).

([4]) COM(2016) 590 and annexes 1 to 11, 12.10.2016 (OJ C 125, 21.4.2017, p. 56).

5.2.2. The EESC stresses that the will to protect the data of natural persons (Article 1(2)) will clash with other texts where such will is absent: nowhere is it clearly said that this will have to apply to those cases (see GDPR, data in the European institutions, etc.).

5.3. The EESC is wondering whether the real aim of this proposal is not to place more emphasis on its Article 1(2), namely to guarantee 'the free movement of electronic communications data and electronic communications services within the Union', which shall be neither restricted nor prohibited for reasons related to respect for the private life and communications of natural and legal persons, rather than actually guaranteeing that which is announced in its Article 1(1), namely 'the rights to respect for private life and communications and the protection of natural persons with regard to the processing of personal data'.

5.4. Everything is based on the person — natural or legal — expressing their consent. As a consequence, in the EESC's view, users must be informed, trained and remain cautious, because once their consent has been given, providers will be able to process content and metadata further in order to obtain as much effect and profit as possible. How many people know, before accepting them, that cookies are trackers? Priorities linked to this regulation should include the education of users, teaching them to make use of their rights, as well as anonymisation and encryption.

6. **Specific comments**

6.1. Personal data should only be collated by bodies which themselves have very strict conditions and aiming at known and legitimate goals (GDPR).

6.2. However, the Committee again expresses regret at the fact that 'the stated principles of the right to protection of personal data are qualified by an excessive number of exceptions and restrictions' ([5]). The balance between freedom and security should remain the hallmark of the European Union, rather than balancing fundamental rights of individuals with industry rights. In its analysis of the proposal for a regulation (WP247, 4.4.2017, opinion 01/2017), the Article 29 Working Party indicates in no uncertain terms that the proposal would decrease the level of protection established in the GDPR, e.g. with regard to locating terminal equipment and the lack of limitations on the scope of data collection (point (17)), and the failure to introduce privacy protection by default (point (19)).

6.3. Data are like an extension of a person, a 'phantom identity', a 'shadow-ID'. The data belong to the person who generates them, but after they have been processed that person loses control over them. Each Member State remains responsible for data retention and transfer, and there is no harmonisation because of possible restrictions on rights introduced by the proposal. The Committee points to the risk of disparities resulting from the fact that such restrictions would be at the discretion of Member States.

6.4. A question arises particularly for people working in firms: to whom do the data they generate in the course of their work belong? And how will they be protected?

6.5. The monitoring set-up is not very clear ([6]). Despite EDPB supervision, there do not appear to be adequate safeguards against arbitrary approaches and the time needed for proceedings to result in a penalty has not been assessed.

6.6. The EESC advocates the creation of a European portal where all the European and national texts, rights, appeals procedures, case law and practical aspects are brought together in one place and kept up to date so as to help the public at large and consumers find their way through the maze of texts and practices so they can exercise their rights. This portal should, at least, be based on the requirements of Directive (EU) 2016/2102 of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, and the principles set out in recitals 12, 15 and 21 of the proposed directive known as the European Accessibility Act (2015/0278 (COD)), and provide content that is accessible and understandable to all end users. The EESC would be willing to be involved in the process of designing this portal.

6.7. In Article 22 there is no reference to 'class actions', as the EESC already pointed out in its opinion on the European electronic communications code.

([5]) OJ C 125, 21.4.2017, p. 56 and OJ C 110, 9.5.2006, p. 83.

([6]) Chapter IV of the regulation in hand refers to the provisions of Chapter VIII, in particular Article 68 GDPR.

6.8. The limitation of the substantive scope (Article 2(2)), extension of the powers to process data without the owner's consent (Article 6(1) and (2)), the unlikely notion of obtaining the consent of *all* end-users concerned (Article 6(3)(b) and Article 8(1), (2) and (3)), and the restrictions which Member States may place on rights if they deem this to be 'necessary, adequate and proportionate' are all rules whose substance is susceptible to so many interpretations that they end up running counter to the idea of genuine protection of privacy. Particular attention should also be paid to data protection relating to minors.

6.9. The EESC welcomes the right to control electronic communications covered in Article 12, but would highlight the particularly obscure wording, which seems to favour the use of telephone calls with hidden caller identity, as if anonymity were a recommendation, whereas the principle should be that the calling line can be identified.

6.10. Unsolicited communications (Article 16) and direct marketing have already been dealt with in the directive on unfair trading practices ([7]). The default arrangements should be based on opting in (acceptance) rather than opting out (refusal).

6.11. The Commission's evaluation is scheduled every three years. In the digital world, that is too long. After two evaluations, the digital landscape will have changed completely. However delegation (Article 25), which will be able to be expanded, should be limited in time, and possibly renewable.

6.12. Legislation must preserve users' rights (Article 3 TEU) while guaranteeing the legal stability needed for commercial activity. The EESC regrets that the movement of data from machine to machine (M2M) is not mentioned in the proposal; reference has to be made to the European Electronic Communications Code (proposal for a directive, Articles 2 and 4).

6.12.1. The internet of things (IoT) ([8]) is going to lead to 'big data', then to 'huge data', and finally to 'all data'. This is a key for future waves of innovation. And machines, large or small, communicate and transmit private data between each other (e.g. information from your watch or the heartbeat data that it records and sends to your doctor's computer). Many digital players have launched their own platforms reserved for connected devices: Amazon, Microsoft, Intel and, in France, Orange and La Poste.

6.12.2. In daily life the IoT can easily be subject to malicious intrusion; the quantity of personal information which can be collected remotely is on the increase (geolocation, health data, video and audio streaming). Breaches in data protection interest for instance insurance companies, who are beginning to encourage their clients to equip themselves with connected devices and to take responsibility for their behaviour.

6.13. Many internet giants are trying to turn their original applications into platforms: thus we should distinguish the Facebook application from the Facebook platform, which allows developers to devise accessible applications based on user profiles. Amazon was itself a specialised web application in online sales. Nowadays it has become a platform which allows third parties — from individuals to large groups — to market their products by benefiting from Amazon's resources: reputation, logistics, etc. All this entails the transfer of personal data.

6.14. The sharing economy is seeing a proliferation of platforms: 'an intermediary platform — which is usually electronic — to put a significant number of people offering goods or services in touch with a significant number of users' ([9]). While they are sought for the activity and the jobs they bring, the EESC is wondering how the data transfer they generate will be able to be controlled, in application of both the GDPR and this regulation.

Brussels, 5 July 2017.

The President
of the European Economic and Social Committee
Georges DASSIS

([7]) OJ L 149, 11.6.2005, p. 22, Articles 8 and 9.
([8]) WP247/17, 1.4.2017, point 19; (OJ C 12, 15.1.2015, p. 1).
([9]) OJ C 125, 21.4.2017, p. 56.

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