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## Information and Notices

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## I

*(Resolutions, recommendations and opinions)*

## OPINIONS

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

**535TH EESC PLENARY SESSION – 60TH ANNIVERSARY OF THE EESC, 23.5.2018-24.5.2018****Opinion of the European Economic and Social Committee on ‘Social economy enterprises as a driver for migrant integration’****(own-initiative opinion)**

(2018/C 283/01)

Rapporteur: **Giuseppe GUERINI**

Plenary assembly decision	21.1.2016
Legal basis	Rule 29(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Single Market, Production and Consumption
Adopted in section	27.4.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	186/1/2
(for/against/abstentions)	

**1. Conclusions and recommendations**

1.1. Recent events in the field of migration have put the system for entering the European Union under pressure and acted as a real stress test for migration, social and public security policies in the EU and its Member States.

1.2. The EESC considers it vital that the European institutions, together with the governments of the Member States, promote coordinated policies making for clearer, more sustainable and efficient arrangements for people from third countries to enter and settle in Europe, work, become citizens and obtain international protection. The Committee calls for particular focus on migrants who may be in danger of social exclusion such as the sick, people in mental distress or with disabilities, and the elderly.

1.3. The EESC has noted that social economy enterprises have managed to identify common principles of action <sup>(1)</sup> (that is inclusive, subsidiary and protects the most disadvantaged people), rising to the challenge of assisting migrants in a proactive manner and mobilising communities and the public in the areas concerned.

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<sup>(1)</sup> On the role of social economy enterprises, see also OJ C 117, 26.4.2000, p. 52.

1.4. Social economy enterprises deserve greater recognition of their natural inclination to be inclusive, and the EESC therefore calls on the European Commission to give priority to this form of enterprise when shaping EU policies and programming EU funding, particularly with regard to the design of the European Pillar of Social Rights, as stressed at both the Conference on Social Economy on 16 November 2017 and the European Summit on 17 November 2017, held in Gothenburg.

1.5. Social economy enterprises create good quality jobs in labour intensive sectors and, particularly, in sectors with a high proportion of non-European workers. In these social economy enterprises, the participatory dimension is important due to the security and protection provided when an economic activity is set up, as they help people to leave the informal economy and undeclared work.

1.6. As a result, social economy enterprises have a fundamental role and are active in four key aspects of the migrant integration process: health and assistance; housing; training and education (in particular by raising awareness about the rights and duties deriving from settling in the European Union); and work and the active inclusion of migrants in the societies hosting them.

1.7. The EESC believes that in view of their specific tendency to gravitate towards the care sector and activities connected with the sharing economy and the circular economy, social economy enterprises can encourage and support not just the creation of new jobs, but also entrepreneurship and access to economic activities for migrants and refugees. The European Union must continue to promote social economy enterprises, since they are one of the drivers of migrants' development and inclusion, both professionally and socially. The Committee therefore asks the European institutions to prioritise policies geared towards social economy enterprises, a request it also made in its contribution to the Commission's 2018 work programme <sup>(2)</sup>.

1.8. In the light of the evidence supporting the value of social economy enterprises in facilitating the inclusion of migrants in the labour market and society, the Committee calls on the EU, the Member States and the international community to establish employment incentives for social economy enterprises that deal with professional integration.

1.9. In view of the progress report on action in the area of migration, presented in November 2017, the Committee emphasises that a coordinated approach by the EU and the Member States is needed <sup>(3)</sup>. Specifically, without an efficient entry mechanism, migrants will obviously continue to make inappropriate use of the international protection system, as has been observed in the last few years. The Committee vigorously stresses that instances of improper use of the international protection system do not warrant the restrictions introduced by some Member States on the possibility for third-country nationals to request asylum in their country.

1.10. The EESC encourages the Commission and the Council to step up coordination with migrants' countries of origin and transit countries in order to open up opportunities for better living conditions. This applies particularly to people who are on the move for economic reasons or as a result of famine or climate change, whilst the EU should pursue a more stringent foreign policy towards countries where wars, dictatorships and persecution cause people to flee.

1.11. The Committee would in particular urge the EU to tackle the issue of migration by addressing the root causes forcing people to move: poverty, conflict, discrimination and climate change. This will inevitably require renewed commitment on the part of the European Union in the area of diplomacy and international development cooperation, including a full-scale 'extraordinary plan for investment in development cooperation'.

## 2. General comments

2.1. Social economy enterprises are key players in Europe's economy and society, reflect the rich diversity of the EU and contribute to achieving the objectives of the Europe 2020 strategy: building a smarter, more sustainable and more inclusive Europe <sup>(4)</sup>.

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<sup>(2)</sup> EESC contribution to the Commission's 2018 work programme, in particular point 2.4.6 et seq.

<sup>(3)</sup> Progress report on the European Agenda on Migration.

<sup>(4)</sup> OJ C 318, 23.12.2009, p. 22.

2.2. Social economy enterprises have contributed significantly to tackling the changes in society. Social economy enterprises operate in many areas of society and have set up innovative initiatives to respond to the growing need for assistance and care for people who cannot look after themselves, particularly the elderly and those with a disability. In many cases, in doing this they have managed to step up women's participation in the labour market, both by involving them directly in social economy enterprises and by setting up new services for children and families<sup>(5)</sup>. At the same time, social economy enterprises have helped to create job openings for disadvantaged people, focusing particularly on people who may be in danger of serious social exclusion such as people with disabilities or those suffering from mental distress or alcohol or drug addictions. Social economy enterprises have won their spurs as a key actor in promoting a European social model<sup>(6)</sup>.

2.3. One of the greatest challenges that the EU has faced in recent years is managing the increasing flow of migrants that has seen millions of people cross Europe's boundaries to escape from war, hunger, persecution and extreme living conditions caused by climate change. The situation has put Member States' entry systems and migration, social and public security policies to the test. In a sense, the EU's migration policies are being subjected to a stress test: it is important to take this opportunity to carefully study the reactions being triggered by the system and the signals that have been sent out, in order to mount targeted interventions and make EU policies more efficient and effective.

2.4. Integrating newcomers is a dynamic process that changes over time in tune with the economic, social and cultural landscape of the country in which these people settle. It raises questions as to how the European Union, Member States and European society, first and foremost, allow non-EU citizens to enter, settle, live and work in the EU, along with how they can obtain international protection.

2.5. Although they operate in different ways in different national contexts, social economy enterprises have managed to identify common principles of action (that is inclusive, subsidiary and protects the most disadvantaged people), rising to the challenge of assisting migrants in a proactive way.

2.6. One distinguishing feature of the work carried out by social economy enterprises is their capacity to mobilise and involve their local communities, setting up networks and partnerships that improve relations with central and local administrations and make it possible to organise assistance and inclusion programmes that are more easily accepted by the local population.

2.7. As a result, social economy enterprises have a fundamental role and are active in four key aspects of the migrant integration process: health and assistance; housing; training and education (in particular by raising awareness about the rights and duties deriving from settlement in the European Union); and work and the active inclusion of migrants in the societies hosting them. By doing this, social economy enterprises and civil society organisations provide places where Europeans and newcomers can meet, places where they can enter into a dialogue, thus helping to dispel prejudice and fear.

### 3. Migration in Europe: the framework in recent years

3.1. Providing a framework for migration is a complex matter as the situation is constantly evolving. Wars, dictatorships, climate change, extreme poverty and deprivation have brought us to the situation that we are experiencing today.

3.2. According to the United Nations, in 2015 over 244 million people — that is, 3,3 % of the world's population — crossed the borders of their country of origin in search of political refuge, work and more 'propitious' economic and climate conditions<sup>(7)</sup>.

3.3. The number of people who have attempted to reach Europe has risen in recent years. In absolute terms, Eurostat data for 2015 show that there were 2,7 million third-country immigrants in the EU-28, of whom 56 % were men and 44 % women.

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<sup>(5)</sup> In many instances, these activities would have been carried out in the home almost entirely by female members of the family, preventing these women from participating in the labour market.

<sup>(6)</sup> OJ C 24, 28.1.2012, p. 1.

<sup>(7)</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/002/18/PDF/N1700218.pdf?OpenElement>

3.4. This extraordinary influx is primarily due to instability caused by war, both in war-torn countries such as Syria and in countries where the post-conflict stabilisation process is still facing serious problems, such as Iraq and Afghanistan. About 54 % of the migrants who sought refuge in EU countries in 2016 came from these countries <sup>(8)</sup>.

3.5. In addition, there is still significant migration of people facing severe economic or environmental hardship in their country of origin. In many cases these are people from the African continent, a flow which has been affected by the increasing instability of the countries on the southern shore of the Mediterranean.

3.6. In this context, a number of shortcomings and obstacles in the framework of rules laid down by the European Union have been revealed, illustrating the poor management of the EU's external borders and inadequate entry regulation, and highlighting the need for a review of the principles and methods guiding the Member States' procedures.

3.7. The Committee has addressed the issue of migration policies on numerous occasions <sup>(9)</sup> and welcomes the Commission's initiative adopting the European Agenda on Migration. In its November 2017 report, the Commission took steps to promote better coordination between the EU Member States and renew contacts with migrants' countries of origin and transit countries <sup>(10)</sup>. The Committee hopes that provision will be made for revising the quota system, in view of the difficulties in implementing it.

3.8. It is therefore important to revise the set of rules enabling migrants to enter the EU through legal channels that protect asylum seekers and at the same time give people fleeing adverse climate and economic conditions the opportunity to take refuge in Europe and contribute to the EU's growth, securing their rights. Doing this would implement the United Nations recommendations on migration, since 'it is in everyone's interest for migration to happen safely and legally, in a regulated rather than a clandestine way' <sup>(11)</sup>.

3.9. The Committee welcomes the conclusions of the informal summit of heads of state and government held in Gothenburg on 17 November, which addressed the topic of building a future for Europe based on fair employment and growth. The Committee also stresses the importance of the side event *What role for the Social Economy in the Future of Work?*, which opened the meeting in Gothenburg, highlighting the contribution of the social economy in supporting EU policies.

3.10. The agreement between the Council and the European Parliament on the 2018 EU Budget is also encouraging, since it lists among the priorities for action 'boosting economic growth and job creation, strengthening security and addressing the challenges posed by migration' <sup>(12)</sup>.

3.11. The Committee urges the European institutions to address the problems that have arisen when implementing the Dublin Regulation. On 16 November 2017, the European Parliament adopted a resolution outlining a working approach to revising the regulation, with a significant reference to the participation of all Member States in an automatic permanent relocation mechanism.

#### 4. Turning problems into opportunities: social economy enterprises as drivers for assistance and inclusion

4.1. One of the factors preventing newcomers from embarking on the inclusion process and thus contributing to the economy and social life in their host communities is the uncertainty of their status and the lengthy process for dealing with asylum applications.

<sup>(8)</sup> Eurostat data — in the Report on international protection by ANCI, Caritas Italy, Cittalia, Fondazione Migrantes and the Central Service of SPRAR (System for the Protection of Asylum Seekers and Refugees), in collaboration with the UNHCR. See also <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables>

<sup>(9)</sup> <https://www.eesc.europa.eu/en/policies/policy-areas/migration-and-asylum/opinions>

<sup>(10)</sup> See footnote 2.

<sup>(11)</sup> Report of the Special Representative on Migration of the Secretary General of UN, 3 February 2017.

<sup>(12)</sup> <http://www.consilium.europa.eu/it/press/press-releases/2017/11/18/2018-eu-budget-agreement-reached/>



4.2. Compelling newcomers to rely on humanitarian assistance for years, without access to education, vocational training or opportunities to earn money, prevents them from developing as useful members of the labour market and restricts their ability to make a positive contribution to the economy and society of the host country<sup>(13)</sup>. The Committee has recently emphasised the decisive role of social economy enterprises in this direction, preventing radicalisation and promoting shared values, peace and non-violence<sup>(14)</sup>.

4.3. The Committee hopes that the debate will also address the need to assess the effectiveness of existing mechanisms allowing third-country nationals to apply to enter and settle in the European Union in order to seek work.

4.4. Similarly, it is crucial that the EU tackle the issue of migration by addressing the root causes forcing people to move: poverty, conflict, discrimination and climate change. This will inevitably require renewed commitment on the part of the European Union in the area of diplomacy and international development cooperation.

4.5. Although somewhat limited use has been made of the Blue Card system, it can be revised to meet the need for new legal channels of entry into the EU. The Committee has in fact pointed out that a European strategy is needed to attract workers from outside Europe to ensure growth and prosperity in the EU. When doing this, account must be taken of the effects of migration on immigrants' countries of origin; the further development of these countries and of their education systems should be supported<sup>(15)</sup>. The Committee suggests considering extending the range of potential beneficiaries of the Blue Card, in particular catering for those who want to launch a business activity, while also increasing the focus on social entrepreneurship.

4.6. In many cases, civil society has taken steps to promote legal, transparent processes, working with local, national and international institutions and sending out encouraging signals. The 'humanitarian corridors' project implemented in Italy by the Sant'Egidio Community, the Federation of Evangelical Churches in Italy, Tavola Valdese and the Italian Government is an important example of a pilot project. This has made it possible for more than 1 000 people, from February 2016 to the present, to request international protection and receive assistance in the management of applications before setting out for an EU country<sup>(16)</sup>.

4.7. Future immigration policies should build on these pilot projects. In particular, greater coordination among international institutions is needed, both for sustained management of these forms of entry and to avoid any discrimination between the 'select few' who can use the humanitarian corridors (including extensive safeguards for the stages following reception) and the many who are excluded and continue to be victims of trafficking and illegal activities.

4.8. The role of social economy enterprises is crucial due to their employment and social inclusion initiatives, harnessing the potential of migrants most of whom decide to leave their country of origin in search of a better standard of living and job opportunities.

4.9. The key role of migrants in the EU has been acknowledged on many occasions, with calls for their creativity and innovative capacity, for example, to be enhanced. Pursuing this objective will create new jobs while also helping to make production sectors more international and creating links, including trade links, with migrants' countries of origin<sup>(17)</sup>. Ensuring that Europe's economy and society are better able to include migrants is therefore also crucial for making EU policies on SMEs more efficient, particularly as regards their capacity to contend with increasingly global markets, as highlighted in the EESC's opinion on this subject<sup>(18)</sup>.

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<sup>(13)</sup> UNHCR 2003, *Framework for durable solutions for refugees and persons of concern*, May, Geneva.

<sup>(14)</sup> OJ C 129, 11.4.2018, p. 11.

<sup>(15)</sup> OJ C 75, 10.3.2017, p. 75.

<sup>(16)</sup> <http://www.santegidio.org/pageID/11676/Corridoi-umanitari.html>

<sup>(17)</sup> OJ C 351, 15.11.2012, p. 16.

<sup>(18)</sup> OJ C 345, 13.10.2017, p. 15.

4.10. Social economy enterprises have in many instances played a significant role here in recognising the positive economic and social contribution of migrants, since these enterprises create good quality jobs in labour intensive sectors and in the fields of technological innovation and digitisation alike. The most important activities certainly include those in the care sector and in providing access to social services, childcare and, in general, assistance to people who cannot care for themselves and are at risk of social exclusion. In many cases, these are the sectors with the highest incidence of workers from third countries.

4.11. In some sectors, however, such as care, farm work, construction and catering, there are still many pockets of irregular employment. It is therefore important to promote the presence of social economy enterprises, since they have demonstrated that they can play an important role in terms of inclusion and regularising employment contracts, enhancing the role of migrants and securing workers' rights in these sectors, in keeping with EU policies in this area and as a way of preventing misuse of the qualifications of self-employed workers <sup>(19)</sup>.

4.12. In the sector of home care, where the workforce is mostly made up of women employed directly by the families, conditions are often such that they prevent professional development. A recent study on the determinants of entrepreneurship for migrant women has shown that lack of recognition of their skills is one of the elements causing them to opt for self-employment <sup>(20)</sup>. Social economy enterprises in these sectors can play an important role in regularising jobs and increasing development opportunities for migrants, provided they are supported by suitable policies.

4.13. Many social economy enterprises which find jobs for disadvantaged people operate in sectors which are part of the circular economy, such as waste collection and differentiated waste treatment, recovery and reuse of materials, social agriculture and park and garden maintenance. These sectors are a key source of employment, and the approach taken by these enterprises to professional integration also seems particularly effective in including migrants in the labour market.

4.14. In many cases, employing migrants can reverse trends towards social exclusion and cultural impoverishment in the EU, thereby revitalising traditional professions and craft trades despite problems of generational renewal <sup>(21)</sup>. Indeed, there are many small and craft businesses launched by migrant citizens.

4.15. In their reception projects for migrants, many social economy organisations have promoted agreements with central institutions and local administrations to deal with the problems in the system and to facilitate the distribution of newcomers across the country, introducing the concept of 'distributed reception' with the aim of facilitating fair allocation mechanisms for local communities <sup>(22)</sup>.

4.16. These projects have given priority to initiating programmes to integrate migrants, providing language courses, skills assessment and vocational training. This has helped roll out mechanisms for the recognition of study courses or previous professional experience, which help to increase newcomers' job prospects.

4.17. Some of these 'distributed reception' programmes are contributing to the repopulation of marginal areas, especially upland areas, where the presence of migrants helps to preserve economic and service activities (starting with schools), reducing the risk that these areas will become depopulated. In any case, if the success of these measures is to be ensured, they need to go hand in hand with employment and housing policies.

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<sup>(19)</sup> Proposal for a Decision of the European Parliament and Council on establishing a European platform to enhance cooperation in the prevention and deterrence of undeclared work, COM(2014) 221 final; OJ C 161, 6.6.2013, p. 14; OJ C 125, 21.4.2017, p. 1.

<sup>(20)</sup> M. Corsi, M. De Angelis, D. Frigeri, working paper: *The determinants of entrepreneurship for migrants in Italy. Do Italian migrants become entrepreneurs by 'opportunity' or through 'necessity'?* See also ILO, Cooperatives and the world of work No 2, *Cooperating out of isolation: domestic workers' cooperatives*.

<sup>(21)</sup> OJ C 351, 15.11.2012, p. 16.

<sup>(22)</sup> <http://www.interno.gov.it/it/notizie/carta-buona-accoglienza-nuovo-modello-integrazione>



4.18. Social economy enterprises can in these situations serve as networks with the conventional business world, enabling migrants to participate in the labour market through tailored training courses and internships <sup>(23)</sup>.

4.19. In this way, the model created by cooperatives is certainly the one which has received most attention from researchers: there has been in-depth research into the role of cooperatives in relation to migrants. In these social economy enterprises, the participatory dimension is important due to the security and protection provided when an economic activity is set up, as they help people to leave the informal economy and undeclared work.

4.20. A specific analysis carried out by the International Labour Organization identified fields in which the work of cooperatives has a positive impact on the inclusion of migrants and refugees: integration into the labour market, care and assistance; education and training; support for everyday life and being independent; market access; access to finance; legal assistance and counselling; and assistance with basic needs <sup>(24)</sup>.

4.21. During the first and second European Days of Social Economy Enterprises, held by the EESC in 2016 and 2017, the case studies demonstrated the interest in the subject of migrants <sup>(25)</sup>, highlighting the introduction of vocational training courses and professional inclusion programmes, particularly for migrant women.

4.22. The Commission has also recognised the importance of social economy enterprises in addressing the challenge of migration by dedicating the 2016 Social Innovation Competition to ideas for receiving and integrating refugees <sup>(26)</sup>. The Committee hopes that the Commission's focus on migration-related initiatives will continue and that they will become a priority when shaping EU policies.

4.23. In addition to the important role they play in helping migrants enter the labour market and in providing education, training and assistance, many social economy enterprises are also active in projects to help many migrants — particularly refugees and asylum seekers — find housing. The property management model of social economy enterprises is now deployed on an economically significant scale in countries such as Italy, with thousands of housing units made available to inclusion projects, often helping to regenerate depressed districts or areas.

4.24. Finally, social economy enterprises and civil society in general perform a key role in terms of access to assistance and health services, significantly reducing the barriers in access to care. The Committee calls on the Member States to guarantee full access to healthcare and social services for all migrants, without discrimination linked to their status.

## 5. Further observations by the EESC Permanent Study Group on Social Economy Enterprises

5.1. Social economy enterprises are particularly willing to operate in the areas of care, management of cultural and environmental heritage and activities connected with the sharing and circular economies, and have a particular affinity with these fields. They can be a valuable ally in promoting the greening policies of the European development model, and turn these areas into a major source of jobs.

5.2. Social economy enterprises support and foster people's entrepreneurial tendencies and facilitate their access to business activities, regardless of whether they have the initial financial capital to start up a business. This is particularly true of cooperatives, and so it would be useful and important for programmes promoting social economy enterprises to be rolled out as part of the development cooperation programmes implemented by the European Union in developing countries.

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<sup>(23)</sup> Internal reports, *Veneto Insieme* Consortium. For further information see <http://venetoinsieme.it/>

<sup>(24)</sup> Cooperatives and Refugees literature review, ILO, 2016 (unpublished).

<sup>(25)</sup> In particular the 2016 Okus Doma project and the 2017 Solidarity Salt project. (See also <https://www.eesc.europa.eu/en/agenda/our-events/events/2nd-european-day-social-economy-enterprises>).

<sup>(26)</sup> [http://ec.europa.eu/growth/content/4-social-innovators-win-%E2%82%AC200000-2016-european-social-innovation-competition-0\\_en](http://ec.europa.eu/growth/content/4-social-innovators-win-%E2%82%AC200000-2016-european-social-innovation-competition-0_en). See also <http://eusc-2016.challenges.org/how-is-europe-supporting-the-integration-of-refugees-and-migrants/>

5.3. In light of the evidence supporting the value of social economy enterprises in facilitating the inclusion of migrants in the labour market and society, Member States should be encouraged to establish employment incentives for social economy enterprises that act as employers. These incentives could be valid for two years from the date on which a person's status as a beneficiary of international protection is recognised.

5.4. It should be borne in mind that the coming years will undoubtedly see an increase in the number of migrants who are on the move due to the serious effects of climate change, which is causing an increase in desertification, famine and environmental disasters. It will force us to revisit the artificial and discriminatory distinction between refugees and asylum seekers and economic migrants, at least in cases where these migrants are fleeing famine and environmental disasters.

5.5. This means that we must continue to work to promote sustainable development and greening, which could also have beneficial effects on the economy, highlighting the contribution that social economy enterprises can make in promoting growth, inclusion and well-being, as emphasised by recent Committee opinions <sup>(27)</sup>.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(27)</sup> Parere Promuovere azioni a favore del clima da parte di attori non statali, GU C 227 del 28.6.2018, p. 35 e parere Nuovi modelli economici sostenibili, GU C 81 del 2.3.2018, pag. 57.

**Opinion of the European Economic and Social Committee on**

**‘Towards an EU-Mercosur Association Agreement’**

**(own-initiative opinion)**

(2018/C 283/02)

Rapporteur: **Josep PUXEU ROCAMORA**

Co-rapporteur: **Mário SOARES**

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	Own-initiative opinion
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(for/against/abstentions)	

## 1. Conclusions and recommendations

1.1. The EESC believes that concluding negotiations on a sound Association Agreement (AA) between Mercosur and the EU — which have already taken too long — would be highly beneficial for both parties. Firstly, the EU itself would gain significant benefits from signing the Association Treaty, particularly in the medium to long term, beginning with European access to a market of almost 300 million inhabitants. Moreover, Mercosur could diversify its economies and add value to its exports, as well as gaining access to a market of 500 million people. The AA reached should be primarily the result of a participatory and transparent dialogue.

1.2. The current international scene, a loss of citizens' trust in globalisation as a benefit for all, increasing trade protectionism, with the adoption of new tariff-based barriers, and the preference for bilateral negotiations instead of multilateral negotiations should provide impetus to conclude an agreement that is sought by key players on the two continents. Brexit is a relevant issue and should be taken into account in the negotiations.

1.3. The EESC welcomes the European Parliament's report on 'A new framework for relations between the EU and Latin America', as well as a communication by the European External Action Service (EEAS) reviewing strategic relations with Latin America as part of its Global Strategy on Foreign Policy. These initiatives, which highlight the EU's strategic interest in Latin America and show that relations between the two regions should be based on more than trade, are taking place at the same time as other initiatives put forward by civil society<sup>(1)</sup>, academia and think-tanks<sup>(2)</sup>.

1.4. The EESC believes that an agreement of this nature will only be possible if it is balanced, beneficial to both parties in the medium and long term and does not sacrifice any particular sector (such as farming or industry), region or country. Under no circumstances can the AA be based on a poor deal. Taking into account all aspects of cooperation and political dialogue (two of the three essential pillars of the AA), the EESC calls on the negotiating parties to show the utmost political will, which is essential to concluding the agreement and to make the greatest possible effort to overcome the differences

<sup>(1)</sup> Own-initiative opinion 'The new context for EU-CELAC strategic relations and the role of civil society' (OJ C 434, 15.12.2017, p. 23).

<sup>(2)</sup> Report *Why does Latin America matter?* by the Elcano Royal Institute.

currently affecting trade-related matters, by recognising the sensitive aspects in some sectors included in the negotiation and to this end using the recognition of disparities, monitoring of the points agreed, flanking and countervailing measures, the establishment of exceptions, development plans to support the worst affected sectors, the promotion of investments, innovation policies and countervailing, transitional and future-developments clauses. Furthermore, all EU policies should be included in the flanking measures, as well as in others.

1.5. For the EESC, the profound digital transformation taking place on both sides of the Atlantic could provide greater impetus to harness the potential of an AA signed between the EU and Mercosur. One of the sectors that could be positively affected is the global value chains between EU and Mercosur, which are currently very weak, and could be strengthened. The AA would also be relevant to all matters relating to building infrastructure, particularly interconnections, the development of sustainable energy and most notably, the telecommunications sector, beginning with the launch of the 5G system in both the EU and Latin America.

1.6. The EESC calls upon the negotiating parties, and the EU in particular, to consider the high political and economic cost of not reaching an agreement or an agreement that is not well-balanced for both parties and the missed opportunity that this would represent. Clearly, it is not only the Mercosur countries that should be taken into account when calculating the cost of not reaching an agreement, the whole of Latin America and in particular the countries of the Pacific Alliance<sup>(3)</sup>, which have become a main focus for Europe's attention in the Latin American integration process, should also be included.

1.7. The EESC is of the view that the AA should be ambitious and deal with all aspects of EU-Mercosur relations. The recent free trade agreements signed with Canada and Japan should be taken into consideration. In this regard, it is important to tackle the real barriers that companies face, by harmonising the rules and their impact on non-trade barriers.

1.8. The AA should have a fully comprehensive social, labour and environmental dimension. This dimension should ensure that the economic relations are in line with the social and environmental objectives of the agreement, without undermining the rules and guarantees governing sustainable development<sup>(4)</sup>. The importance of food security should also be emphasised.

1.9. The EESC believes that the Phytosanitary provisions (SPS) must be highlighted and protected in any association agreement in order to ensure the protection of consumers and producers in relation to fair trade.

1.10. The EESC believes that the AA should be used as an active tool to promote social dialogue and compliance with fundamental ILO conventions, particularly those related to decent work and included in the ILO Declaration on Fundamental Principles and Rights at Work of 1998. In this regard, the EESC calls for an enhanced socio-occupational chapter to address problems in the world of work and to promote dialogue between employers and employees, which could provide a boost for greater social cohesion. This chapter should recognise the work-related documents already adopted by both parties, namely, the EU Charter of Fundamental Rights and the Mercosur Social and Labour Declaration. The AA will thus ensure that breaching principles and rights at work cannot be used as a legitimate comparative advantage either among the parties or in international trade. It should therefore include mechanisms to ensure compliance.

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<sup>(3)</sup> The Pacific Alliance is a regional integration initiative made up of four Member States: Chile, Colombia, Mexico and Peru. A further two countries are candidates for membership: Costa Rica and Panama.

<sup>(4)</sup> As the EESC recommended in its opinion 'Trade and Sustainable Development chapters in EU Trade Agreements' (OJ C 227, 28.6.2018, p. 27).

1.11. The EESC calls for Mercosur's Economic and Social Consultation Forum (FCES) and the EESC itself — as the bodies representing civil society in the two regions — to be involved in the negotiation process, in the impact assessments of the AA and in the proposals arising therefrom (the EESC considers it crucial to analyse in advance the impact of a potential AA and establish mechanisms for the a posteriori verification of compliance and the development of the issues agreed upon) and in drawing up a specific chapter in the agreement focusing on the social, labour and environmental dimension.

1.12. The Committee also calls for the creation of a civil society Joint Monitoring Committee (JMC) made up of the EESC and FCES. It shall:

- have advisory status,
- a balanced membership that ensures equal representation of the three sectors represented at both institutions,
- have a voice on all areas covered by the AA (including, therefore, its chapter on trade and sustainable development),
- have a recognised right to direct dialogue with other joint bodies of the AA recognised, and
- be consulted by these bodies and able to act on its own initiative, draw up its own rules of procedure and receive adequate funding from the respective political authorities in order to enable it to carry out its duties.

1.13. The EESC considers it unnecessary and inefficient to include civil society representation twice — once in the general AA and again in the chapter on Trade and Sustainable Development. The Committee therefore considers the AA as a whole which applies to all countries of both parties. The EESC urges the negotiators to learn from the experience of other association agreements<sup>(5)</sup>, which have set up domestic advisory groups (DAGs) for each party without including any possibility for recognised dialogue under the agreements. The clear limitations of this model show that it makes no sense for each Mercosur country to have a DAG involving civil society indirectly in the AA. This is particularly true since both parties have independent, balanced, representative advisory bodies that are capable of exercising their mandate under the AA.

## 2. Introduction

2.1. Mercosur has a surface area of 12 800 000 km<sup>2</sup>; a population of 293 million inhabitants and a population density of 22,9 inhabitants/km<sup>2</sup>. Mercosur is the sixth-largest economy in the world, with a GDP of some USD two billion. Moreover, it includes two full members of the G20: Argentina and Brazil. The Argentinian presidency of the G20 in 2018 is testimony to region's growing importance.

2.2. After the signing of an Interregional Framework Agreement (IFA) in December 1995, the EU and Mercosur began to negotiate an AA. In view of the difficulties between the parties (controversy surrounding agricultural production models and their effect on the market, and the perception of protectionism in industry and the services sector in the EU and Mercosur), the negotiations were suspended in 2004, in particular due to the differing expectations held regarding the Doha Round. The decision to resume the negotiations was taken at the Latin America, Caribbean and EU summit in 2010. There were promising signs that the agreement would be finalised by the end of that year, but negotiations once again cooled off, on account of the underlying political bias that the Mercosur governments brought to regional integration and their relations with the EU. However, after a change in position by the Brazilian government, they were able to resume in 2013.

2.3. With the emergence of various threats to representative democracies and to the full application of freedoms on both sides of the Atlantic, the EESC stresses that the EU-Mercosur AA should strongly promote democratic values, principles and political frameworks nationally and internationally.

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<sup>(5)</sup> Central America, Ukraine, Georgia and Moldova.

2.4. Given the shifting impact that negotiations between the United Kingdom and the EU could have on the AA, the EESC believes that these issues should be tackled proactively, taking into account the most likely future consequences <sup>(6)</sup>.

### 3. The strategic components of the EU-Mercosur Association Agreement

3.1. The signing of an AA with Mercosur should be considered as part of European external policy on Latin America, which is based on the special nature of the bi-regional relationship — a very different relationship than with any other region in the world. Although there are significant difficulties (fragmentation of the region), strengthening relations with Latin America would benefit the EU, just as strengthening relations with the EU would benefit Latin America.

3.2. Strong political will is needed in order to design and drive forward the AA, which, is not only a free trade agreement, but would above all be a comprehensive strategic agreement that would aim to bring long-term benefits for all the economic and social actors of both parties in terms of development, security, migration, and environmental challenges. Moreover, all existing mechanisms should be used to assess current disparities between the two regions, to reduce the negative effects of trade liberalisation on certain sectors, to close the current gaps in integration in Mercosur and to establish social participation and transparency as key principles in bi-regional relations.

3.3. The AA provides a great opportunity to progress towards overall strategic objectives of shared interest. It would provide a way of maintaining an international economic and political presence at a time when economics and politics are shifting from the Atlantic to the Pacific. Over and above agreements within the Latin America Integration Association (ALADI), Mercosur does not have free trade treaties (FTTs) with the USA, nor with the major powers in Asia. This sets it apart from the Pacific Alliance. Outside Latin America, Mercosur has various types of agreements with South Africa, India, Pakistan, Turkey and Morocco, as well as FTTs with Egypt, the Palestinian Authority and Israel. The EU has more than 50 trade agreements with different countries worldwide. In Latin America and the Caribbean, it has agreements with Mexico, Chile, Central America, Peru, Colombia, Ecuador and Cariforum. In short, an AA between the EU and Mercosur would create a bi-regional bloc with considerable clout on the new world stage.

3.3.1. Protectionist tendencies, which have reached global levels, are having a major impact on the global economy. An AA between Mercosur and the EU could strengthen the Atlantic area and send out the message that there is an alternative approach to trade relations and or nations and regions to drive progress. This new generation of FTAs that factor in the concerns of people at risk of losing their jobs, income and security is the best response to growing protectionism and to the danger of a trade policy that leaves citizens vulnerable.

3.3.2. While Mercosur has not signed a treaty with China, its presence in the region has grown exponentially in recent years. Argentina and Brazil are key to China's arrival, as shown both in trade and by the increase in Foreign Direct Investment (FDI) and financial support for infrastructure development.

3.3.3. Mercosur could be a strategic partner to the EU in its aim of promoting a protected environment worldwide, beginning with the signing of the AA. The environment is now one of the issues of greatest concern to the Member States, the public at large and the multilateral system. The EU is at the forefront of green policies and technologies. Natural resources are one of Mercosur's main strengths, but this is one of the regions most threatened by climate change. In this regard, particular attention should be paid to reviewing and, in the medium term, eliminating intensive farming practices and unsustainable livestock production.

3.3.4. If this objective is to receive sufficient support, significant content would need to be included in the AA on 'energy, the environment, climate change science and technology and innovation'. These issues should be priorities in dealing with development cooperation.

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<sup>(6)</sup> Evaluation on the economic impact of Brexit on the EU27, P/A/IMCO/2016-13 March 2017, EP 595.374 EN.



3.4. It is also important to take into account the lessons learned from existing partnerships with other countries in the region. This will help to build a solid foundation and the right environment for both European and local investment to reach its full potential, in a sustainable manner, as a driver of wealth, welfare and employment.

#### 4. Sensitive aspects of the negotiation

4.1. Along with the benefits of the AA between the EU and Mercosur, there are clear difficulties in the negotiations, which can be summed up in five points: (1) the complexity of the negotiating agenda on the trade, industry and services content of the agreement; (2) the potential imbalances between both parties in the area of agriculture; (3) the structural weaknesses affecting Mercosur's integration that limit free trade; (4) the social and environmental dimension of the AA; and (5) the uneven political will amongst the parties to reach an agreement and the willingness to discuss all possible uses of compensatory mechanisms, inside and outside of the agreement, in order to reach it. All of these points are examined in this document in a non-exhaustive manner and in accordance with the documentation available to date.

4.1.1. With regard to trade, after such prolonged negotiations, the difficulties have been identified. From Europe's point of view, they concern mainly the Mercosur agri-food sector. In particular, the EU fears negative effects on sugar, beef, chicken and pork, fruit and vegetables. There are also concerns over industrial protectionism (automobiles and chemical products such as ethanol), together with some processed agricultural products (including wine); a risk of non-compliance with rules on the protection of designations of origin; a relatively low level of enforcement of food safety and environmental protection rules and a lack of transparency in public contracts.

4.1.2. Maintaining production standards achieved for the benefit of consumers and production is essential for the EU. Reciprocity should be key in dealing with aspects of food safety, environmental protection and animal welfare (including feeding systems). The use and respect for the rules on the use of plant and animal products should be outlined clearly in the AA. Moreover, effective and accountable verification systems should be introduced for production processes and, in the case of livestock products, for transport and slaughter in all trade between the parties. In this regard, the chapter covering respect for protected geographical indications is essential for protecting a common European heritage established over the years and to combat plagiarism and fraud.

4.1.3. Products that are subject to quotas, e.g. sugar, ethanol, and beef and veal, should be subject to a continuous and approved monitoring system, with a view to adopting compensatory measures in the event of major disruption and to avoid the abandonment of local production. With regard to fruit and vegetables, if protection for the import pricing mechanism is waived, an observatory to monitor the functioning of the market should be set up to safeguard the production interests of both parties. Working groups would then need to be set up to exchange forecasts and information on effects that distort the market.

4.2. From Mercosur's perspective, the emphasis is on agriculture. European concerns could be allayed if a level of compliance with the same standards could be achieved — environmental, food safety, animal welfare standards, etc. — in both European production and products imported from Mercosur. The AA should not increase food dependency in any part of the EU and should provide for the instruments required to prevent intensive and unsustainable agricultural models, while always taking consumers interests into account.

4.3. With regard to industrial products with less significant barriers, agreement seems to be more likely, as was the case with the EU's agreement with Korea on the automobile industry, for example. Finally, other issues — e.g. intellectual property — that are particularly sensitive for certain Mercosur countries such as Brazil, could include future-developments clauses or transitional clauses, on the basis of WTO rules. In this respect, the EESC believes that, among other initiatives, an industrial property programme could be drawn up, to promote technology transfer and to establish a viable system of patents between the EU and Mercosur, which could be extended to the whole of Latin America.

4.4. Mercosur's structural weaknesses may pose a challenge for the AA. The most prominent of these include the limitations imposed by the lack of interconnection infrastructure and the low level of integration in regional value chains in an area three times greater than the EU. It also includes the low level of intra-regional trade and the predominance of extra-

regional trade; an incomplete customs union, the lack of coordination between macroeconomic policies and the weakness of regional institutions. One example is the absence of a Mercosur supranational court of justice, which may impose binding sentences on governments, along with the ineffectiveness of the peaceful dispute settlement system.

4.4.1. Despite a new Mercosur Common Customs Code being adopted in 2010, it has not yet entered into force, which is why the Common External Tariff (CET) continues to apply. Mercosur is a free-trade area, rather than a customs union.

4.5. However, the EU should take a very positive view of the fact that the current negotiations are taking place with a Mercosur consisting of four countries (Argentina, Brazil, Paraguay and Uruguay). The potential expansion of the bloc, with new memberships pending, would make the terms of the agreement even more difficult.

4.6. The EESC supports the setting up of a multilateral court to settle investment disputes<sup>(7)</sup> and the Mercosur and associated countries joining this initiative, in order to ensure greater legal certainty both to Latin American and European investors. The Committee is also of the opinion that any future membership of the OECD should be subject to effective implementation and compliance with their agreements with the EU and creating a climate of legal certainty and full respect for the law in relation to all economic and social players on both sides of the Atlantic.

## 5. Potential and opportunities arising from the AA

5.1. The AA that the EU and Mercosur are negotiating goes far beyond a free trade agreement. It contains two other components that make a difference: political dialogue and cooperation. In light of the threats against multilateralism, rising protectionism and looming trade wars, now is the right time for the EU to show its strategic commitment to Latin America in general and to Mercosur in particular and to make appropriate use of the existing opportunities.

5.2. Taking into account the territory, population and current trade of more than EUR 84 000 million per year, concluding the AA between the EU and Mercosur would strengthen the role of both blocs on the international stage and create a large economic integration area, bringing benefits for both parties and generating positive spillover effects, for the rest of Latin America as well. The AA with Mercosur must therefore be a win-win agreement for both parties.

5.3. The EU is the world's largest economy and Mercosur is the sixth largest. The Mercosur countries have started to diversify their economies and they have a strong agri-food sector, but also an expanding industrial base with considerable technology and energy-related resources. Economic diversification efforts, especially those aimed at bringing greater added value to Mercosur exports, are an excellent opportunity for European businesses, particularly in technology and services.

5.4. Between 2012 and 2016, only Paraguay maintained its growth rate of 8,4 %, while Argentina (1,4 %) and Uruguay (2,9 %) slowed. Brazil recorded a contraction of - 1,4 %. However, the recovery is already being felt in Argentina and Brazil and the medium-term forecasts are encouraging.

5.5. Legal certainty in the four Mercosur countries is an important factor to be taken into account, although it can and should be improved. Corruption has become a matter of increasing societal concern for both sides.

5.6. The qualitative and quantitative importance of the regional market varies considerably depending on the size of the Mercosur member countries. In relative terms, it appears that the smaller countries are more involved in trade with Europe. In 2015, Europe accounted for more than 40 % of Paraguay's trade, around 30 % of Uruguay's and almost a quarter of trade in Argentina. However, it accounted for less than 10 % of Brazil's. These figures are similar for both exports and imports.

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<sup>(7)</sup> REX/501, Multilateral investment Court (currently being drawn up).

5.7. FDI is one of the strengths of the EU's presence in Mercosur and European FDI outstrips EU FDI in China, India and Russia put together <sup>(8)</sup>. European trade with the Mercosur countries has great potential for growth, despite the increase in Chinese exports and imports. However, one factor to consider is the excessive dependence on Mercosur exports of raw materials to China.

5.8. The presence of European small and medium-sized enterprises (SMEs) has increased in recent years in the Mercosur countries and some Mercosur SMEs have begun to access the European market. The AA between the EU and Mercosur would be an excellent opportunity for European SMEs to increase their presence and activity in the region.

5.8.1. The EU essentially exports manufactured goods, equipment, transport equipment and chemical products and imports food and energy products. Concluding a balanced AA would offer enormous wealth creation potential, if businesses, workers and the whole of society were able to benefit from it, especially if it were able to: open up space for investment, particularly in new knowledge-intensive activities and high-quality jobs; encourage the formation of SMEs by creating jobs in networks and boost innovation and democratisation in new technologies, thus contributing to their widespread use — with particular reference to communication technologies (ICT). Both investment in technology and the increase in biregional trade could boost job creation, if the required conditions are created.

5.8.2. Secondly, a number of specific factors would not only open up opportunities for trade, but would also make a significant contribution to sustainable development, including: building inclusive and environmentally-friendly infrastructure that facilitates access to basic services as part of a new urban development framework and promotes territorial cohesion; investing in engineering and technology to mitigate climate change and using sustainable energy, by diversifying using non-conventional renewable energy sources and drawing on the experience of European businesses in this area in order to move towards a green economy.

5.8.3. Moreover, a good AA could benefit economic and social well-being in both regions, under the right circumstances, and this would certainly have an effect on job creation, e.g. via:

- new business opportunities for enterprises in non-traditional areas, such as new technologies, the green economy and social networks,
- the expansion of traditional markets in the telecommunications, automobile, pharmaceuticals, electricity and banking sectors,
- new markets being opened up for SMEs,
- the supply of natural resources and food, while also helping to maintain biodiversity and environmental sustainability,
- the promotion of a social, democratic and solidarity-based economy as a way to improve the socioeconomic fabric and bring the shadow economy into the open.

5.9. An AA with Mercosur would enable the EU to strengthen its economic and geopolitical ties with a strategic partner. If finalised immediately, this bi-regional agreement would be the first major agreement signed by Mercosur, allowing the EU to move ahead of other international competitors such as the USA, China, India, Russia or South Korea. Moreover, the AA would bolster the Strategic Partnership with Brazil — which excludes trade — a very important country in terms of international geopolitics. This AA would strengthen Europe's presence in Latin America, a region with significant energy, food and water reserves — three vital resources in the XXI century. The AA could help to strengthen economic and geopolitical ties between the Atlantic and the Pacific.

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<sup>(8)</sup> EU FDI in Mercosur was EUR 447 700 million in 2016, which is more than EU FDI in Russia (EUR 162 000 million), China (EUR 177 700 million) and India (EUR 72 900 million) combined. Source: Eurostat.

5.10. An AA with the EU would also be beneficial to Mercosur from a strategic point of view. Firstly, it would strengthen its regional position and facilitate existing efforts towards rapprochement with the Pacific Alliance. Secondly, Mercosur's international negotiating position would be improved and it could offset some of the disparities between the Mercosur countries (and Latin America in general) in their trade and financial relations with other international competitors. Mercosur would benefit from technological, scientific and educational transfer and it would gain an important partner in multilateral settings on issues that heavily affect it, such as climate change, sustainable development or the fight against global threats.

5.11. The EESC welcomes the political will of the parties in the area of cooperation and encourages the parties to make effective use of the existing financial instruments for the purposes of fleshing out this cooperation in the following areas:

- education, training and university exchanges: EU-Mercosur Erasmus,
- RDI collaboration between universities, public research centres and businesses; making technology transfers a priority,
- sustainable development and business projects, and
- social cohesion: tackling poverty and inequality.

## 6. Civil society and the Association Agreement <sup>(9)</sup>

6.1. The EESC believes that the bi-regional content of the AA is a fundamental and distinctive element of these negotiations and provides a benchmark for political and economic relations in a world which is becoming increasingly globalised. The EESC is convinced of the value of dialogue with civil society in the EU's external policy counterparties and has been working with organisations from Mercosur for over 20 years, both on monitoring negotiations and on preserving an ongoing structured dialogue to facilitate mutual understanding and provide a critical but constructive contribution to relations between the two regions.

6.2. The EESC takes categorically positive overall view of relations between the EESC and Mercosur. These relations have a long history, based on deep historical, cultural and linguistic ties, and aim to deepen regional integration, to jointly manage common challenges arising from globalisation and to ensure that social cohesion and economic development remain inseparable. The civil societies on both sides have established a network of close relations, which have in turn contributed to greater coordination within each sector (employers, trade unions, third sector, etc.).

6.3. In recent years European negotiators have recognised this work through their general acceptance of the need to include arrangements for civil society participation in each agreement, thus incorporating it into the promotion of sustainable development <sup>(10)</sup>. The EESC welcomes this development, but regrets the limited role granted to civil society in existing agreements in force today. DAGs have been created for each party (and by each non-European signatory country, if the party is a region), but the agreements do not formally include the possibility for these DAGs to work together. Even more seriously, the establishment of the partner countries' DAGs depends exclusively on the willingness of their governments, which has led to an imbalance between sectors, a lack of representativeness, a lack of independence vis-à-vis their governments, a lack of interest, if open not rejection, from the governments who should establish them.

6.3.1. The EESC rejects the possibility of negotiations on the AA with Mercosur once again resulting in a system of participation based on the model of the DAGs.

<sup>(9)</sup> See also the previous proposals by the EESC in its opinions OJ C 347, 18.12.2010, p 48, OJ C 248, 25.8.2011, p. 55 and OJ C 434, 15.12.2017, p. 23, as well as the final declarations from the EU-CELAC organised civil society biennial meetings.

<sup>(10)</sup> Provisions of this type, taking more or less the same form, are already included in agreements with Central America, Colombia/Peru/Ecuador and Cariforum, Chile, and will be introduced in the revision of the agreement with Mexico.

6.4. The EESC notes, once more, that Mercosur, like the EU, has a participatory advisory civil society body: the Mercosur Economic and Social Consultation Forum (FCES). The FCES represents the employers, workers and other civil society organisations on an equal basis. Its members meet regularly and forward agreed positions to the political authorities in the region. By supporting the FCES since its creation, the EESC has aimed to highlight the importance of strengthening it, as an essential factor in the region's socioeconomic integration.

6.5. The EESC re-affirms the importance of the principles of transparency and participation — both in the negotiations and in the implementation of the AA — with the aim of inducing a virtuous cycle of trust in the institutions, of legitimisation and of civil society taking ownership of negotiations which affect them directly. The Committee therefore regrets the lack of transparency in these negotiations, which have not followed the good example previously established by negotiations for an FTT with the USA. It calls for civil society from all parties involved in the negotiations, particularly those linked to Mercosur, to be given systematic, meaningful and relevant information.

6.6. In accordance with the joint positions of the EESC and the FCES — and pre-agreements reached during the negotiations prior to 2004 and subsequently agreed upon, which stipulated that both institutions would receive a joint mandate under the AA — we call for the establishment of a civil society Joint Monitoring Committee (JMC) under the AA. This JMC must:

- have an equal number of EESC and FCES members,
- represent the three sectors (employers, labour and other organisations) in a balanced manner,
- have mandatory consultative functions covering all thematic areas of the AA, including the trade chapter and sustainable development monitoring,
- receive timely and up-to-date information on the impact of the AA,
- be able to hold discussions with the other joint bodies of the AA (Association Council, Association Committee, joint parliamentary body, Trade and Sustainable Development Board),
- receive consultations from those bodies, but also act on its own initiative,
- draw up its own rules of procedure, and
- receive adequate funding from the respective political authorities in order to enable it to carry out its duties <sup>(11)</sup>.

6.7. A JMC with these features would make it easier to resolve disputes arising after the AA has been signed and potential blockages. In particular, and following the approach of existing bodies in similar agreements, the JMC should monitor the impact that the AA has in terms of improving human rights and labour, social and environmental rights (by checking that the cases of social or environmental dumping to gain market advantage, for example), as well as the parties' strict compliance with international conventions or agreements they have entered into <sup>(12)</sup>. By their very nature, the civil society organisations that would make up the JMC are the most suitable to ensure that the AA is beneficial for all parties, and to mediate or facilitate communication with the affected sectors. To this end, the JMC must be able to forward the information it has on individual cases, as well as its recommendations, to the joint bodies of the AA, with the aim of receiving a response.

<sup>(11)</sup> In this regard, see the joint communication from the FCES and the EESC to the EU-Mercosur negotiations on 23 February, issued during the round of negotiations held in Asunción (Paraguay).

<sup>(12)</sup> This includes the SDGs and the 2030 Agenda, the Paris Agreement on Climate Change, the ILO fundamental conventions, relevant human rights declarations and international conventions on preserving biodiversity, etc.

6.8. The EESC considers it necessary to include a social dimension in the AA, which extends beyond trade and has increasing social cohesion as its overarching objective. In particular, this should cover the agreement's impact on employment, the protection of the interests of local populations and the most disadvantaged groups, the promotion of and respect for human rights, environmental protection, the rights of immigrants and of workers in general, consumer protection and promotion of the social economy. In this regard, it should include the parties' commitment to implementing the International Labour Organisation core conventions, so that violating the core principles and rights at work cannot be invoked or used as a comparative advantage in international trade. Similarly, the inclusion of a socio-occupational chapter to deal with problems in the world of work and promote dialogue between employers and workers could be a useful tool that will enable the agreement to generate high-quality jobs, improve the social conditions of workers and make a significant contribution to a more even distribution of wealth.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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## III

*(Preparatory acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

535TH EESC PLENARY SESSION – 60TH ANNIVERSARY OF THE EESC, 23.5.2018-24.5.2018

**Opinion of the European Economic and Social Committee on****(a) Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — The Goods Package: Reinforcing trust in the single market***(COM(2017) 787 final)***(b) Proposal for a Regulation of the European Parliament and of the Council laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations (EU) No 305/2011, (EU) No 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 and (EU) 2017/1369 of the European Parliament and of the Council, and Directives 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU and 2014/90/EU of the European Parliament and of the Council***(COM(2017) 795 final — 2017/0353 (COD))***(c) Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of goods lawfully marketed in another Member State***(COM(2017) 796 final — 2017/0354 (COD))**(2018/C 283/03)*Rapporteur: **Jorge PEGADO LIZ**

## Referral

(a) European Commission, 12.2.2018

(b) Council, 31.1.2018

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(c) European Parliament, 05.2.2018

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## Legal basis

(a) Article 304 TFEU

(b) Article 114 TFEU

(c) Article 114 TFEU

## Section responsible

Single Market, Production and Consumption

## Adopted in section

27.4.2018

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(for/against/abstentions)	

## 1. Conclusions and recommendations

1.1. The EESC welcomes the magnificent, necessary and complex work that the Commission has put into producing this package, work which deserves recognition. The EESC regrets, however, the excessive ‘flexibility’ of some of the provisions, giving the Member States too much leeway and failing to take more control.

1.2. The EESC endorses the Commission’s choice of legal basis for the present proposals, its evaluations regarding subsidiarity and proportionality, and also the choice of legal instruments considered the most apt for achieving the stated aims.

1.3. It is surprised that the Commission does not give a clear explanation of what became of its previous 2013 proposal for a regulation on product surveillance: it is evidently not about to be adopted and the present proposal duplicates some of the provisions.

1.4. Likewise, the Commission does not explain why its proposals are not accompanied by a new regulation on general product safety, ensuring that all products, regardless of their characteristics, are covered by up-to-date, more effective rules.

1.5. The EESC considers, moreover, that the present proposal should include a rule tightening up on the market surveillance obligation on the part of Member States, including the obligation to report to the Commission (on a quarterly basis) on their activities and controls.

1.6. The EESC would again insist that the general principles governing market surveillance should include the precautionary principle as a key element of decisions in all cases where, despite there being no clear scientific evidence that the product in question does not pose a risk in this respect, there are reliable indications that consumer or environmental protection may be compromised.

1.7. In the absence of any such reference, the EESC emphasises the need to make it clear that the burden of proof always lies with the economic operators, meaning that the latter cannot claim that it is up to the authorities to demonstrate the lack of safety or any other risk presented by a product.

1.8. The EESC considers it a matter of priority not only for the European Commission to be required to present regular reports on RAPEX, but for consumers and businesses, as well as the organisations representing them, to have access to additional information to that which is made publicly available.

1.9. It also considers that this regulation should be the legal act setting out all the rules relating to the EU’s Rapid Exchange of Information System, including the definition, points of contact, arrangements and procedures for exchanging information, the external bodies that can participate in the system (also including consumer organisations) and the notification rules.

1.10. On the other hand, the EESC highlights the need to reinforce the common European customs strategy to ensure the optimum use of physical and human resources in developing the measures set out in the present proposal and, to this end, recommends stepping up mutual assistance agreements with all trade partners, including the World Trade Organisation (WTO) and in the framework of the partnership agreements recently negotiated with Japan and Canada.

1.11. It also stresses the need for an ambitious policy to allow Member States to cooperate in exchanging information in order to act more swiftly when product use causes serious undesirable effects.

1.12. As regards the evaluation by the EU of products controlled within its borders and subject to harmonisation legislation, the EESC considers it vital for the European Commission — without prejudice to the specific competences of the national authorities — to have the power to assess national measures implemented in respect of harmonisation policy.

1.13. On the other hand, the EESC believes that the issue of market surveillance of sales via online platforms, and an assessment of the new risks for consumers using internet-connected devices, should be considered in this proposal.

1.14. The EESC is in favour of including measures to create a pan-European Injuries Database (IDB) which would cover all types of injuries and recommends including a legal basis for this purpose, with the Commission providing support for coordinating the collection of data from the Member States and ensuring that the database operates efficiently.

1.15. Finally, the EESC recommends that the Commission consider its suggestions that some articles of the proposals be amended, as explained below in the specific comments.

## 2. Goods package

### 2.1. General objectives

2.1.1. In its communication <sup>(1)</sup>, the first part of the Goods Package, the Commission defines the general, overarching objective of the initiative, namely that ‘all those involved — the general public, workers, consumers, businesses and authorities — need to be assured that they can act and acquire safe products in a transparent and fair environment where the rules apply in an equal manner to all’.

2.1.2. To this end, the Commission considers that two remaining structural weaknesses in the single market for goods must be rapidly addressed if it is to reap its full potential and warrant the trust of consumers, businesses and the authorities.

2.1.3. The first structural weakness of the single market for goods relates to the enforcement of EU harmonised product safety rules.

2.1.4. The second structural weakness relates to products that do not fall under EU harmonised product safety rules, or fall only partially under these rules. Such products may be considered safe and in line with the public interest in one Member State, but run into difficulties in gaining access to the market in another Member State.

2.1.5. In order to address these two ‘weaknesses’, the Commission is proposing two legislative initiatives and a number of additional measures.

2.1.5.1. The first legislative initiative aims to strengthen compliance with and enforcement of EU product rules, whilst the second is intended to revamp and facilitate the use of mutual recognition in the single market.

2.1.5.2. The additional measures include:

(a) a report on the operation of Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services from 2014 to 2015 <sup>(2)</sup>; and

(b) a report on the implementation of Regulation (EC) No 765/2008 <sup>(3)</sup>.

### 2.2. Specific objectives

2.2.1. The specific objectives of these initiatives can be summarised as follows:

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<sup>(1)</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM%3A2017%3A787%3AFIN>

<sup>(2)</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0788&qid=1519385332001>

<sup>(3)</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519385589015&uri=CELEX:52017DC0789>

(a) *Compliance Proposal*

2.2.2. With respect to the first legislative proposal — the proposal for a regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products<sup>(4)</sup>, henceforth referred to as the 'Compliance Proposal' — the objective is to gain confidence in the effective implementation of EU rules on products, thereby ensuring:

- (a) smart enforcement of the rules in a borderless single market;
- (b) enforcement of legislation at external borders.

2.2.3. The main specific objectives are to:

- (a) consolidate the existing framework for market surveillance activities;
- (b) encourage joint actions by market surveillance authorities from several Member States;
- (c) improve the exchange of information and promote the coordination of market surveillance programmes;
- (d) create a strengthened framework for controls on products entering the Union market and for improved cooperation between the customs authorities and market surveillance authorities.

(b) *Recognition Proposal*

2.2.4. As regards the second legislative initiative — the proposal for a regulation on the mutual recognition of goods lawfully marketed in another Member State<sup>(5)</sup>, henceforth referred to as the 'Recognition Proposal' — the objective is to ensure efficient and effective enforcement of the principle of mutual recognition, by:

- (a) ensuring the effective functioning of the mutual recognition principle;
- (b) building cooperation and trust;
- (c) guaranteeing the operation of the internal market for non-harmonised products.

2.2.5. The main specific objective of this proposal is to improve the functioning of mutual recognition through a raft of measures designed to ensure compliance with existing rights and obligations based on the mutual recognition principle, including the following:

- (a) clarifying the scope of mutual recognition, by clearly defining when it is applicable;
- (b) introducing a self-declaration to facilitate the demonstration of a product being already lawfully marketed and a problem-solving system to deal with decisions denying or restricting market access;
- (c) setting up administrative cooperation and putting in place an IT tool that will enhance communication, cooperation and trust among national authorities, and thus facilitate the functioning of mutual recognition.

(c) *Additional texts*

2.2.6. In addition, the Commission presents two reports that form the basis of its legislative proposals, namely:

2.2.7. Report by the Commission on the operation of Directive (EU) 2015/1535 (abbreviated to the 'Transparency Directive') from 2014 to 2015<sup>(6)</sup>, in which it comes to the following main conclusions:

- (a) it confirms its usefulness in terms of transparency, administrative cooperation and prevention of technical barriers in the internal market, demonstrated by the broad stakeholder interest in the notification procedure, which makes it possible to identify areas where harmonisation at EU level could be an option;
- (b) it recognises, nevertheless, that there is still room for improvement in the application of the procedure, namely concerning the number of notifications from some Member States and their compliance with the notification obligations;

<sup>(4)</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A379%3AFIN>

<sup>(5)</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A379%3AFIN>

<sup>(6)</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017DC0788&qid=1519385332001>

- (c) it considers that a higher number of notifications and more active participation of the Member States in the procedure would facilitate the prevention of new technical barriers and the identification of systemic issues in each Member State and across the EU;
- (d) it deems it crucial to further promote the Directive and step up its implementation, whilst establishing a stronger link with follow-up policy and legislative action, in order to fully achieve its objectives.

2.2.8. Report by the Commission on the enforcement of Regulation (EC) No 765/2008 <sup>(7)</sup> setting out the requirements for accreditation and market surveillance relating to the marketing of products, under the Conformity Regulation (COM (2017) 789 final), in which the main comments are as follows:

- (a) there is a need for reliable and competent 'conformity assessment bodies' that operate correctly in order to verify whether products meet certain standards before they are put on the market;
- (b) for this reason, the EU has established a system of accreditation of conformity assessment bodies;
- (c) the Commission is of the view that the EU accreditation infrastructure set up under Regulation (EC) No 765/2008 <sup>(8)</sup> provides added value, not only for the single market but also for international trade;
- (d) the report confirms that accreditation has the strong backing of EU industry and the community of conformity assessment bodies;
- (e) the challenge, however, is to ensure that the whole accreditation system keeps pace with recent developments and is always applied with the same stringency;
- (f) the report also confirms that businesses are aware of the important role of CE marking of products in the single market, introduced between 2013 and 2017.

(d) *Soft law measures*

2.2.9. Finally, the Commission acknowledges — without going into detail — that there is still scope for soft law measures designed to build trust in the single market, as provided for in its own original communication, such as making use of the existing SOLVIT mechanisms or the adoption of a clear and unambiguous 'single market clause', 'train-the-trainer' programmes on mutual recognition, exchanges of officials, etc. (appendix to the communication).

### 3. General comments

3.1. It has to be acknowledged that the Commission has carried out magnificent work, which is necessary, complex and worthwhile, and deserves recognition.

3.2. However, it does not provide a proper explanation of what has become of its 2013 proposal for a regulation on product surveillance. There is no indication that the regulation was published, and the present proposal would seem to duplicate and amend some of its provisions, without, however, stating that the previous proposal has been shelved.

3.2.1. Furthermore, the EESC considers it vital for there to be a clear link between the Directive on General Product Safety and the present proposal so that all products (and not just those listed in the appendix) are included within its scope.

3.2.2. The EESC considers that it would have been indispensable for the proposal to be accompanied by a new regulation on general product safety, ensuring that all products, regardless of their characteristics, are covered by up-to-date, more effective rules.

3.2.3. Indeed, the EESC continues to take the view that the market surveillance measures are fragmented and overlapping, leading to confusion between the rules on surveillance *per se* and the obligations of economic operators.

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<sup>(7)</sup> OJ L 218, 13.8.2008, p. 30.

<sup>(8)</sup> OJ L 218, 13.8.2008, p. 30.

3.2.4. The EESC is concerned that, by fielding simultaneous discussions on two proposals with similar content but different elements, the Commission is not doing enough to resolve this issue.

3.3. In view of the current discussions on the Product Safety and Market Surveillance Package, the EESC considers that the present proposal should include a rule to reinforce the market surveillance obligation on the part of the Member States, requiring them to report (on a quarterly basis) to the Commission on their activities and controls, particularly regarding statistics and decisions.

3.4. Furthermore, surveillance measures taken by the authorities should be published, including in the form of activity reports and on their respective websites.

3.5. On the other hand, the EESC endorses the choice of legal basis for the present proposals, the evaluations regarding subsidiarity and proportionality and also the choice of legal instruments considered the most apt for achieving the stated aims. Its only objection is the excessive 'flexibility' of some of the provisions, giving the Member States too much leeway and failing to take more control, something that would have been possible had the EU opted instead for other courses of action.

3.6. The EESC stresses that the general principles governing market surveillance should include the precautionary principle as a key element of decisions in situations where consumer or environmental protection may be compromised but where there is no clear scientific evidence that the product in question does not pose a risk in this respect.

3.6.1. The EESC is once again obliged to voice criticism of the Commission for the total lack of reference to this principle and reiterates that the precautionary principle — one that is always used by Member State authorities in the area of risk management — is crucial for all bodies which have to make decisions on whether or not to withdraw a product from the market.

3.6.2. In the absence of any reference to the precautionary principle, the EESC advocates nevertheless making it clearer that the burden of proof always lies with the economic operators, meaning that the latter cannot claim that it is up to the authorities to demonstrate the lack of safety or any other risk presented by a product.

3.7. The EESC recognises that Member States have an obligation to draw up a general market surveillance strategy at least every three years.

3.7.1. The EESC does, however, think that measures adopted by the Member States should be regularly monitored by the European Commission.

3.8. The EESC considers it fundamental for the RAPEX rapid alert system to operate in a coordinated and efficient manner regarding the exchange of information between the Member States. It notes, however, that in recent years, when a Member State notifies the Commission of a dangerous product, neither the authorities of that country nor the Commission itself generally inform consumers, or even their representative organisations, except when the necessary measures are taken, especially product recall requiring action on the part of the consumer. The same goes for situations when the authorities of one Member State agree with the economic operator for a product to be withdrawn from the market, but do not inform the other Member States of this agreement, even jeopardising the precautionary principle on many occasions.

3.8.1. The EESC also stresses the need for the mechanism to be coordinated when it comes to situations where the product needs to be destroyed, thus promoting greater integration and consumer information with regard to these situations.

3.8.2. In this respect, the EESC considers it a matter of priority, without prejudice to the need to safeguard the precautionary principle and protect business secrets, not only for the European Commission to be required to present regular reports on RAPEX, but for consumers and businesses, as well as the organisations representing them, to have access to additional information to that which is made publicly available, given how difficult it can often be for consumers to become aware of the fact that a product has been identified as unsafe and behave accordingly.

3.8.3. It also considers that this regulation should be the legal act setting out all the rules relating to the EU's Rapid Exchange of Information System, including the definition, points of contact, arrangements and procedures for exchanging information, the external bodies that can participate in the system (also including consumer organisations) and the notification rules.



3.9. Moreover, in line with its previous opinions, the EESC stresses the need to reinforce the common European customs strategy to ensure the optimum use of physical and human resources in developing the measures set out in the present proposal, including exploring the new technologies and innovation, in full compliance with the privacy of personal data and with particular attention to SMEs and consumers.

3.9.1. With this in mind, it recommends stepping up mutual assistance agreements with the EU's trade partners, including with the WTO and the partnership agreements recently negotiated with Japan and Canada.

3.9.2. The EESC also points to the issue of tackling fraud, counterfeiting and adulteration, particularly as regards imports into the EU, as these have a significant impact on general product safety.

3.9.3. In this connection, it points to the need for an ambitious policy enabling the Member States to cooperate on the exchange of information so that they can act more swiftly to combat serious undesirable effects with regard to product use, in that the growing number of fraudulent and adulterated products, coupled with the limited resources on the part of the Member States to control them, pose an increased risk to consumer health and safety.

3.9.4. Finally, as stated in a previous opinion, the EESC considers that 'members or employees of surveillance and customs authorities should provide guarantees of their honesty and independence and be protected from possible pressure or attempts to corrupt them in the exercise of their duties' <sup>(9)</sup>.

3.10. As regards the evaluation by the EU of products controlled within its borders and subject to harmonisation legislation, the EESC considers it vital for the European Commission — without prejudice to the specific competences of the national authorities — to have the power to assess national measures implemented in respect of harmonisation policy, thereby avoiding legal uncertainty which could call into question the free movement of safe products.

3.11. Again, as stated in its previous opinion, the EESC continues to advocate the inclusion of measures to set up a pan-European Injuries Database (IDB) which would cover all types of injury and serve to:

- (a) assist market surveillance authorities to make more informed risk assessment decisions;
- (b) provide a basis for preventive action and public awareness-raising campaigns, and allow standardisers to develop better product standards;
- (c) help manufacturers to adapt the design of new products to include safety aspects; and
- (d) evaluate the effectiveness of preventive measures and set priorities in policymaking.

3.12. Once again, the EESC would suggest establishing a legal basis for the IDB, with the European Commission providing support for coordinating the collection of data from the Member States and ensuring that the database operates efficiently.

#### **4. Specific comments**

##### **4.1. *Compliance Proposal (COM(2017) 795 final)***

###### **4.1.1. *Article 1***

4.1.1.1. The EESC welcomes that fact that, in addition to the protection of the health and safety of persons, protection is also extended to the environment and to the public interest.

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<sup>(9)</sup> OJ C 271, 19.9.2013, p. 86, point 1.6.

#### 4.1.2. Article 5

4.1.2.1. In the case of most consumer products, the EESC is critical of the declarations of conformity as they generally consist of a unilateral declaration by the producer recognising that the product complies with European law on product safety. The declaration frequently gives rise to misunderstandings on the part of end-users, who confuse product origin with product authorisation.

4.1.2.2. Recently, a number of consumer organisations have voiced a range of concerns over these systems of conformity, which are the same as those experienced with regard to the CE marking declaration. The EESC stresses here that the declaration of conformity needs to be placed on the actual product website, on the page containing the technical documentation related to the product. The declaration of conformity should therefore not create confusion or be misleading for end-users.

#### 4.1.3. Articles 10 and 14

4.1.3.1. The EESC welcomes the fact that the proposal seeks to set up a coherent market surveillance system in each Member State. However, whilst the proposal lays down rules on the duties, powers and organisation of market surveillance, it makes no reference to the capacity and discretionary powers of the Member States in terms of technical, human and financial resources, something that could lead to inconsistencies in product surveillance in the European Union.

4.1.3.2. Without prejudice to the powers conferred on the authorities, the EESC notes that very few obligations are imposed upon them, with the document referring primarily to prerogatives, including the power merely to alert users in their country, within an appropriate timeframe, to products identified as a risk.

#### 4.1.4. Article 18

4.1.4.1. The EESC does not know why, in this article, the Commission omitted the previous rule proposed in 2013, namely the listing of specific criteria regarding decisions taken by the authorities, and all subsequent measures such as obligations incumbent on the economic operator and further action on the part of the authorities. From the point of view of economic operators, it has not been clearly established whether notifications to RAPEX are monitored in practice and whether operators actually withdraw the products concerned from the market.

4.1.4.2. As regards the recall procedure, consumer information is paramount, in the EESC's view, and this is why it stresses that such information must be clearly specified and the authorities required to publish it. Furthermore, the information procedure related to product recall must also be defined in such a way as to prevent consumers from confusing it with product marketing information.

#### 4.1.5. Article 26

4.1.5.1. The Committee considers it essential for the proposal to include a specific requirement that Member State authorities have at their disposal the powers and resources needed to perform their tasks, including physical and laboratory controls on products.

#### 4.1.6. Article 27

4.1.6.1. The EESC considers that, without prejudice to the points mentioned, there should be a general clause enabling market surveillance authorities to ask the control authorities at the external border to prevent products that present an actual risk to health, safety, the environment or the public interest from being released into free circulation.

#### 4.1.7. Article 32

4.1.7.1. The EESC highlights the need for civil society organisations, and particularly consumer organisations, to be involved in the network so as to ensure greater transparency regarding the results achieved by the Member States in the area of market surveillance policy.

#### 4.1.8. Article 61

4.1.8.1. The EESC welcomes the proposal to draw up a specific rule on penalties to dissuade economic operators from placing dangerous products on the market.

4.1.8.2. It is therefore pleased to see that Article 61(3) states that penalties may be increased in the event of a repeated infringement.

#### 4.2. **Recognition Proposal (COM(2017) 796 final)**

##### 4.2.1. *Article 4*

4.2.1.1. The EESC has doubts about the effectiveness of this principle, particularly where in Article 4(3) it establishes that it is the responsibility of economic operators to affix the declaration, as it could have the same effect on consumers as the CE marking, which has never prevented products considered to be dangerous from circulating in the internal market regardless of their declaration.

4.2.1.2. The EESC considers that if the economic operator fails to supply the required declaration, and without prejudice to Article 4(8), a reasonable timeframe must be established to allow the authorities to verify the information concerning compliance.

##### 4.2.2. *Article 5*

4.2.2.1. The EESC would point out, once again, that the precautionary principle must be included in the product assessment requirements, particularly in respect of Article 5(5).

##### 4.2.3. *Article 6*

4.2.3.1. With regard to consumer rights, in particular the right to health and safety, and to the protection of the environment and of the public interest, the EESC does not agree with the presumption of safety established in this provision. It considers that even when the assessment has been conducted as specified in Article 5, a product cannot be put into circulation until a final decision has been taken by the Member State authority.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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**Opinion of the European Economic and Social Committee on**  
**Proposal for a Regulation of the European Parliament and of the Council on health technology**  
**assessment and amending Directive 2011/24/EU**

(COM(2018) 51 final — 2018/0018 (COD))

(2018/C 283/04)

Rapporteur: **Dimitris DIMITRIADIS**

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## 1. Conclusions and recommendations

1.1. The EESC agrees that the aim of sustainable cooperation on health technology assessment (HTA) at EU level is to ensure that all the EU countries can benefit from efficiency gains, thus maximising added value.

1.2. The EESC endorses the Commission's decision to opt for the legal route of a regulation as opposed to another legal instrument, since this will ensure more direct and more effective cooperation at Member State level.

1.3. The EESC believes the proposal for a Regulation to be fully in line with the general objectives of the EU, including the smooth functioning of the internal market, sustainable healthcare systems and an ambitious research and innovation agenda.

1.4. The EESC agrees with the position that healthcare spending is likely to increase in the coming years, given factors such as the ageing of Europe's population, increasing prevalence of chronic diseases and the advent of complex new technologies, but that at the same time Member States are also facing ever greater budgetary constraints.

1.5. The EESC would support the use of tax incentives in certain countries, as well as possibly revising upwards the 'de minimis' State aid threshold, but this must remain at the discretion of the Member States.

1.6. The EESC believes that the public funding is very relevant for HTA, and certainly this could be strengthened through joint work cooperation and avoiding the duplication of efforts.

1.7. The EESC believes that the Member States should support and finance relevant ideas and initiatives coming from start-ups.

1.8. The EESC believes that the proposal should benefit SMEs, as well as social economy enterprises operating in the sector, by reducing the administrative burden and the compliance costs associated with submitting multiple dossiers to meet the various demands of national HTAs, but it laments the absence of special provisions for SMEs.

1.9. The EESC recommends that the Regulation mention preventive measures such as support for hospitals in monitoring nosocomial infections and in their prevention and reduction, and that its scope be broadened/supplemented to include such measures.

## 2. Background

2.1. The proposal for a Regulation follows over 20 years of voluntary cooperation in the sphere of health technology assessment (HTA). After the adoption of the Cross-Border Healthcare Directive (Directive 2011/24/EU) <sup>(1)</sup>, a voluntary HTA network of national HTA bodies and institutions was set up in 2013 at EU level to provide strategic and political guidance for scientific and technical cooperation at EU level.

2.2. These activities were complemented by three successive Joint Actions <sup>(2)</sup> on HTA which gave the Commission and the Member States the opportunity to establish a solid knowledge base in relation to the methodologies and exchange of information for assessing health technologies.

2.3. The aim of sustainable cooperation on HTA at EU level is to ensure that all the EU countries can benefit from efficiency gains, thus maximising added value. Enhanced cooperation at EU level in this area is broadly supported by stakeholders interested in early access of patients to innovative treatments, medicinal and health products, provided they offer added value, demonstrating that the EU is not just an economic union but also a union that is concerned first and foremost about people. Support for the proposal was impressive among stakeholders and citizens responding to the Commission's public consultation, with almost all respondents (98 %) recognising the usefulness of HTA and 87 % agreeing that cooperation at EU level on HTA should continue after 2020 <sup>(3)</sup>.

## 3. Problems and lacunae which the proposal is intended to address

3.1. The EESC agrees with the conclusion that emerged after extensive consultation that access to the market in innovative technologies has to date been impeded or even distorted owing to different national or regional bureaucratic procedures, methodologies and requirements with HTA that exist throughout the EU and are imposed by various national rules and practices. This is why the Commission had to put forward a proposal for a regulation as the most appropriate legal approach.

3.2. Similarly the EESC agrees with the observation that the current situation is also contributing to a lack of business predictability, with higher costs for industry and SMEs, which leads to delays in accessing new technologies and has negative effects on innovation. An example of the current situation without harmonisation can be found in the paper by the think tank *I-Com, Institute for Competitiveness* <sup>(4)</sup>. On p. 49 the paper reports with reference to BEUC (the European Consumer Organisation): 'Some HTA bodies make the assessments publicly available, directly or upon request, while some others consider them confidential. Moreover, observational studies to assess the value of a drug are accepted by some HTA bodies but rejected by others. This is important since, as BEUC reports, existing literature shows that these data are less robust than those provided by randomised trials and efficacy profiles of medicines. Although these differences do not directly affect the work of BEUC, they may contribute to duplication of work and high costs to Member States. Thus, it is relevant to raise consumers' awareness of the importance of HTA and bring patients' and end-users' contribution. Last but not least, the organisation feels that although joint full HTA could be very useful, it should adapt to national healthcare contexts'. As decades of EU cooperation based on HTA projects have shown, these questions have not been adequately addressed through the purely voluntary approach to the joint work that has been conducted up until now.

3.3. The current project-based approach to EU-level HTA cooperation means that it is also undermined by a lack of sustainability, because funding is short-term and must be renegotiated and secured in each financial cycle. While the ongoing cooperation, namely the Joint Actions and the HTA Network, has illustrated the benefits of EU collaboration in terms of establishing the professional network, tools and methodologies for cooperation and piloting joint assessments, this cooperation model has not contributed to overcoming the fragmentation of national systems and duplication of activities <sup>(5)</sup>.

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<sup>(1)</sup> Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare (OJ L 88, 4.4.2011).

<sup>(2)</sup> EUnetHTA Joint Action 1, 2010-2012; EUnetHTA Joint Action 2, 2012-2015; and EUnetHTA Joint Action 3, 2016-2019. See: <http://www.eunetha.eu/>

<sup>(3)</sup> [http://europa.eu/rapid/press-release\\_IP-18-486\\_en.htm](http://europa.eu/rapid/press-release_IP-18-486_en.htm)

<sup>(4)</sup> <http://www.astrid-online.it/static/upload/7787/7787e169a7f0afc63221153a6636c63f.pdf>

<sup>(5)</sup> <http://www.eunetha.eu/wp-content/uploads/2018/01/FINAL-Project-Plan-WP4-CA-TAVI-v3.pdf>

3.4. Considering that the reliability of any new mechanism must be guided by the principles of independent and free expression for the parties involved, based solely on scientific, ethical and impartial criteria, the objectives of this initiative can be adequately achieved through enhanced HTA cooperation at EU level following these principles. The initiative will effectively address the current fragmented landscape of national HTA systems (diverging procedures and methodologies that affect market access), while at the same time strengthening cooperation at other levels that are essential to HTA (for example, in those countries experiencing difficulties owing to the lack of patient registries, the national action plans for all health conditions will have to be deployed so as to accelerate the work of the relevant health ministries, taking into account the best practice of other European countries). This is an approach that also incorporates social values and priorities into the scientific decision-making procedure.

3.5. The EESC stresses the need for the recognition of health-sector technological innovation to also cover non-hospital care at local level. As populations age <sup>(6)</sup>, chronic diseases become more prevalent and more people find themselves unable to live independently, specialisation is needed, as well as ever more effective use of technologies and treatment methods for home care. To this end, dedicated HTA programmes should be provided for, aimed at improving care and assistance in the home, not only through the use of new technologies and telemedicine, but also through increased quality of services generally across the care sector.

3.6. The EESC points here to how often advances in the sphere of healthcare provision for Europe's citizens have been developed and steered by innovative social economy enterprises, whose presence in the sector should be recognised and better utilised.

#### **4. What is this specific proposal intended to achieve?**

4.1. The proposed EU Regulation on HTA is intended to help promote the availability of innovative health technologies to patients in Europe, to make better use of available resources and to improve business predictability.

4.2. The EESC endorses the Commission's decision to opt for the legal route of a regulation as opposed to another legal instrument, since this will ensure more direct and more effective cooperation at Member State level. However, the requirement to use the joint clinical assessment if such an assessment has been made of the technology does not guarantee that the Member States will have a relevant HTA that can be used for decision-making. Voluntary cooperation is therefore an option for certain categories of health technology assessment as stated in Article 19. Because there is a risk that the wish to deliver such a HTA within a limited time frame would undermine its quality, it is imperative to apply Article 29 of the proposal for a Regulation on evaluation and monitoring.

4.3. The proposal for a regulation is also intended to ensure that the methodologies and procedures applied in HTA are more predictable right across the EU and that joint clinical assessments are not repeated at national level, thus avoiding duplication and divergence. As described in more detail in the impact assessment report, the preferred option is considered to provide for the best combination of effectiveness and efficiency in reaching the policy objectives, while also respecting the subsidiarity and proportionality principles. It allows for the best possible achievement of the internal market objectives by promoting convergence in procedures and methodologies and reducing duplication (e.g. of clinical assessments) and therefore the risk of divergent outcomes, thus helping to improve the availability of innovative health technologies for patients. However, since access to and use of technologies is not the same in all Member States, HTA needs vary, particularly where care standards are concerned. The lack of direct comparison or the application of intermediary criteria in the clinical tests used for marketing authorisations make the need for further analyses more acute. Consequently, mandatory use of the joint HTA may not be fully implementable and the principle of voluntary cooperation should perhaps continue to pertain, as suggested above, for certain categories of HTA. Therefore, it is important to clarify that according to Article 34 Member States may carry out a clinical assessment using means other than the rules provided for in Chapter III of this Regulation to ensure that Member States continue to have the possibility to do tailored additional assessments where needed.

4.4. The EESC agrees that the proposal for a regulation provides the Member States with a sustainable framework, allowing them to pool expertise and reinforce evidence-based decision-making, and supporting them in their efforts to ensure the sustainability of national health systems. The preferred option is also cost-efficient in the sense that the costs are

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<sup>(6)</sup> [http://ec.europa.eu/economy\\_finance/publications/european\\_economy/2015/pdf/ee3\\_en.pdf](http://ec.europa.eu/economy_finance/publications/european_economy/2015/pdf/ee3_en.pdf)



significantly outweighed by savings for Member States, industry and SMEs, as a result of pooling of resources, avoiding duplication and improving business predictability. The proposal contains provisions on the use of common HTA tools, methodologies and procedures across the EU and establishes the following four pillars for the joint work of the Member States at EU level.

4.4.1. **Joint clinical assessments** focusing on the most innovative health technologies with the greatest potential benefits and EU added value.

4.4.2. **Joint scientific consultations** through which health technology developers can seek the advice of HTA authorities on what data and evidence are likely to be required in a submission for HTA.

4.4.3. **Identification of emerging health technologies** to ensure that the most promising ones for patients and healthcare systems are determined early on and covered by the joint work.

4.4.4. **Voluntary cooperation** in areas not covered by mandatory cooperation, for example on health technologies other than medicinal products and medical devices (e.g. surgical procedures) or economic issues related to the use of a health technology.

## 5. What legislative and non-legislative options were considered? Is there a preferred option or not?

5.1. The EESC considers the proposal for a Regulation to be fully in line with the general objectives of the EU, including the smooth functioning of the internal market, sustainable healthcare systems and an ambitious research and innovation agenda.

5.1.1. As well as being consistent with these political objectives of the EU, the proposal is also compatible with existing EU legislation governing medicinal products and medical devices<sup>(7)</sup>. For instance, although the regulatory process and the HTA process will remain well separated because they have different purposes, there are opportunities to create synergies, through mutual information-sharing and better alignment of the timing of procedures between the proposed joint clinical assessments and the centralised marketing authorisation for medicinal products<sup>(8)</sup>.

5.2. The legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU).

5.2.1. Article 114 TFEU allows for the adoption of measures to approximate the provisions laid down by law, regulation or administrative action in the Member States, provided they are necessary for the establishment or functioning of the internal market whilst at the same time ensuring a high level of public health protection.

5.2.2. Article 114 TFEU is also the appropriate legal basis given the objectives of the proposal, namely to remove some of the existing divergences in the internal market for health technologies caused by procedural and methodological differences in clinical assessments carried out in Member States along with the considerable duplication of such assessments across the EU.

5.2.3. In line with Article 114(3) TFEU, a high level of human health protection has been considered in the preparation of the proposal, which is expected to improve the availability of innovative health technologies for EU patients.

5.3. Any legislative proposal must also comply with Article 168(7) TFEU, under which the Union must respect the responsibilities of the Member States for defining their health policy and for organising and delivering health services and medical care. This includes decisions on levels of pricing and reimbursement, which do not fall within the scope of the initiative under discussion.

5.3.1. Even though it is very clear that the EU Member States will continue to be responsible for assessing non-clinical (e.g. economic, social or ethical) domains of health technology and for taking decisions about pricing and reimbursement, the EESC suggests looking into and carrying out a separate study on a common EU pricing policy — with the aim of ensuring

<sup>(7)</sup> Relevant legislation includes Directive 2001/83/EC, Regulation (EC) No 726/2004, Regulation (EU) No 536/2014, Regulation (EU) 2017/745 and Regulation (EU) 2017/746.

<sup>(8)</sup> The need for improved synergies is also recognised by the Member States in the HTA Network Reflection Paper 'Synergies between regulatory and HTA issues on pharmaceuticals' as well as by EUnetHTA and the EMA in their joint 'Report on the implementation of the EMA-EUnetHTA three-year work plan 2012-2015'.

transparency and access for all citizens — for medicines, medical devices and in vitro diagnostic devices generally, **and those which have undergone HTA in particular**, with the aim of improving access for all European citizens and avoiding parallel exports or imports based solely on the price. This will also provide effective support for the work of the relevant national committees of the price list registries or observatories (which set price ceilings) that exist in certain countries, particularly as regards medical devices.

5.4. Although the explanatory memorandum states that '[t]he term "health technology" is to be understood in a broad sense comprising medicinal products, a medical device or medical and surgical procedures, as well as measures for disease prevention, diagnosis or treatment used in healthcare', the scope of joint clinical assessments is limited to: medicinal products undergoing the centralised marketing authorisation procedure, new active substances and existing products for which the marketing authorisation is extended to a new therapeutic indication, and certain classes of medical devices and in vitro diagnostic medical devices for which the relevant expert panels established in accordance with Regulations (EU) 2017/745 and 2017/746 have given their opinions or views and which have been selected by the Coordination Group set up under the present Regulation.

5.5. As part of efforts to prevent degenerative diseases, but also to reduce inappropriate hospital admissions of older people who are not able to look after themselves, measures should be introduced to improve the quality of healthcare and social care and thus improve patient safety and well-being.

5.5.1. The EESC thinks mention should be made of preventive measures such as support for hospitals in monitoring nosocomial infections and in their prevention and reduction, and that the scope of the regulation should be broadened to include such measures. This specific example concerns the approximately 37 000 <sup>(9)</sup> people who die every year in Europe of hospital-acquired infections. There is an urgent need to improve the safety of patients and the quality of the health services provided, focusing on prevention of nosocomial infections and the appropriate use of antibiotics. So far studies have been carried out only at national level, but they highlight all the shortcomings that this specific proposal is intended to remedy.

## 6. How much will the preferred option cost?

6.1. The EESC believes the preferred option to be cost-efficient in so far as the costs are significantly outweighed by savings for the Member States and industry <sup>(10)</sup>, as a result of pooling resources, avoiding duplication and improving business predictability.

In order to ensure that sufficient resources are available <sup>(11)</sup> for the joint work provided for in the proposal for a regulation, the EESC supports the concept of sufficient funding for joint work and voluntary cooperation, and for the support framework underpinning these activities. Funding must cover the costs of producing reports on the joint clinical assessments and joint scientific consultations. Member States should also have the option of seconding national experts to the Commission to support the secretariat of the Coordination Group, as mentioned in Article 3.

6.2. The costs of controls are included in the costs allocated to the exercise on identifying emerging new technologies to be assessed at EU level and the joint clinical assessments. Cooperation with the relevant bodies responsible for medicinal products and medical devices will minimise the risks of errors when drawing up the work programme of the Coordination Group, responsible for monitoring. As the Commission also mentions, the Coordination Group will be made up of national representatives from Member States' HTA authorities, and its sub-groups of technical experts who carry out assessments. Training of national HTA authorities is also provided for so as to ensure that the Member States with less experience will meet HTA requirements, although this is not mentioned explicitly in the proposal.

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<sup>(9)</sup> <http://www.cleoresearch.org/en/>

<sup>(10)</sup> The cost saving associated with joint assessments (Relative Effectiveness Assessments, or REA) could amount to EUR 2,67 million annually.

<sup>(11)</sup> The total cost of the preferred option has been estimated at around EUR 16 million.

6.3. Total EU expenditure on healthcare (public and private) amounts to around EUR 1,3 trillion annually <sup>(12)</sup> (including EUR 220 billion for medicinal products <sup>(13)</sup> and EUR 100 billion for medical devices <sup>(14)</sup>). Thus healthcare spending represents on average around 10 % of EU GDP <sup>(15)</sup>.

6.4. The EESC agrees with the position that healthcare spending is likely to increase in the coming years, given factors such as the ageing of Europe's population, increasing prevalence of chronic diseases and the advent of complex new technologies, whilst at the same time Member States are also facing ever greater budgetary constraints.

6.5. The EESC also anticipates that these developments will oblige the Member States to further improve the efficiency of healthcare budgets by focusing on powerful technologies while at the same time maintaining incentives to innovate <sup>(16)</sup>.

6.6. The EESC would support the use of tax incentives in certain countries, as well as possibly revising upwards the 'de minimis' State aid threshold. One proposal to consider is to look at the possibility of revising upwards the 'de minimis' State aid threshold from the current EUR 200 000 to at least EUR 700 000 for SMEs operating in the health and social care sectors, and introducing additional quality requirements such as operating on the basis of projects involving several enterprises, investing in research and innovation, or reinvesting all profits back into the company. These measures could be useful for encouraging SMEs and social economy enterprises to invest more in research and innovation and in developing network-based cooperation <sup>(17)</sup>. Also, the EESC believes that the Member States should support and finance relevant ideas and initiatives coming from start-ups.

6.7. The EESC believes that the public funding is very relevant for HTA, and certainly this could be strengthened through joint work cooperation and avoiding the duplication of efforts. Each national HTA is estimated to cost around EUR 30 000 for national bodies and EUR 100 000 for the healthcare sector <sup>(18)</sup>. If, say, ten Member States carry out an HTA for the same technology and their work were covered by a joint report, a saving of 70 % could be achieved, even on the assumption that the increased need for coordination would make a joint assessment three times more expensive than one national report. Those resources could be saved or re-allocated to other HTA activities. However, given the very high cost of new technologies, it is crucial that the HTA used by a Member State to decide on reimbursement of a technology should be in line with that Member State's therapeutic armoury. For cancer treatments, for example, the costs of which are usually in excess of EUR 100 000 per patient, an inappropriate clinical assessment will have a cost far greater than the amounts saved by the joint assessment. It is important to mention that: 'The European Cancer Patient Coalition (ECPC) welcomes the

<sup>(12)</sup> Eurostat data. From the Commission Staff Working Document *Pharmaceutical Industry: A Strategic Sector for the European Economy*, DG GROW, 2014.

Eurostat, healthcare expenditure for all the Member States, 2012 or most recently available data. The figure is complemented by WHO health data for the following countries: IE, IT, MT and UK (ECB annual exchange rate).

<sup>(13)</sup> Eurostat data, in DG GROW SWP, 2014, *Pharmaceutical Industry: A Strategic Sector for the European Economy*.

<sup>(14)</sup> Communication on *Safe, effective and innovative medical devices and in vitro diagnostic medical devices for the benefit of patients, consumers and healthcare professionals*, COM(2012) 540 final. Analysis of the World Bank, EDMA, Espicom and Eucomed.

<sup>(15)</sup> European Commission. European Semester Thematic Fiche: Health and Health systems, 2015. DG ECFIN, *Cost-containment policies in public pharmaceutical spending in the EU*, 2012. And [http://ec.europa.eu/smart-regulation/roadmaps/docs/2016\\_sante\\_144\\_health\\_technology\\_assessments\\_en.pdf](http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_sante_144_health_technology_assessments_en.pdf)

<sup>(16)</sup> DG ECFIN, *Cost-containment policies in public pharmaceutical spending in the EU*, 2012.

<sup>(17)</sup> Currently, Commission Regulation (EU) No 1407/2013 limits the amount of State aid that may be granted to a company to EUR 200 000 over three years, including in the form of tax breaks. In 2008, under the European Economic Recovery Plan, the EU temporarily raised the ceiling to EUR 500 000 in response to the economic crisis. It should be recognised that the impact on health systems of the growing demand for healthcare services, particularly those related to people not being able to live independently, will be one of the main items of expenditure for Member States' health systems. It would therefore be useful to provide for a special system of incentives and support for enterprises engaged specifically in providing local welfare services.

<sup>(18)</sup> DG ECFIN, *The 2015 Ageing Report*, 2015. OECD, 2015. *Pharmaceutical expenditure and policies: past trends and future challenges*.

proposal. By avoiding duplication of efforts, mandatory joint clinical assessments would remove the risk of diverging results and thus minimise the delays in access to new treatments' <sup>(19)</sup>. In addition, the International Association of Mutual Benefit Organisations (AIM, an international organisation of healthcare NGOs) 'is pleased to see that the European Commission proposes to give HTA collaboration at EU level a more permanent status.' [...] However, 'AIM is concerned that, with only one clinical assessment in the EU, there would be more pressure to produce this clinical assessment as quickly as possible, to the potential detriment of the quality and safety of care' <sup>(20)</sup>.

6.8. Since the budgetary impact of the proposal is expected to be felt from 2023 onwards, the contribution from the EU budget post-2020 will be discussed when the Commission's proposals for the next multiannual financial framework (MFF) are drawn up and will reflect the result of negotiations on the post-2020 MFF.

6.9. With enormous economic interests, the health technology sector is prone to conflicts of interest. It is very important that HTA is organised in an objective, independent and transparent manner.

## **7. How will SMEs and micro-businesses be affected?**

7.1. The proposal is important for small and medium-sized enterprises (SMEs), which predominate in the medical devices sector, as noted in point 4.2 above. However, no special provisions are envisaged for micro-enterprises, since these are not expected to play a prominent role in the marketing of new healthcare technologies. The EESC believes that the proposal should benefit SMEs, as well as social economy enterprises operating in the sector, by reducing the administrative burden and the compliance costs associated with submitting multiple dossiers to meet the various demands of national HTAs, but laments the absence of special provisions for SMEs. In particular, the joint clinical assessments and joint scientific consultations provided for will increase business predictability for the sector. This is especially relevant for SMEs and social enterprises, which generally have a smaller portfolio of products and limited own resources and capacity for HTA. It is worth noting that the proposal does not envisage fees for joint clinical assessments and joint scientific consultations, which is also very significant with respect to employment (i.e. reducing unemployment). Improving business predictability through joint work on HTA across the EU is expected to have a positive effect on EU competitiveness in the health technology sector. The IT infrastructure provided for in the proposal is based on standardised IT tools (e.g. for databases, document exchange, online publication), using tools that have already been developed through the EUnetHTA Joint Actions.

7.2. A real economic incentive for SMEs would be to encourage their participation in European development funding programmes under the National Strategic Reference Frameworks (NSRFs) beyond 2020. The 2014-2020 NSRFs have specific provisions for research and development aimed at reducing poverty and unemployment.

7.2.1. The EESC believes that these programmes should be not just maintained, but also expanded within the broader framework of principles of the proposal for a regulation, and that they should serve to incentivise research, development and creativity. The proposal does not make any mention of third countries, but we believe that cooperation under the proposal should not be ruled out where there are bilateral trade agreements with such countries. In the end, everything comes back to the final user and the choices they make.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(19)</sup> [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614772/EPRS\\_BRI\(2018\)614772\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/614772/EPRS_BRI(2018)614772_EN.pdf)

<sup>(20)</sup> <https://www.aim-mutual.org/wp-content/uploads/2018/02/AIM-on-HTA.pdf>

**Opinion of the European Economic and Social Committee on the**

**‘Proposal for a Council Directive amending Directive 2006/112/EC as regards rates of value added tax’**

*(COM(2018) 20 final — 2018/0005(CNS))*

**‘Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises’**

*(COM(2018) 21 final — 2018/0006 (CNS))*

**‘Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax’**

*(COM(2017) 706 final — 2017/0248 (CNS))*

**and on the**

**‘Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate’**

*(COM(2017) 783 final — 2017/0349 (CNS))*

*(2018/C 283/05)*

Rapporteur: **Petru Sorin DANDEA**

Consultation	Council of the European Union, 15.12.2017, 9.1.2018, 5.2.2018
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	26.3.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	198/5/10
(for/against/abstentions)	

## 1. Conclusions and recommendations

1.1. The EESC welcomes the Commission's proposal and recommends that it be swiftly adopted and implemented by the Member States, given the fact that the excessive fragmentation of the VAT system within the internal market places unjustified obstacles in the way of small businesses' development.

1.2. The EESC endorses the Commission's objective of ensuring that the measures included in this package are for the benefit of the final consumer. The EESC considers, however, that the reduced rates and exemptions applied under Article 98 (1) and (2) of proposal for a Directive 2018/0005 (CNS) should be applied primarily for the purpose of achieving a general-interest objective in a consistent way. Such an objective is sometimes pursued (for instance, in the case of social care and education services) by intermediate bodies, which are not final consumers. Furthermore, the EESC considers that the system should, by increasing the thresholds, be accessible not only to micro-enterprises but to small and medium-sized businesses as well.

1.3. While the EESC agrees with the Commission's proposal to establish a 'negative list' of goods and services to which the reduced rates provided for in the proposal for a directive cannot be applied, it points out that this list should not unduly curb Member States' freedom to establish reduced rates for certain general-interest goods. The Member States should also be permitted to continue to apply reduced rates to products subject to reduced rates under existing derogations stated in the current Directive 2006/112/EC.

1.4. The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input. The EESC considers that this approach creates difficulties of interpretation, such as when it comes to the management of complex services, especially services provided by networks of businesses, clusters and consortia. Thus, ambiguous interpretations may arise when payment for a service provided by a company within a group goes to the parent company, which then re-invoices the company that provided the service. If, in this situation, the same preferential rate is not applied, there will be a cost increase which, ultimately, albeit indirectly, will affect the end user.

1.5. The EESC believes that the ambitious objectives set by the Commission in this legislative package can only be achieved if the Member States make the necessary efforts to adopt the definitive VAT system within a reasonable period of time.

1.6. The EESC agrees with the Commission's proposal to allow Member States to use two reduced rates of a minimum of 5 %, as well as one reduced rate lower than 5 %, and considers that they should be applied to certain classes of goods and services, as is the case in some Member States. The EESC recommends that the Member States continue to apply reduced rates to certain classes of goods and services of general interest. Moreover, the EESC considers that the Member States should put forward a list of goods and services to which reduced VAT rates may be applied, in order to support SMEs' access to the internal market. An in-depth analysis on the possibility of implementing higher VAT rates on luxury goods should be taken into consideration.

1.7. The EESC would draw the Member States' attention to key aspects of the VAT system as applied to organisations and associations providing assistance to disadvantaged people. They are usually unable to recover large sums due to the VAT, which significantly undermines their ability to assist people in disadvantaged groups. That is why the Committee recommends that the EU institutions and the Member States exempt these organisations from the VAT regime. The Committee also considers that lawyers working on a *pro bono* or *pro deo* basis should not be subject to VAT, provided that such activities generate little to no income for them.

1.8. The EESC recommends that the Member States provide the institutions responsible for combating VAT fraud with the human, financial and logistical resources they need, in order to ensure proper implementation of the provisions of the regulation, as proposed by the Commission. Moreover, the EESC thinks it would be useful for the Member States to explore possibilities for making better use of digital technology in the fight against VAT fraud and in promoting voluntary compliance through greater transparency in EU VAT legislation.

## 2. European Commission proposal

2.1. In April 2016, the European Commission published an action plan<sup>(1)</sup> to modernise the EU VAT system. The Commission proposal contains three proposals for a directive<sup>(2)</sup> and one proposal for a regulation<sup>(3)</sup> as part of continuing efforts to implement the plan.

2.2. The three proposed directives propose to amend Directive 2006/112/EC on the common system of value added tax. The proposed amendments concern the special scheme for small and medium-sized enterprises, the minimum VAT rates and compliance with a minimum standard rate.

2.3. The EU's rules on VAT date back more than two decades and are based on the principle of origin. The Commission is seeking to modernise these rules and create a definitive VAT system for cross-border business-to-business sales of goods, based on the principle of taxation in the Member State of destination.

2.4. The Commission proposal is seeking to establish equal treatment of Member States, providing for one reduced rate not subject to a minimum, and two reduced rates no lower than 5 %. Furthermore, the Commission is proposing that the minimum standard VAT rate of at least 15 % will continue to apply.

2.5. The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input, in the case of intra-EU trade. Moreover, the Commission is proposing that the measures included in this package be for the benefit of the final consumer.

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<sup>(1)</sup> COM(2016) 148 final — Action Plan on VAT — Towards a single EU VAT area — Time to decide.

<sup>(2)</sup> COM(2017) 783 final — Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, with regard to the obligation to respect a minimum standard rate.

<sup>(3)</sup> COM(2017) 706 final — Amended proposal for a Council Regulation amending Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax.



2.6. The proposal for a regulation proposes to amend Council Regulation (EU) No 904/2010, which contains measures to strengthen administrative cooperation in the field of value added tax. The main changes proposed include exchanges of information without prior request, joint audits, procedures to refund VAT to taxable persons not established in the Member State of refund, strengthening Eurofisc with a joint risk analysis capacity and the possibility to coordinate enquiries and cooperate with OLAF (the European Anti-Fraud Office) and Europol for disclosure of serious VAT fraud cases and the EPPO (the European Public Prosecutor's Office), updating the conditions governing the exchange of information, and sharing customs procedures 42/63 and vehicle registration data with tax authorities <sup>(4)</sup>.

### 3. General and specific comments

3.1. Given the excessive fragmentation of the VAT system at Member State level and its ineffectiveness in relation to fraud, as well as the obstacles that it poses for small businesses as regards trade and investment, the EESC welcomes the Commission's proposal and recommends that it be swiftly adopted and implemented by the Member States.

3.2. The Commission considers that the reduced rate system should not be applied to goods and services that constitute an intermediate input. However, this approach creates difficulties of interpretation, such as when it comes to the management of complex services, especially services provided by networks of businesses, clusters and consortia. Thus, ambiguous interpretations may arise when payment for a service provided by a company within a group goes to the parent company, which then re-invoices the company that provided the service. If, in this situation, the same preferential rate is not applied, there will be a cost increase which, ultimately, albeit indirectly, will affect the end user.

3.3. The Commission proposes that, in future, the VAT system be based on the country of destination principle. The EESC believes that this should be an important step towards the definitive EU VAT system and encourages the Commission and the Member States to speed up this process and provide clarity in the definition of various goods and services.

3.4. The Commission is proposing to keep the minimum standard rate of VAT at 15 %. The EESC wishes to draw attention to the fact that, for most Member States, VAT is one of the main sources of revenue for the public budget, and therefore supports the Commission's proposal.

3.5. Most Member States apply reduced VAT rates to foodstuffs, medicines and books, as well as to some essential services such as health and social care services. The EESC agrees with the Commission's proposal to allow Member States to use two reduced rates of a minimum of 5 %, as well as one reduced rate lower than 5 %, and considers that they should be applied to certain classes of goods and services, as is the case in some Member States. The use of these reduced rates increases the need to inform SMEs that also operate outside the domestic market. An in-depth analysis on the possibility of implementing higher VAT rates on luxury goods should be taken into consideration.

3.6. The Commission points out that the new system, based on the country-of-destination principle, could lead to distortions of competition for certain goods or services. To prevent this, the Commission proposes to establish a 'negative list', based on the statistical classification of products and services, to which the standard VAT rate would apply. While the EESC agrees with the Commission's proposal and underlines the obligation of Member States to follow such a list, the EESC points out that it is important when the list is decided upon, that it does not unduly curb Member States' freedom to establish reduced rates for certain products of general interest. The Member States should also be permitted to continue to apply reduced rates to products subject to reduced rates under existing derogations stated in the current Directive 2006/112/EC. The negative list proposed by the European Commission (Annex IIIa) should therefore take into account well-established rules in the Member States. In any case, it should be clear that this reduced VAT rate can be maintained on the provision of labour-intensive services, particularly by SMEs.

3.7. Given that the new VAT scheme for small businesses proposed by the Commission is aimed at helping SMEs, enabling them to benefit from the opportunities provided by the single market, the EESC considers that the thresholds proposed in Article 284(1) and Article 284(2)(a) should be better correlated with the turnover threshold set in Article 280a(1). In other words, while the Commission proposal sets the annual turnover threshold up to which micro-enterprises may benefit from the exemptions provided for in the proposal for a directive at EUR 85 000. The threshold for the volume of

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<sup>(4)</sup> For more information, see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0069> and [http://europa.eu/rapid/press-release\\_ECA-11-47\\_en.htm](http://europa.eu/rapid/press-release_ECA-11-47_en.htm)



cross-border sales is EUR 100 000, which means that the proposed system is mainly applicable to micro-enterprises. The EESC feels that the thresholds should be set at levels that ensure that SMEs are also covered by the new system. Moreover, the measures aimed at SMEs should also be applicable to social economy enterprises, especially where such enterprises provide social care and education services. The EESC also believes that additional measures are needed to enable SMEs to benefit from the reduced administrative burden which, under the system proposed by the Commission, would apply only to micro-enterprises.

3.8. The EESC considers that, in order to support SMEs' access to the EU internal market, Member States should draw up a list of goods and services to which reduced VAT rates apply. The list should be available to the business sector at central EU level.

3.9. The EESC welcomes the simplifications proposed by the Commission in respect of registration and reporting obligations pertaining to small businesses and considers that these measures will help them to develop more quickly and facilitate their access to the single market.

3.10. Therefore, while agreeing with the Commission's objective of ensuring that the measures included in this package are for the benefit of the final consumer, the EESC considers that the reduced rates and exemptions applied under Article 98 (1) and (2) of proposal for a Directive 2018/0005 (CNS) should be applied primarily for the purpose of achieving a general-interest objective in a consistent way. Such an objective is sometimes pursued (for instance, in the case of social care and education services) by intermediate bodies, which are not final consumers. Furthermore, and in order to facilitate access for all to legal defence, it is important to provide for a reduced rate of VAT for services provided by lawyers defending disadvantaged people.

3.11. The EESC recognises that the legislation included in the second package does not comprise a comprehensive approach to the field of VAT. Nonetheless, the Committee would draw the Member States' attention to key aspects of the VAT system as applied to organisations and associations providing assistance to disadvantaged people. They are usually unable to recover large sums due to the VAT, which significantly undermines their ability to assist people in disadvantaged groups.

3.12. The Commission has proposed a deadline of 2022 for transposition of the directive. The EESC recommends that the Commission and Member States consider a shorter implementation period, given that the new scheme is intended to facilitate trade for small businesses and open up new opportunities for them in the single market. The EESC proposes that the Commission launch, in cooperation with the Member States, a major media information campaign to promote the new VAT system and its requirements.

3.13. In view of the fact that Member States lost a total of EUR 152 billion in VAT revenues in 2015, the EESC agrees with the measures proposed by the Commission in its proposal for a regulation on administrative cooperation. Involving OLAF and the EPPO in investigating cross-border VAT fraud, alongside Eurofisc, will make it easier to detect fraud at Member State level.

3.14. The EESC recommends that the Member States provide the institutions responsible for combating VAT fraud with the human, financial and logistical resources they need, in order to ensure proper implementation of the provisions of the regulation, as proposed by the Commission. Moreover, the EESC thinks it would be useful for the Member States to explore possibilities for making better use of digital technology in the fight against VAT fraud and in improving voluntary compliance.

3.15. The EESC reiterates its proposal to set up a forum<sup>(5)</sup> for the purposes of exchanging best practices in revenue collection and looking at ways to bolster Member States' administrative capacity to combat VAT fraud in the area of cross-border transactions, as well as improving the functioning of the internal market. The Commission should set up this forum.

3.16. The EESC points out that the ambitious objectives set by the Commission in this legislative package can only be achieved if the Member States make the necessary efforts to adopt the definitive VAT system within a reasonable period of time.

Brussels, 23 May 2018.

*The President  
of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(5)</sup> See EESC opinion ECO/442 on the VAT reform package (I) (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 on transparent and predictable working conditions in the European Union'**

(COM(2017) 797 *final* — 2017/0355 (COD))

(2018/C 283/06)

Rapporteur: **Christian BÄUMLER**

Co-rapporteur: **Vladimíra DRBALOVÁ**

Consultation	Council of the European Union referral: 10.1.2018 European Parliament referral: 18.1.2018
Legal basis	Article 153(2) of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	25.4.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	164/22/9
(for/against/abstentions)	

## **1. Conclusions and recommendations**

1.1. The European Economic and Social Committee (EESC) supports the Commission's effort to make working conditions for all workers, particularly those in atypical employment, more transparent and predictable as a concrete step towards implementing the European Pillar of Social Rights.

1.2. The EESC regrets that it was not possible to revise and update the Written Statement Directive (Directive 91/533/EEC) within the social dialogue framework. It points out that the social partners have a specific role in regulating transparent and predictable working conditions through social dialogue and collective bargaining, respecting the diversity among the Member States and national practices.

1.3. The EESC also points out that the REFIT report notes that the existing Directive 91/533/EEC still has clear added value, achieves its purpose, remains an important part of the *acquis* and continues to be relevant to all interested parties. Shortcomings were found, however, in relation to effectiveness, the personal scope of the directive and its implementation.

1.4. Some of the Member States have addressed the challenges of atypical employment and put in place safeguarding measures through collective agreements, social dialogue or legislation with a view to ensuring fair working conditions and transitions with diverse career paths in labour markets, and the EESC explicitly welcomes this. The Commission should clarify that such types of protection should be upheld, in full respect of the autonomy of the social partners.

1.5. The EESC understands the objectives of the Commission proposal for a directive on transparent and predictable working conditions which should lead to better protection for workers, particularly those in atypical employment. The EESC points out that only a balanced, legally sound, unambiguous and sufficiently reasoned proposal will be able to guarantee the necessary convergence and ensure coherent application in the European labour market of the obligations stemming from the proposed directive.

1.6. The EESC recognises the particular situation of natural persons acting as employers, and micro and small enterprises, which may not have the same resources available to them as medium and larger enterprises when fulfilling their obligations under the proposed directive. The EESC therefore recommends that the European Commission and Member States should provide appropriate support and assistance to such entities, to help them meet these obligations. The use of model letters and templates, as already foreseen by the proposal, is a good example and other practical measures should be explored.

1.7. In order to ensure effectiveness of the rights provided by Union law, the personal scope of the Written Statement Directive should be updated to address labour market developments while at the same time respecting national practices. According to the Commission, the Court of Justice of the European Union has, in its case-law, established criteria for determining the status of a worker which are appropriate for determining the personal scope of application of this directive. The definition of a 'worker' is based on these criteria. The Commission should consider issuing guidelines to assist employers in fulfilling their obligations and raise awareness among workers, thus reducing the risk of litigation.

1.8. The EESC highlights that Member States must be able to determine, under the social dialogue, who falls within the scope of 'worker' but that this must be interpreted in the light of the purpose of the directive, which is to 'promote more secure and predictable employment while ensuring labour market adaptability and improving living and working conditions'. The EESC highlights that domestic workers, seafarers and fishermen should therefore fall within its scope. Working conditions of seafarers are already regulated to a high degree by the European Social Partners' Agreement on the ILO Maritime Labour Convention 2006, appended to the Council Directive 2009/13/EC.

1.9. The EESC points out that the criterion of 'being under the direction of another' in the definition of a worker could hinder the inclusion of platform workers. It therefore recommends further clarification so that such workers also benefit from the protection of the directive. The EESC believes, however, that people using platforms who are genuinely self-employed and independent should be excluded from the scope of the directive.

1.10. The EESC recommends that the personal scope of the directive with regard to the definition of an employer should be clarified, as it is currently imprecise.

1.11. The EESC supports the recast version of the obligation to provide workers with information regarding their working conditions when an employment relationship starts or is modified, and the clarification that this must take place at the latest at the beginning of such a relationship or when changes take effect. The EESC acknowledges that there may be justified operational reasons for allowing some limited flexibility in the case of micro and small enterprises, while ensuring that workers are informed of their working conditions as close to the start of the employment relationship as possible.

1.12. The EESC notes that the proposal allows for the social partners to conclude collective agreements which depart from the minimum requirements relating to working conditions. The EESC endorses this provided that the objectives of the directive are met, and that the overall protection of workers is acceptable and is not undermined.

1.13. The EESC believes that on-demand work cannot be maintained as a form of employment without an appropriate reference period and appropriate advance notice. The EESC recommends that employment contracts that provide for on-demand work should guarantee a certain number of hours or corresponding payment.

1.14. The EESC supports the provisions relating to minimum requirements relating to working conditions, notably regarding the length of the probationary period, restrictions on the prohibition of employment in parallel, minimum predictability of work, transitioning to another form of employment where available, and the provision of cost-free training where this is required for the worker to carry out the work. However, the EESC recommends clarification of certain aspects, recommending that responsibility be left up to the national level according to national legal and social dialogue practices.

1.15. The EESC believes that for the effective application of the directive, it is right for workers to be protected from dismissal, or other measures with equivalent effect, because they have invoked their rights under the directive. In such circumstances, it is reasonable that the employer can be required, at the request of a worker, to substantiate the grounds of dismissal in writing.

1.16. The proposal provides for instruments with which to sanction an infringement of the directive's information obligations. The EESC drew attention to this lacuna in a previous opinion and called for it to be rectified. The EESC is of the opinion that sanctions, where they are justified, should correspond with the level of damage suffered by the worker. The EESC welcomes the provision under Article 14(1) giving employers 15 days to complete the missing information.

1.17. The proposal sets out minimum standards for convergence and it is important that workers who currently enjoy better material rights should not fear deterioration in their existing rights when the directive is implemented. The EESC therefore supports the explicit non-regression clause contained in the proposal. However, the EESC recommends that, as well as ensuring that there would be no worsening of the overall level of protection, the directive should also make it more explicit that there should be no worsening of conditions in the individual areas covered by the directive.

## 2. Context of the proposal

2.1. The proposed Directive on transparent and predictable working conditions in the European Union (2017/0355 (COD)) is intended to replace the current Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (Written Statement Directive). It should also complement other existing EU directives.

2.2. The proposal has its legal basis in Article 153(2)(b) of the Treaty on the Functioning of the European Union and draws on a REFIT evaluation of the existing EU law. The REFIT report notes that the Written Statement Directive brings clear added value, achieves its purpose, remains an important part of the *acquis* and continues to be relevant to all interested parties. Shortcomings were found, however, in relation to effectiveness, the personal scope of the directive and its implementation

2.3. The cost of issuing a new or revised written statement is expected to be EUR 18-153 for SMEs and EUR 10-45 for larger companies. Companies would also have one-off costs related to familiarisation with the new directive: an average of EUR 53 for an SME and EUR 39 for a larger company. Costs of responding to requests for a new form of employment are expected to be similar to those deriving from issuing a new written statement.

2.4. Employers anticipate some modest indirect costs (legal advice, revised scheduling systems, HR management time, information for staff etc.). Flexibility will only be lost at the margins (i.e. for the small proportion of employers making extensive use of the most flexible forms of employment).

2.5. On 26 April 2017 and 21 September 2017, the Commission launched two phases of the consultation of the European social partners on the possible direction and on the contents of Union action as provided for under Article 154 TFEU. The views of the social partners were mixed on the need for legislative measures to revise Directive 91/533/EEC. The EESC points out, as it did in a previous opinion, that transparent and predictable working conditions should be negotiated above all by the social partners in the framework of social dialogue<sup>(1)</sup> and regrets that there was no agreement among the social partners to enter into direct negotiations to conclude an agreement at Union level.

2.6. The Commission points out that the world of work has evolved significantly since the adoption of Directive 91/533/EEC (hereinafter the 'Written Statement Directive') on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The last 25 years have brought about a growing flexibilisation of the labour market. In 2016, a quarter of all employment contracts were for 'non-standard' forms of employment and in the last 10 years more than half of all new jobs were 'non-standard'. Digitalisation, too, has facilitated the creation of new forms of employment.

2.7. The Commission notes in the proposal that the flexibility coming with new forms of employment has been a major driver of job creation and labour market growth. Since 2014, more than five million jobs have been created, of which almost 20 % in new forms of employment.

2.8. Even so, the Commission has also acknowledged that these trends have nurtured instability and increasing unpredictability in some working relationships. This is particularly the case for workers in the most insecure situations. Between 4 and 6 million workers are on on-demand and intermittent contracts, many with little indication of when and for how long they will work. Up to one million are subject to exclusivity clauses, preventing them from working for another employer. On the other hand, the Sixth European Working Conditions Survey (2015) found that 80 % of workers from the EU 28 were satisfied with their working conditions.

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<sup>(1)</sup> OJ C 434, 15.12.2017, p. 30.

2.9. Some of the Member States have addressed the challenges of atypical employment and put in place safeguarding measures through collective agreements, social dialogue or legislation with a view to ensuring fair working conditions and transitions with diverse career paths in labour markets, and the EESC explicitly welcomes this. The Commission should set out in the recitals that certain forms of protection, e.g. those in Belgium and Sweden, are to be complied with. In Belgium, for instance, the system of supplementary jobs in various sectors is based on the principle that workers already have another main job.

### 3. General comments

3.1. The EESC has also encouraged Member States and the EU, in its opinions on the Pillar of Social Rights<sup>(2)</sup>, to establish and maintain a regulatory framework that fosters adaptability, which is simple, transparent and predictable, which strengthens and preserves workers' rights and the rule of law and through which the EU can promote a stable legal framework for collective bargaining and social dialogue in the implementation of flexicurity. In its first opinion on the Pillar of Social Rights<sup>(3)</sup>, the EESC emphasised that labour market conditions must support new and more diverse career paths. Different forms of job creation and different forms of work are required 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.

3.2. The EESC points out that atypical employment can have significant impacts for both individuals and society. Insecure employment could, for example, conflict with starting a family, purchasing a home and other personal projects. It must be remembered that young people, women and people with a migrant background are particularly affected by these forms of employment. The lower pay often associated with atypical employment can in some cases require supplementary social benefits and, in addition, have a negative impact on pension entitlement, as well as the amount.

3.3. The EESC endorses the Commission's aim of ensuring that dynamic innovative labour markets underpinning the EU's competitiveness are framed in a way that offers basic protection to all workers and longer-term productivity gains for employers and enables convergence towards better living and working conditions across the EU. The EESC points out that only a balanced and legally sound, unambiguous and sufficiently reasoned proposal will be able to guarantee the necessary convergence and ensure uniform application in the European labour market of the obligations stemming from the part of employment law being debated.

3.4. The Commission points out that the regulatory system across the EU has become increasingly complex. According to the Commission, this increases the risk of competition based on undercutting social standards, which also has harmful consequences both for employers, who are subject to unsustainable competitive pressure, and for Member States, who forgo tax revenue and social security contributions. The EESC supports the Commission's aim of setting minimum requirements for atypical workers while respecting national legal and social dialogue systems, protecting in particular those workers who are not covered by collective agreements.

3.5. The EESC sees the proposal as one of the Commission's key initiatives to follow up on the European Pillar of Social Rights, jointly proclaimed by the European Parliament, the Council and the Commission at the Social Summit for Fair Jobs and Growth in Gothenburg on 17 November 2017. The pillar serves as a compass for the renewed upwards convergence in social standards amid the changing realities of the world of work. This directive should help to implement the pillar's principles on 'Secure and adaptable employment' and 'Information about employment conditions and protection in case of dismissals'. There are different views on how to implement these principles most effectively. Some consider the Commission proposal to be a considerable step in the right direction, while others think it goes beyond what is needed.

3.6. However, the EESC emphasises that social dialogue and collective bargaining should remain the most important tool to set transparent, predictable and decent working conditions, and the European Commission should be mindful not to interfere in or impede social dialogue and collective bargaining.

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<sup>(2)</sup> OJ C 125, 21.4.2017, p. 10, OJ C 81, 2.3.2018, p. 145.

<sup>(3)</sup> OJ C 125, 21.4.2017, p. 10.



#### 4. Specific comments

##### 4.1. *Scope and definitions*

4.1.1. Under Article 1(2), the minimum rights enshrined in the directive apply to every worker in the Union. In order to ensure effectiveness of the rights provided by Union law, the personal scope of the Written Statement Directive should be updated to address labour market developments while at the same time respecting national practices. According to the Commission, the Court of Justice of the European Union has in its case-law established criteria for determining the status of a worker which are appropriate for determining the personal scope of application of this directive. The definition of worker in Article 2(1) is based on these criteria. They ensure a coherent implementation of the personal scope of the directive while leaving it to national authorities and courts to apply it to specific situations. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, platform workers, trainees and apprentices could all come within the scope of this directive.

4.1.2. The EESC points out that the criterion of being under the direction of another person could hinder the inclusion of platform workers. It should therefore be specified in the recitals that algorithms can be binding on workers in the same way as oral or written instructions. Real self-employed people using platforms should be excluded from the scope of the directive.

4.1.3. The EESC highlights that Member States and social partners must be able to determine under the social dialogue who falls into the scope of 'worker' but this must be interpreted in the light of the general objective of the directive, which is to improve working conditions by promoting more secure and predictable employment while ensuring labour market adaptability. The CJEU has highlighted (see for example Case C-393/10, O'Brien) that Member States may not apply rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness.

4.1.4. The EESC fears that the actual definition of an employer in the proposal could lead to confusion and complexity. By defining an employer as 'one or more natural or legal person(s) who is or are directly or indirectly party to an employment relationship with a worker', the proposal introduces a new concept for defining employers. Usually there is only one employer for a given employment relationship. In this regard it is necessary to refer to the applicable national legislation.

4.1.5. The EESC points out that the exemption provided in Article 1(6) could lead to unjustifiable unequal treatment of domestic workers when it comes to access to better kinds of work, further training and the exercise of their rights. This difference in treatment is unsound and actually prohibited, given that several EU countries have now ratified — and are therefore bound by — ILO Convention No 189 on the working conditions of domestic workers.

4.1.6. The EESC welcomes the fact that Article 1(7) of the directive should be applicable to seafarers and fishermen. With respect to seafarers' working conditions, regulated by the Council Directive 2009/13/EC, the EESC is of the opinion that consideration should be given to the compatibility of the proposed directive with the specificities of the maritime profession.

##### 4.2. *Obligation to provide information*

4.2.1. The EESC can support the fact that under Article 4(1) of the proposal, workers are to be informed of important working conditions at the start of the employment relationship. This is the only way of making sure that both sides are aware of their rights and obligations when they enter into the employment relationship. Providing information at a later stage works solely to the detriment of employees and in the case of short-term work they lose entirely the protection to which they are entitled. Nevertheless, the EESC recognises that there may be exceptional circumstances, which may prevent micro and small businesses from being able to provide the information on the first day. The EESC recommends that a brief extension of the timing for the provision of the information could be provided for micro and small enterprises. The EESC also recognises that an expanded package of information for businesses, particularly small and micro-enterprises, could be burdensome. The EESC therefore believes that assistance and support should be provided to natural persons, small and micro-enterprises, among others by associations of SMEs, to help them to fulfil their obligations under the directive.

4.2.2. The proposal provides in Article 4(1) that the document containing the information on the employment relationship may be communicated electronically, provided it is easily accessible by the worker. The EESC believes, however, that this is important to ensure that notification actually takes place. It recommends that employers and workers should have the scope to agree on the method of transmission of the document and that, in any event, the notification is to be considered as completed only once the worker has acknowledged receipt.

4.2.3. The EESC agrees that information about changes to basic working conditions must be given at the earliest opportunity and at the latest when the changes come into effect. This plugs a major gap in the current Written Statement Directive, under which changes only have to be notified in writing a month after taking effect (Article 5(1)). To avoid excessive administrative burdens it should be stipulated that changes resulting from modifications of prevailing legal and administrative requirements or from collective agreements do not have to be notified individually by a company, since in many Member States such changes are communicated by legislators and social partners.

4.2.4. Article 6(1) largely corresponds to the existing provisions (Article 4(1) in the Written Statement Directive). The EESC notes the more detailed information (now in (c)) on benefits in kind and cash benefits.

4.2.5. The EESC welcomes the obligation in Article 6(2) to give posted workers more information. It recommends that it should be made clear that these arrangements build on existing ones — in other words, that this information is to be provided in addition to that under Articles 6(1) and 3(2). It is not clear when the revised Directive 96/71/EC will come into force; however the EESC points out that the provisions of this directive must be consistent with the final agreement on the revision of the directive on posting of workers.

4.2.6. The EESC notes that the reference to the homepage to be set up in every Member State (under Article 5(2)(a) of Enforcement Directive 2014/67/EU) does not adequately meet the requirement to provide information. This is because the reference assumes that every Member State has complied fully with its obligation in the enforcement directive and that the posted workers can understand the information in terms of both substance and language. Given that many countries, Germany among them, have failed to satisfactorily meet their obligation under Article 5 of Directive 2014/67/EC despite expiry of the implementation period, the reference serves no purpose, if homepages provide only very general information and not in the relevant languages.

4.2.7. The EESC points out that merely referring to the provisions in force, as provided for in Article 6(3), is not enough to satisfy the requirements of properly informing foreign workers if those provisions are not accessible in a language they can understand. Especially when it comes to the remuneration they can expect abroad, foreign workers must be informed directly and not referred to provisions they cannot understand.

4.2.8. Article 6(4) creates an exemption from the information obligation for foreign assignments that do not exceed four consecutive weeks. The EESC is concerned that this could create a loophole that makes it possible to circumvent the information requirements. It recommends an evaluation of this exemption in due course.

### 4.3. *Minimum requirements relating to working conditions*

4.3.1. The EESC supports the objective of the Commission that the provisions of Article 7(1) should serve to introduce uniform minimum standards on the length of the probationary period. This provision, like the exemption in Article 7(2), is in the interest of both employers and workers. Probationary periods allow employers to verify that workers are suitable for the position for which they have been engaged while providing them with accompanying support and training. Such periods may be accompanied by reduced protection against dismissal. Any entry into the labour market or transition to a new position should not be subject to prolonged insecurity. As established in the European Pillar of Social Rights, probationary periods should therefore be of reasonable duration. The EESC points out that Article 7(2) would allow the Member States to provide for longer probationary periods where justified by the nature of the employment relationship, which could be the case for example in the public administration of certain Member States or for jobs requiring exceptional skills.

4.3.2. The EESC supports the provision in Article 8(1) that employers must not prohibit workers from taking up employment with other employers outside the time spent working for them, providing this remains within the limits set out in the Working Time Directive which is intended to protect workers' health and safety. However, the EESC points out that such a broad right for parallel employment should respect the national rules, practices and traditions of social dialogue and social partnerships in the different Member States. Such a broad right may be problematic in particular regarding key



personnel for the employer, as such employees cannot be available for several employers at the same time. Regarding the Working Time Directive, there are also concerns that employers might be responsible for monitoring the working time of persons in parallel employment. The EESC recommends clarifying that the employer is not responsible for monitoring working time in another employment relationship.

4.3.3. According to Article 8(2), employers may lay down conditions of incompatibility where such restrictions are justified by legitimate reasons such as the protection of business secrets or the avoidance of conflicts of interests. In recital 20 the Commission refers to specific categories of employers. The employers can in principle support this Article 8(2), but consider that limiting restrictions for working for specific categories of employers seems to not allow necessary restrictions for key personnel in particular, no matter which category of employer they would like to work for. However, the trade unions oppose this broad exemption as it would give employers the unilateral right to lay down incompatibility criteria limiting parallel employment. In the event that an employer may have legitimate reasons for such restrictions, these must be capable of objective justification, and it should therefore be the Member State legislators and courts that are principally responsible for balancing the conflicting interests of the parties.

4.3.4. The EESC shares the objective of improving the predictability of work on demand envisaged by the proposal. This predictability can be improved through restrictions of actual working times to a reference framework established in advance and through the early notification of such times, as provided for in Article 9. Workers whose work schedule is mostly variable should benefit from a minimum predictability of work where the work schedule mainly either directly — for instance by allocating work assignments — or indirectly — for instance by requiring the worker to respond to clients' requests — requires workers to be flexible. Nevertheless a clarification will be needed as to what is understood by a sufficiently reasonable period of notice for the employee to be told about work over the following days and who should make the decision on what notice periods are reasonable for which branches of industry. Arrangements differ between sectors.

4.3.5. The EESC points out that the directive does not provide any qualitative guidance to Member States on the reference framework and the advance notice. It is not impossible that even a broadly conceived reference period and notice periods would still be in conformity with the directive even though they did not improve predictability of work for workers. In addition, reference periods could be imposed unilaterally by the employer, without workers having the same right, which perpetuates the existing imbalance.

4.3.6. The EESC recognises the fact that on-demand work brings flexibility that limits the predictability of an employee's everyday life. Fluctuating and unreliable income could be serious problems that on-demand work causes for staff. The EESC believes that on-demand work cannot be maintained as a form of employment without setting an appropriate reference period and appropriate advance notice for the worker. The EESC recommends that employment contracts that provide for on-demand work must guarantee a certain number of hours or corresponding payment.

4.3.7. According to Article 10(1), after a period of employment of six months workers must be able to ask their employers for a form of employment with more predictable and secure working conditions. The EESC welcomes the fact that this arrangement is to cover all categories of workers in non-standard or insecure arrangements. It is concerned that there is no provision for an enforceable right to move to other forms of employment, where this is available. As such, the right to submit a request is in itself no meaningful improvement in the legal situation of employees, since they can already express their wish for upgrading, an open-ended contract and so on. However, policy measures to support that aim should be efficient and proportionate and should not place unnecessary administrative burdens on companies.

4.3.8. The EESC believes that the requirements in Article 10(2) regarding the employer's written answer must be amplified. Employers should provide objective business reasons for the refusal of the request so that where the worker believes that the application has been refused on other grounds, the refusal can be subject to independent review by the courts or according to national practices. This is the only way to ensure that employers seriously consider the workers' requests, rather than just providing any reply to comply with a formality.

4.3.9. The EESC notes the fact that the Commission acknowledges the specific situation of natural persons acting as employers, and small and micro enterprises in the derogation from the written justification requirements provided for in Article 10(2). However, it points out that the current formulation would cover all companies with 249 or fewer staff and an annual turnover of up to EUR 50 million, which is 99 % of all companies in the EU. The scope of this derogation should therefore be reconsidered.

4.3.10. The EESC thinks the directive should open up real opportunities for workers in non-standard jobs to move to more standard terms of employment appropriate to their qualifications. This requires minimum rights for temporary workers to be moved into open-ended employment and to upgrade from part-time to full-time work, where there are free places in the company and the worker has the necessary skills or qualifications.

4.3.11. The EESC welcomes the provision in Article 11, that where employers are required by Union or national legislation or relevant collective agreements to provide training to workers to carry out the work they are employed for, the costs of such training should be cost-free to the worker. As regards a possible 'reimbursement clause' in the event of training going beyond legal requirements which leads to a higher qualification and where the employee resigns at an early stage after the training, the EESC stresses that such clauses must be well founded in each case and where appropriate negotiated by agreement between the social partners and should in any case comply with the principle of proportionality and be regressive in effect (i.e. decreasing repayment risk over the course of employment).

4.3.12. The EESC welcomes the fact that Article 12 provides for the minimum standards in Articles 7 to 11 to be modified under collective agreements on condition that workers' rights remain at an appropriate level in those agreements and that overall protection of workers is maintained. We would point out that transparent and predictable working conditions should be negotiated above all by the social partners in the framework of social dialogue.

#### 4.4. *Other provisions*

4.4.1. The EESC highlights the fact that Article 13 requires Member States to ensure compliance with this directive and to declare null and void or to amend provisions contrary to it in collective and individual agreements in line with the provisions of the directive. The consequences of introducing annulment and the corresponding conformity with the directive in Member States should be carefully analysed especially in the light of Article 12. The role of the social partners in ensuring compliance should be encouraged and respected.

4.4.2. Article 14 of the proposal provides for instruments with which to sanction an infringement of the directive's information obligations. The EESC drew attention to this lacuna in a previous opinion and called for it to be rectified <sup>(4)</sup>. The EESC is of the opinion that sanctions, where they are justified, should correspond with the level of damage suffered by an employee. It could avoid litigation for even small technical breaches of the directive. The EESC welcomes the provision under Article 14(2) giving employers 15 days to complete the missing information.

4.4.3. The EESC welcomes the requirement imposed upon Member States in Article 15 to ensure that workers have access to effective and impartial dispute resolution and a right to redress, including adequate compensation, in the event of infringements of their rights arising from this directive.

4.4.4. The EESC welcomes the arrangements in Article 16 giving tangible form to the general prohibition on disciplinary treatment. These arrangements, which Member States would implement though an explicit prohibition of discrimination, serve as a signal to legal practitioners and as such operate as a preventive measure.

4.4.5. The EESC notes the protection against dismissal provided for in Article 17 and the related burden of proof. Article 17(1) stipulates that Member States must prohibit dismissal (or measures with equivalent effect) or preparations for dismissal on the grounds that workers exercised the rights provided for in the directive. In combination with Article 17(2), by which workers who think they have been dismissed for exercising rights under this directive may request the employer to provide duly substantiated grounds, this is a useful tool for the exercising of rights arising from this directive. The approach in Article 17(3) — that it is for the employer to prove that the dismissal was based on grounds other than

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<sup>(4)</sup> OJ C 125, 21.4.2017, p. 10.

discrimination of the worker — goes in the right direction, but there are some concerns regarding the legal basis which should be clarified. It should be made clear that dismissals or similar measures are invalid because workers have invoked their rights under the directive.

4.4.6. The EESC supports the obligations on Member States set out in Article 18 to lay down effective, proportionate and dissuasive penalties for infringements of the national implementing provisions.

4.4.7. The EESC welcomes the express provisions in Article 19 prohibiting the lowering of standards in this legislation, which are already in the existing Written Statement Directive (Article 7), which is indispensable where substantive rights standards are higher. Paragraph 1, however, needs to be clarified to ensure that not only may the overall level of protection not be lowered, but that — specifically related to the individual areas covered by the directive — no deterioration is allowed in the areas it governs as a result of its implementation.

4.4.8. The EESC is pleased that, under Article 21, the rights and obligations arising from this directive are also to be extended to existing working conditions. This is both right and necessary, given the improvement to the legal situation the directive seeks to achieve. It acknowledges, however, that it could incur costs and some additional burdens for companies. Measures should be taken to assist natural persons acting as employers and companies, particularly small and micro enterprises, in meeting their obligations under the directive.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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### Opinion of the European Economic and Social Committee on

**Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (borders and visa) and amending Council Decision 2004/512/EC, Regulation (EC) No 767/2008, Council Decision 2008/633/JHA, Regulation (EU) 2016/399 and Regulation (EU) 2017/2226**

(COM(2017) 793 *final* — 2017/0351 (COD))

**Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration)**

(COM(2017) 794 *final* — 2017/0352 (COD))

(2018/C 283/07)

Rapporteur: **Laure BATUT**

Consultation	European Commission, 18.1.2018 European Parliament, 28.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	25.4.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	160/3/2
(for/against/abstentions)	

## 1. Conclusions and recommendations

1.1. The EESC considers the European Commission's proposal for improving interoperability between EU information systems for borders and visas and for police and judicial cooperation, asylum and migration to be useful and positive.

1.2. In the EESC's view, this interoperability needs to be a strategic objective for the EU, in order for the Union to continue to be an open area that safeguards fundamental rights and mobility. The EU and the Member States have an obligation to protect the lives and the safety of all human beings, and the principle of non-refoulement should be fully respected.

1.3. There will be more understanding for these interoperability measures if they:

- ensure, as part of the EU's migration strategy, a balance between freedom and security in accordance with the separation of powers,
- safeguard the fundamental rights of the people concerned, in particular the protection of their personal data and privacy and their right of access to and correction and erasure of their data within a reasonable time, via accessible procedures,
- reiterate, including in all the implementing texts, the requirement of including data protection principles from the design stage ('privacy by design'),
- do not create new barriers to the normal flow of passengers and freight.

1.4. The EESC calls for the procedures and guarantees regarding the use of data for law enforcement purposes to:

- provide for application of the most protective European law (GDPR),
- speed up the process by which the Member States responsible reach decisions on applications for international protection,
- safeguard the right of the people concerned to judgments in a two-tier court system,
- ensure that minors, and in particular unaccompanied minors — whether they are in an irregular situation, are being persecuted or have committed crimes — have the right to obtain a visa, to be protected and integrated and to exercise the right to be forgotten in a shorter period than for adults.

1.5. The EESC believes that the current legal basis for these information systems should be strengthened, and should take into account the upgradeability of data collection systems. It recommends:

- enhancing the security of existing databases and of their communication channels,
- assessing the impact on risk management of strengthening *ex ante* controls,
- ongoing monitoring and evaluation of the architecture by the data protection authorities (EDPS); it requires the parties responsible to report annually to the decision-making authorities and to the Commission regarding the security of the interoperability components, and every two years on the impact of the measures on fundamental rights.

1.6. The EESC feels that the project needs to rely on skilled staff, and recommends:

- robust training programmes for the authorities concerned and eu-LISA staff,
- strict checks on the competences of staff of and applicants for that agency.

1.7. The EESC has concerns about the funding for the new system. It is crucial to follow up on the planning in order to avoid budget slippage and see the project through to the end in 2029.

1.8. The EESC recommends that the public should be kept informed of progress on the project until its completion, and that people should be given educational information on the checks to which they will be subject. It considers that the possibility must be available of halting the whole project if freedom and fundamental rights were to be threatened by abuse of the system.

## 2. Introduction

2.1. In the international context of 2017, considered as unstable in terms both of geopolitics and of the internal security of the Member States, the Council has on several occasions asked the Commission to introduce the means of tracing persons deemed to be a 'risk' who have already been subject to monitoring in one of the Member States. Identifying their border crossings and their movements within Europe could be crucial for security in the EU.

2.2. In its Resolution of 6 July 2016, the Parliament called on the Commission to provide the necessary data protection safeguards.

2.3. The texts under consideration fall under the objective of 'preserving and strengthening Schengen' <sup>(1)</sup>. The EU already has several sets of rules and digital information services in areas linked to checking the border crossings of persons and goods.

2.4. As a reminder:

- **SIS: Schengen Information System**, one of the oldest mechanisms, since revised, which manages a broad range of alerts concerning people and goods,

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<sup>(1)</sup> COM(2017) 570 final.

- **Eurodac: European system for comparing the fingerprints** of asylum seekers and third-country nationals in an irregular situation at borders and in the Member States, and for determining the Member State responsible for applications (EESC-2016-02981, rapporteur: Mr Moreno Díaz <sup>(2)</sup>),
- **VIS: Visa Information System** (Visa Code), which manages visas for short stays (EESC-2014-02932, rapporteurs: Mr Pezzini and Mr Pariza Castaños <sup>(3)</sup>),
- **EES: Entry-Exit System**, currently awaiting decision, which should electronically manage the passport details and entry/exit dates of third-country nationals visiting the Schengen area (EESC-2016-03098, SOC/544, rapporteur: Mr Pîrvulescu <sup>(4)</sup>),
- **ETIAS: European Travel Information and Authorisation System**, currently awaiting decision, which should be a large automated system for storing and verifying *ex-ante* the data of third-country nationals who do not require a visa to travel within the Schengen area (EESC-2016-06889, SOC/556, rapporteur: Mr Simons <sup>(5)</sup>),
- **ECRIS-TCN: European Criminal Record Information System for third-country nationals**, as currently proposed by the Commission, a digital system for exchanging information on judgments already handed down by national courts.

2.5. The current tools of an authorised authority can be likened to a smartphone with different applications, each of them separate and providing its own information.

2.6. Aside from the SIS, these systems are focused on **managing third-country nationals**. There are six complementary, decentralised systems. The search results are the sum of the different responses obtained from the various databases by the investigation services, depending on their access rights.

2.7. The Commission intends to address the following question:

- what method to use, without changing the structures already in place or losing complementarity between them, to harmonise queries to all the databases at the same time in order that, at a single point of entry into EU territory and using a single query of the system, all information gathered in existing databases will be available to the supervisory authority authorised to query them, while simultaneously respecting the rules on data protection and fundamental rights.

2.8. In the present proposals the European Commission

2.8.1. would like to add the additional possibilities that would be created by access to the Europol and Interpol databases, which already cooperate with the European supervisory authorities;

2.8.2. would like to 'synchronise' information searches in order to reduce the response times with regard to migrants' cases, and to speed up the security response when necessary. To do this, it proposes creating new bodies that would allow the current databases to work together.

2.9. **Its objectives are to plug as many gaps in the various systems as possible, improve the** management of the outer borders of the Schengen area, contribute to internal security in the EU, manage identity fraud, tackle cases of multiple identities, find suspected or convicted persons and check their identity within the Schengen area.

2.10. To continue with the image of the smartphone, not only would the authorised authority have many applications at its disposal, it would also be able to gather together — simultaneously, through a single search, and by using his/her access codes — data stored on all types of device: PC, laptop, mobile phone, tablet, etc.

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<sup>(2)</sup> OJ C 34, 2.2.2017, p. 144.

<sup>(3)</sup> OJ C 458, 19.12.2014, p. 36.

<sup>(4)</sup> OJ C 487, 28.12.2016, p. 66.

<sup>(5)</sup> OJ C 246, 28.7.2017, p. 28.

### 3. Functioning of the system

3.1. The Commission has held consultations and convened a High Level Expert Group on Information Systems and Interoperability <sup>(6)</sup>, appointed by the Member States, the countries of the Schengen group, European agencies such as eu-LISA <sup>(7)</sup> and the FRA <sup>(8)</sup>, coordinated by DG Home.

#### *The method: interconnectivity or interoperability?*

3.1.1. The **interconnectivity** of information systems means the possibility of interlinking them so that the data held by one system can be consulted automatically by another.

3.1.2. **Interoperability** <sup>(9)</sup> is the ability of systems to communicate, exchange data and use the information which has been exchanged, in accordance with the authorisations granted to the systems.

#### 3.2. Choosing interoperability

3.2.1. The Commission takes the view that this does not interfere with existing structures and competences, and that the data will remain 'in compartmentalised silos'. Despite the increase in transmission possibilities, this could be a security advantage for systems and data, none of which would obviously be accessible via the internet. The documents to which the opinion relates contain significant similarities;

— one of them, COM(2017) 793, relates to the interoperability of information systems for borders and visas,

— the other, COM(2017) 794, relates to police and judicial cooperation, asylum and migration.

#### 3.3. New tools

3.3.1. In order to function based on interoperability, the six databases will need to be complemented by four new tools in order to work quickly by only submitting a single query to the system, ensuring that requests always originate from authorised persons.

#### 3.4. The European Search Portal (ESP)

3.4.1. The authorised supervisory authority (end-user) should have a single access to the whole system. Instead of carrying out six searches, only one would be carried out (police, customs, etc.), to query several databases simultaneously concerning the requested data, without storing any of it. If the data exist, the system will find them. In the case of suspected criminal or terrorist activity, the first search for the person being checked may not yield any results ('no-hit'), but if a match to the data is found ('hit') in databases such as SIS, EES or ETIAS, this may lead to more in-depth searches and an inquiry.

#### 3.5. Shared Biometric Matching Service (Shared BMS)

3.5.1. This shared matching platform will make it possible to simultaneously search for and compare data converted into mathematical representations, biometric data, fingerprints and photographic ID from the various databases, such as SIS, Eurodac, VIS, EES <sup>(10)</sup> and ECRIS, but not ETIAS; the data they contain will therefore need to be compatible.

3.5.2. The data converted into a mathematical representation will not be preserved in their original form.

#### 3.6. Common Identity Repository (CIR)

3.6.1. A common identity repository will gather data concerning the biographical and biometric identity of third-country nationals who have been checked, whether they are at the border or within Member States (Schengen). An indicator showing a match between information in the various databases will speed up searches. Under the responsibility of eu-LISA and using its security resources, these data will be stored in a way that means that no person can have access to more than one alphanumeric line at a time. Developed on the basis of the EES and the ETIAS, the CIR should avoid data duplication. It will also be possible to use the repository for civilian research.

<sup>(6)</sup> DG Home, Unit B/3; Commission Decision C/2016/3780 of 17 June 2016; <http://ec.europa.eu/transparency/regexpert/index.cfm?Lang=EN>

<sup>(7)</sup> European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

<sup>(8)</sup> EU Agency For Fundamental Rights.

<sup>(9)</sup> Commission communication, COM(2016) 205 final, 'Stronger and Smarter Information Systems for Borders and Security'.

<sup>(10)</sup> The italics serve as a reminder that the texts relating to these bodies have not yet been adopted.



### 3.7. *Multiple-Identity Detector (MID)*

3.7.1. The role of the multiple-identity detector will be to verify the correct identity of bona fide persons and to combat identity fraud, by searching all databases at the same time. As yet, no administration has used a tool like this, which should help to avoid identity theft.

### 3.8. *The role of the eu-LISA agency* <sup>(11)</sup>

3.8.1. The agency, set up in 2011, aims to support EU policies in the fields of justice, security and freedom. Based in Tallinn in Estonia, it already provides for exchange of information between the Member States' law enforcement authorities, and ensures seamless operation of large-scale IT systems and the freedom of movement of people within the Schengen area.

3.8.2. It works on the Smart Borders project and, under the new data exchange architecture, its role will involve storing information linked to individuals, e.g. information relating to the authorities, investigations and investigators. It will check the authorisations of those making requests and ensure data security, including in the event of a 'security incident' (Article 44 of proposals COM(2017) 793 and 794).

3.8.3. **Use of the Universal Message Format (UMF)** — which is still to be created — should make it easier to work with the new systems, which will be compulsory, making it necessary to create interfaces in the Member States which do not yet have one and a system for temporary translation from one language into another.

### 3.9. *Protection of personal data (Articles 7 & 8 of the Charter)*

3.9.1. The proposal for a Regulation recognises the possibility of security-related incidents. The Member States and their data systems must in the first instance comply with the data protection principles laid down in the texts, the Treaty, the Charter of Fundamental Rights, and the GDPR <sup>(12)</sup> which will enter into force on 25 May 2018.

## 4. Discussion

### 4.1. *Added value of interoperability in terms of democracy*

4.1.1. The EU needs regulation and investigative resources that protect against crime. Interoperability of information systems is an opportunity to assert the primacy of law and the protection of human rights.

4.1.2. The EES and ETIAS in conjunction with the BMS and CIR will make it possible to monitor border crossing by people under suspicion, and to retain their data. However, the possibility of 'access [via the BMS] by law enforcement authorities to non-law enforcement systems at EU level' (Article 17 on the CIR, proposals COM(2017) 793 & 794) cannot be compatible with the objectives set out as the basis for the proposals in question. The Committee (Article 300(4) TFEU) must draw attention here to the principle of proportionality, and urges the Commission to avoid any 'Big Brother' <sup>(13)</sup>-style system and to avoid creating barriers to the free movement of European citizens (Article 3 TEU).

4.1.3. The proposed model for the collection and use of personal data obtained at the border and within EU territory when monitoring movements and the documents held is presented as being watertight, open only to authorised persons for security and management purposes, and will make the procedures smoother.

4.1.4. The Committee has doubts about how watertight it really is: shortcomings will still remain, and the structures will be built up over nine years, based on 'foundations' that do not yet exist, such as the EES and ETIAS databases and national interfaces. The technology is constantly evolving, but the project is necessarily based on the state of the art and has no budgetary provision for managing the obsolescence that may emerge in some digital sectors.

<sup>(11)</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

<sup>(12)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). EESC opinions: OJ C 229, 31.7.2012, p. 90 and OJ C 345, 13.10.2017, p. 138.

<sup>(13)</sup> In 1984 by George Orwell.

4.1.5. Moreover, the rapid growth in the use of artificial intelligence (AI) algorithms could have been considered in the project, both as a system monitoring tool and as a security key that can be given to the decision-making authorities to ensure the democratic use of the architecture.

4.1.6. The proposal sets out a system for law-abiding players acting in good faith. The fact that people are in the driving seat is reassuring, but they can also be the weak links in the chain. The Committee suggests adding an article providing for 'circuit breakers' in the event of a political or 'management' crisis, as any problem in one database could present a risk to the entire structure <sup>(14)</sup>. Wider application of the UMF could result in international use, which would be very positive but present risks in terms of data protection. The authorised authorities will bear a heavy responsibility. These aspects are not considered in the texts under discussion.

#### 4.2. *Protection of fundamental rights*

4.2.1. Fundamental rights are absolute: they may only be subject to limitations that are necessary and genuinely meet objectives of general interest recognised by the Union, and only if their essence is respected (Articles 8 and 52(1) of the Charter of Fundamental Rights). The Committee wonders how the proportionality of control measures can be assessed in the case of migrants fleeing persecution and seeking asylum on the EU's coasts. (COM(2017) 794 final, Explanatory memorandum — Fundamental rights). Looking for suspects in order to prevent criminal — including terrorist — acts **must not bring our democracies closer to the concept of 'pre-crime'**; there must still be a distinction between 'activities' that violate public order and 'opinions'.

4.2.2. Respect for the rights set out in the Charter for all people must safeguard the balance between security and freedom without which democracy dies. In the Committee's view, this balance is crucial and should be a permanent objective for all authorities, including supervisory authorities at both national and European level.

4.2.3. The chain of authorities involved in a search, and the associated metadata, will be stored in the system. The fundamental rights of the authorised authorities themselves must also be respected with regard to the data generated, in particular with regard to their security and privacy, in the event of malicious intrusion into the structure and misuse of data between the times of capture and deletion.

#### 4.3. *Data protection*

4.3.1. The proposals recognise the principle of data protection by design and by default, even though the explanatory memoranda point out that, according to the Court of Justice (ECJ), this is not an absolute right. The Committee recognises the benefits of preventive measures that ensure safety, of combating false identities and of guaranteeing the right to asylum, but it stresses that anonymising and generating mathematical representations of data have their limitations: the people concerned may subsequently need their data.

4.3.2. It also stresses that the types of data retained — biometric and biological — are of particular interest for certain businesses and for criminals. In this context, cybersecurity is just as important as physical security, and there is too little mention of it in the proposals. The stored data will be kept in a single physical location; however well protected it is, it could still be exposed.

4.3.3. The EESC points out that, when it comes to data protection and the right to erasure (right to be forgotten), EU institutions and bodies must comply with Regulation (EC) No 45/2001, which provides less protection than the GDPR <sup>(15)</sup> of 2016 (to enter into force in May 2018) that the Member States must follow. The Committee highlights the complexity of implementing this right, and is concerned that travellers, migrants and asylum seekers will not be in a position to enforce it:

1. data protection must be validated for all existing national and European databases in order to ensure that the whole system is protected;
2. it is absolutely vital in order for the public to accept this vast surveillance network over their heads.

4.3.4. The retention period for data gathered by the authorised authorities is not clearly defined in the proposals. The texts set out the procedure for correction and/or erasure — which goes back and forth between the Member State to which the request has been made and the Member State responsible — but does not set time limits for retaining data (Article 47 of the proposals). The Committee recommends that such a time limit should be set, and that it should be shorter for minors (Article 24 of the Charter), except in cases of terrorism, so that they can have a chance of integration.

<sup>(14)</sup> EDPS, Annex to the High Level Expert Group Final Report, May 2017.

<sup>(15)</sup> General Data Protection Regulation (Regulation (EU) 2016/679).

#### 4.4. Governance and accountability

4.4.1. International databases are not subject to the same rules as European computer systems. The establishment of a universal access format, which could become increasingly international, would be just one technical element that would not unify the regulations, even though Interpol must of course respect Article 17 of the UN Covenant<sup>(16)</sup>. Moreover, authorisations will remain a matter for the Member States. The EESC believes that this issue should be addressed in the proposals.

4.4.2. Just a single query, and the symbiosis of European databases will give its verdict. The EESC emphasises that the bureaucracy generated will be more than proportionate to the speed gained. Governance will be provided by the Commission as part of a control procedure together with the Member States. The fulcrum will be the eu-LISA agency, which is responsible, *inter alia*, for establishing the procedures for gathering information on how interoperability is working; it will receive information from the Member States and Europol, and present a technical evaluation report to the Council, European Parliament and Commission every four years, with the Commission publishing its own overall report a year later (Article 68 of the proposals). In the Committee's view, this interval is much too long. The assessment of the security of the interoperability components (Article 68(5)(d)) should be made at least once a year, and the examination of the impact on fundamental rights (Article 68(5)(b)) should be undertaken at least every two years.

4.4.3. The Committee finds it regrettable that issues as fundamental as those addressed in these proposals will be managed by European agencies, whose recruitment and operation are obscure to many citizens. It considers it necessary to compare best practices and to consult all independent data use supervisory authorities (EDPS) and other agencies such as the FRA and ENISA.

4.4.4. All of these new structures and procedures will be put in place by means of Commission delegated acts and implementing acts. The Committee hopes that the objectives of respecting fundamental rights and protecting personal data will continue to be enshrined in all of these acts over time, in an approach focusing on improving reception of people at borders. The EESC recommends that the European public should be kept informed of the stages towards completion of the project, and that people should be given educational information on the checks to which they will be subject.

### 5. The necessary training of supervisory authorities throughout the EU

5.1. In the Committee's view, a lot of training will be needed in the first period (after 2021), contrary to what the Commission claims in its impact assessment summary (C). It mentions a figure of EUR 76 million per year. The transition to new procedures always calls for upgrades. All EU borders and national systems are concerned here. Some Member States still do not have compatible systems and will need to make considerable efforts and set up interfaces that enable them to participate. In order for interoperability to work, the disparities between Member States will need to be ironed out.

5.2. Training on the use of high-quality data and the UMF will be necessary. The Committee suggests that a joint training hub for authorised authorities, including eu-LISA — the competences of whose members should be carefully verified — should be organised with CEPOL<sup>(17)</sup>, Frontex, Europol, etc.

5.3. A tool like the MID does not exist elsewhere. If successful, it would be a powerful tool. The new architecture will require the highest possible data quality. To ensure that the project as a whole meets expectations, all Member States must be able to participate at the same level, otherwise the gaps will be even bigger than they were before — which would undermine the right to asylum and to access international protection (Articles 18 and 19 of the Charter).

### 6. Financing

6.1. The overall architecture proposed is based on certain assumptions: that the decision-making authorities will adopt the EES, ETIAS and UMF systems, that the MID will work properly and that the CIR will be secure. Will two bodies — the EDPS and the eu-LISA agency, and perhaps ENISA as well — have sufficient staff and financial resources? The Commission is proposing EU/Member State cofinancing. The Committee notes that management of the 'Semester' is still based on austerity budgets and that, in addition, the current use of existing databases (SIS, VIS, Prüm, EES) still needs to be optimised in accordance with the legal requirements (report from the expert group).

<sup>(16)</sup> International Covenant on Civil and Political Rights — UN — 'Article 17: 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.'

<sup>(17)</sup> European Union Agency for Law Enforcement Training (Budapest, Hungary).

6.2. The EESC wonders what budgetary impact Brexit will have, although the United Kingdom is not in the Schengen system, and more generally about the complexity of managing interoperability in the future in European countries that do not use the SIS but do participate in other databases such as Eurodac.

6.3. The proposed fund is the ISF, the Internal Security Fund for borders. It is scheduled to start operating in 2023. The Committee questions whether five years will be long enough to reduce the disparities in Europe and to establish the conditions for success. The proposed budget is EUR 424,7 million over nine years (2019-2027), to be paid by the EU (ISF) and the Member States. The Member States must put themselves in a position to ensure that the current systems work properly with the new IT architecture. The Committee believes that the return to growth should help with the implementation of these investments.

Brussels, 23 May 2018.

*The President  
of the European Economic and Social Committee*  
Luca JAHIER

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**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 on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation**

(COM(2018) 32 final)

(2018/C 283/08)

Rapporteur: **Brian CURTIS**

Commission referral	12.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Bureau decision	19.9.2017 (in anticipation of the referral)
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	3.5.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	185/01/01
(for/against/abstentions)	

## **1. Conclusions and recommendations**

1.1. The Committee welcomes the approach taken by the Commission in exploring systematically the relevant range of options which could help resolve a series of problems identified at the interface between chemical, product and waste legislation.

1.2. The proactive, long-term view of the type being adopted by the Commission on this matter is commended. The transition process will, inevitably, be of extended duration, but will require constant encouragement to be driven forward and need to take account of ongoing developments in identification and processing technology.

1.3. Securing public health in general and that of the end consumers of products is essential in underpinning confidence in the principles of the Circular Economy.

1.4. The occupational health and safety of workers in recycling plants are also at risk without comprehensive action, particularly on dealing with the issue of legacy substances. The provision of comprehensive information to trade unions is therefore essential.

1.5. The full application of the REACH Regulation and other legislation on chemicals already in place should be prioritised. Existing legislation which prevents hazardous chemicals from initial entry to the material cycle is still not being fully used, especially concerning entry into the EU on products from third countries.

1.6. The Committee identifies and advocates further investment in adapted sorting equipment by recycling companies and the consideration of economic and technical support measures in this area.

1.7. The Committee strongly supports the view that better information on the presence, location, and concentration of hazardous chemicals in products and materials recovered from waste can reduce problems encountered by operators in the recovery chain.

1.8. The identification of both potential sources of value or of necessary protective action on hazardous chemicals in the waste stream will support the cost/benefit analysis that will be required to justify legislative action and practical interventions.

1.9. It is essential to improve and reinforce where necessary the identification and tracking requirements on imported goods that may contain substances of very high concern (SVHCs), in order to enforce both prohibition where necessary, and adequate tracing mechanisms throughout the product life-cycle.

1.10. The legal framework should offer equal protection, whether a product is made of virgin or recovered materials.

## 2. Introduction

2.1. In its opinion on the Circular Economy Package <sup>(1)</sup> <sup>(2)</sup> the Committee identified the need for greater facilitation of recovery of materials from the waste stream and noted that a range of legal, technical and financial obstacles needed to be addressed. The presence of hazardous substances in waste materials is such an obstacle and this Communication is part of a process identifying policy objectives, challenges and solutions in achieving greater circularity in the economy. Some areas will need to be tackled by non-legislative means, but the overall aim is to exert influence on future policy.

## 3. Gist of the Commission's proposal

3.1. The Communication sets out a number of policy objectives and related issues and invites stakeholders to take positions on the identified challenges to help define a path towards a truly circular economy. These are set out under four broad headings — the approach is exploratory and non-directive. This opinion, taking into account the Commission's staff working document and input from EESC members and civil society stakeholder organisations, responds to the request to offer preferred options to meet the main challenges. For this reason the main content of the opinion is presented in the final section on specific comments.

3.2. The Commission is now launching a public consultation and encouraging discussions with the European Parliament, the Council and interested parties to choose options and define specific actions at a general or sectorial level for the development of markets for sustainable secondary raw materials. Subsequent action will be taken forward in line with the Better Regulation principles and before any concrete proposals with expected significant impact are put forward Impact Assessments will be prepared.

## 4. General comments

4.1. EU legislation that is relevant to this topic covers the areas of chemicals, products and waste <sup>(3)</sup>. In particular the current legal framework has weaknesses in failing to ensure that information on hazardous chemicals is transmitted through the whole material cycle and possible subsequent life cycles.

4.2. Our ever more complex society increasingly depends on the use of chemicals <sup>(4)</sup>. The pillars of EU **chemicals legislation** are the CLP Regulation <sup>(5)</sup>, the REACH Regulation <sup>(6)</sup> and the POPs Regulation <sup>(7)</sup> which complement each other and apply irrespective of the sector of use.

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<sup>(1)</sup> Opinion on *Circular Economy package* (OJ C 264, 20.7.2016, p. 98).

<sup>(2)</sup> Circular Economy Package adopted by the Commission on 2 December 2015.

<sup>(3)</sup> Definitions of hazardous waste can be found in 'Guidance document on the definition and classification of hazardous waste' June 2015.

<sup>(4)</sup> EEA Report No 2/2016, p. 33-34.

<sup>(5)</sup> The Classification, Labelling and Packaging Regulation (EC) No 1272/2008.

<sup>(6)</sup> Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

<sup>(7)</sup> The Persistent Organic Pollutants Regulation — see [http://ec.europa.eu/environment/chemicals/international\\_conventions/index\\_en.htm](http://ec.europa.eu/environment/chemicals/international_conventions/index_en.htm)



4.3. **Product legislation** can focus on product safety and also product sustainability. The GPSD <sup>(8)</sup> provides general safety requirements for non-food consumer products. A range of product-specific legislation such as the Toys Directive, the Food Packaging Regulation, the RoHS Directive <sup>(9)</sup> and the Eco-design Directive also are relevant. The EESC opinion <sup>(10)</sup> supports an 'integrated approach' to Eco-design, which should be expanded beyond its current scope. Such an integrated approach would take into account both energy efficiency and performance of products as well as efficiency and performance in terms of use of resources and materials.

4.4. Several pieces of **waste legislation** are also relevant. The Waste Framework Directive has been the subject of several Committee opinions and the EESC has consistently supported the requirement for Member States to adopt a priority order when approaching waste, the first being prevention of waste, then preparation for re-use, recycling or, other recovery and, as a last resort, disposal through incineration and landfill. The EESC has also called for Extended Producer Responsibility (EPR) schemes to be mandatory for adoption by Member States. Further it has also called for the provision requiring separate collection to be strengthened <sup>(11)</sup>.

4.5. Some general points can be made which should guide future actions:

- **Better information** on the presence, location, and concentration of hazardous chemicals in products and materials recovered from waste can reduce problems encountered by operators in the recovery chain and advance the protection of the environment and human health.
- It is essential that hazardous chemicals are **prevented from initial entry** to the material cycle. Existing legislation which enables this is still not being fully used.
- The **legal framework** should offer equal protection, whether a product is made of virgin or recovered materials.

4.6. It can be noted that supporting work is ongoing. For example, the issue of hazardous substances in electrical and electronic equipment is being tackled by the RoHS Directive which, by triggering the substitution of certain hazardous substances in electrical and electronic equipment, enhances the possibility and economic profitability of recycling waste derived from such equipment. Further, four related legislative proposals <sup>(12)</sup> <sup>(13)</sup> <sup>(14)</sup> <sup>(15)</sup> are also being discussed by the European Parliament and the Council. The EESC notes the recent political agreement on the matter <sup>(16)</sup>.

4.7. Some of the issues raised in this communication are conceptually complex, particularly those which concern problems posed by lack of harmonisation and alignment of rules. The more concrete issues of information and legacy substances should, in the view of the Committee be prioritised.

4.8. Nevertheless it is clear from the summary of issues provided in this communication and from the wide range of initiatives that are in place or under development to achieve a more truly circular economy that the transition process involved in eliminating hazardous substances from waste and during its recovery or recycling will not be achieved quickly. A proactive long-term view of the type being adopted by the Commission is therefore appropriate.

<sup>(8)</sup> The General Product Safety Directive (GPSD) 2001/95/EC.

<sup>(9)</sup> Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

<sup>(10)</sup> Opinion on *Ecodesign Working Plan 2016-2019* (OJ C 345, 13.10.2017, p. 97).

<sup>(11)</sup> Opinion on *Circular Economy package* (OJ C 264, 20.7.2016, p. 98).

<sup>(12)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste.

<sup>(13)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment.

<sup>(14)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste.

<sup>(15)</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/31/EC on the landfill of waste.

<sup>(16)</sup> Statement by Commissioner Vella on the political agreement reached to modernise waste rules.



## 5. Specific comments

### *The need for information*

5.1. The objective is to ensure that appropriate information on substances of concern in products is available to all actors in the supply chain and ultimately to waste operators. If we can limit hazardous chemicals from entering the economic cycle in the first place it is clearly the best way of protecting human health and the environment. It also can enable the recovery of materials from waste and enhance the circular economy.

5.2. The provision of comprehensive information to trade unions can play a vital role in protecting the health of workers and is therefore essential.

5.3. REACH regulates the manufacture, use and placing on the market of chemicals in the EU. Its primary objective is to ensure a high level of protection to humans and the environment. Reports by some consumer associations and the Commission indicate poor implementation of the limited supply chain communication obligations imposed by REACH.

5.4. The Commission is launching a feasibility study on the use of different information systems, innovative tracing technologies and strategies which could enable relevant information to flow along article supply chains and reach recyclers. The question is asked: would a compulsory information system add value and how should we manage goods imported into the EU which may contain unauthorised substances?

5.5. The Committee argues that to a large extent legal tools already exist which can limit Substances of Very High Concern (SVHCs) from entering the material cycle. In particular those legal provisions which prioritise and incentivise their substitution with non-hazardous chemicals are of relevance. The Committee favours the full application of the REACH Regulation, and that it is kept up-to-date with evolving scientific knowledge on the hazardous properties of chemicals, including secondary raw materials. This will protect the occupational health and safety of workers and the public health of the end consumer. It will also enhance the credibility of the Circular Economy.

5.6. With reference to imported goods it is already the case that importers are required to identify SVHCs. Further stress could be laid on the enforcement of the obligation under REACH for manufacturers and importers to detail in their registration dossier and Safety Data Sheet exposure scenarios covering the waste stage. In addition more detailed information could be required, such as the description of different end-of-life scenarios for recycling, preparation for reuse or disposal. This should be done in conjunction with the enforcement of the obligation for manufacturers and importers of products to inform economic operators in the supply chain of the presence of SVHCs in articles, as well as requiring that the location of the substance in the product is identified.

5.7. It is essential to improve and reinforce where necessary the identification and tracking requirements on imported goods that may contain SVHCs, in order to enforce both prohibition where necessary, and adequate tracing mechanisms throughout the product life-cycle.

5.8. The Committee is concerned that there might be a particular problem in full identification of SVHCs in relation to Free Trade Agreements and Economic Partnership Agreements.

5.9. In general, further investment in adapted sorting equipment will be necessary by recycling companies and economic and technical support measures should be considered.

### *Waste containing substances which are no longer allowed in new products*

5.10. Restrictive legislation on dangerous chemical substances has been in place in Member States since the nineteenth century and new chemicals undergo rigorous examination for hazards. However the continuous process of risk assessment means that products legally produced in the past contain SVHCs and those produced today may contain substances that later may be prohibited. In the waste processing and recovery stage this can result in dangerous 'legacy substances'.

5.11. The objective is to make recycling easier whilst improving the uptake of secondary raw materials by promoting non-toxic material cycles. In addition, when considering possible chemical restrictions and exemptions to restrictions, we must give more attention to their impact on future recycling and reuse.

5.12. The Commission argues that the issue of legacy substances remains a barrier to the circular economy and a specific decision-making methodology to support decisions on the recyclability of waste containing substances of concern should be developed. Such work is underway and should be ready by mid-2019. In conjunction with this there is a need to prepare guidelines to ensure that the presence of SVHCs in recovered materials is better addressed in the early stages of the preparation of proposals to manage the risk and also under consideration is the enactment of implementing legislation to allow an effective control of the use of the existing exemption from REACH registration for recovered substances.

5.13. The reality of legacy substances poses the question as to whether it is possible to reconcile the idea that waste is a resource that we should recycle ensuring that waste that contain SVHCs is only recovered into materials which can be safely used? Should we allow recycled materials to contain chemicals that are no longer allowed in primary materials? If so, under what conditions?

5.14. The goal for recycled materials is that they approximate the performance and chemical composition as closely as possible to that of comparable primary materials. Economic and technical factors play a significant role in determining the feasibility of removing substances of concern and are highly case-dependent. Policy options are to require all primary and secondary raw materials to meet the same rules or to allow secondary materials to have specific, time-limited derogations.

5.15. The EESC argues that any criteria applied in this context need to prevent hazardous chemicals from being present in recovered materials in concentrations exceeding the level allowed for virgin materials.

*Lack of alignment on rules determining which wastes and chemicals are hazardous*

5.16. This issue is closely related to the points on harmonisation set out above and both are conceptually complex. As has been set out above the production and use of hazardous chemicals and products are subject to strict EU rules adopted to protect workers, citizens and the environment from harm. Waste management is similarly governed by EU rules designed to achieve the same outcome. Nevertheless research has indicated that the two sets of rules are not fully aligned <sup>(17)</sup>.

5.17. It is necessary that a more consistent approach is achieved between chemicals and waste classification rules. For example, the adoption of rules, similar to the WEEE Directive <sup>(18)</sup>, for other specific product groups or material streams (e.g. furniture or textiles) which impose an appropriate treatment of waste containing hazardous chemicals before it can be recovered and used in new products. The Commission intends to publish a guidance document on waste classification to assist waste operators and competent authorities to have a common approach to waste characterisation and classification. Further best practice exchanges on test methods will also take place. Stakeholders are requested to consider whether the rules on hazard classification should be aligned so that waste would be considered hazardous according to the same rules as products.

Brussels, 23 May 2018.

*The President  
of the European Economic and Social Committee  
Luca JAHIER*

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<sup>(17)</sup> For example: *Keeping it Clean: How to protect the circular economy from hazardous substances*. European Environmental Bureau.

<sup>(18)</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment.

## Opinion of the European Economic and Social Committee on

### Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A European Strategy for Plastics in a Circular Economy

(COM(2018) 28 *final*)

### Proposal for a Directive of the European Parliament and of the Council on port reception facilities for the delivery of waste from ships, repealing Directive 2000/59/EC and amending Directive 2009/16/EC and Directive 2010/65/EU

(COM(2018) 33 *final* — 2018/0012 (COD))

(2018/C 283/09)

Rapporteur: **Antonello PEZZINI**

Consultation	European Parliament, 5.2.2018 Council, 9.2.2018 European Commission, 12.2.2018
Legal basis	Articles 100(2) and 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	19.9.2017
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	3.5.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote	193/00/01
(for/against/abstentions)	

## 1. Conclusions and recommendations

1.1. The EESC has supported the Commission's policy on the circular economy from the outset, but feels that it should be pursued in close collaboration with the social partners and civil society organisations by means of forward planning exercises, and with the involvement of institutions of higher education and the various training centres.

1.1.1. The following must also be in place: effective educational and training measures; design and behavioural incentives; high-quality common technical and regulatory standards; attractive and rewarding schemes, including tax and financial schemes; a systemic and cross-sectoral approach; and widespread and smart use of digital applications.

1.2. Respect and defence of goods which are part of the dynamic balance of the biosphere do not appear out of nowhere; they are the natural by-products of an awareness fuelled by culture and the realisation that what is created has not been created in order to be exploited and destroyed for economic gain, but rather in order to be used, improved and preserved intelligently, in the genesis of universal anthropomorphism <sup>(1)</sup>.

<sup>(1)</sup> Benedetto Croce; in the history of everything that has human form, in the universe.

1.3. New discoveries, such as polymers, have made humankind's work and life easier, but they must be managed throughout their lifecycle to ensure that they do not harm the patterns of nature.

1.3.1. The Committee believes that it is essential to develop a culture of eco-design of polymer materials which will promote subsequent use of secondary polymers.

1.3.2. A cultural revolution is needed in behavioural patterns and in production, distribution and consumption patterns to turn waste into a valuable resource to be reused, to include civil society and the entire range of educational establishments.

1.3.3. The EESC considers that for both economic and health and safety reasons, an industry strategy geared towards reuse must be developed, particularly in the now vast packaging industry. This strategy should involve businesses with experience in recycling processes and should aim to harmonise and engineer skills, both upstream and downstream.

1.3.4. Acting in close cooperation with European and international bodies, national standardisation bodies should step up the process of using labelling to recognise secondary raw materials. European standardisation here will improve consumer safety when it comes to new products.

1.3.5. The EESC feels that research and innovation should play a key role, particularly the Joint Technology Initiative on Institutional public-private partnerships under Horizon 2020 focusing on developing bio-based products<sup>(2)</sup> and other initiatives promoting a circular and sustainable approach under the next Framework Programme 9.

1.3.6. Priority must be given to the process of digitally labelling the various types of plastics for the purpose of identification, separation and possibly elimination using common methodologies. It is particularly important to ensure that these secondary raw materials contain none of the toxic substances which appear in raw materials not intended for use with food or in children's toys.

1.4. The EESC considers that action must be taken by means of chemical analyses conducted under the REACH programme to curb microplastic pollution, one of the biggest dangers to the environment and human health.

1.5. The EESC firmly supports the Commission's proposals to equip ports with facilities for the collection of waste and the requirements imposed on shipowners to comply with waste disposal procedures.

1.5.1. The EESC considers that a similar policy should also be applied to rivers, which collect much of the pollution in the seas.

1.5.2. The EESC considers that fishing associations and the social partners should be involved, both culturally and through national and/or European funds, in cleaning up polymer residue from seas and rivers and in raising awareness about river and marine waste. When properly trained, they could also participate in the part of the industry active in ports and along the rivers during the initial stages of recycling, particularly when the fishing season is closed to allow fish to reproduce.

1.6. The EESC considers that the emergence and development of new complementary activities, by-products of the circular economy, calls for current waste legislation to be revised. This legislation derives from Directive No 2008/98/EC which makes the person in possession of the waste responsible, often without establishing the mechanisms for its reuse.

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<sup>(2)</sup> The Bio-based Industries Initiative is a Public-Private Partnership (PPP) between the European Commission and the Bio-based Industries Consortium (BIC). The Consortium currently brings together more than 60 European large and small companies, clusters and organisations across technology, industry, agriculture and forestry. They have all committed to invest in collaborative research, development and demonstration of bio-based technologies within the PPP. It will include EUR 3,8 billion investments in bio-based innovation from 2014-2020 (Horizon2020): EUR 1 billion of EU funds and EUR 2,8 billion of private investments.

1.7. The EESC considers that eco-design <sup>(3)</sup>, which so far has been applied to energy savings, should be brought into play for the circular economy, particularly as regards plastic.

1.8. The EESC considers that appropriate regional agreements on marine pollution are needed, extending them to cover proximity policies and the Euromed and Baltic agreements.

1.9. Voluntary agreements within and between sectors by industries and local and regional administrations should be supported and encouraged, promoting corporate certification (EMAS and CSR) and green boats <sup>(4)</sup>.

## 2. Introduction

2.1. Plastic, understood as a generic term for a group of polymer materials, is an important and ubiquitous material in our economy and daily lives. It helps promote sustainable and competitive growth, long-term employment and many technological and design innovations.

2.2. Plastic — from monomers to polymers — was discovered in the mid-1950s by two scientists: Natta and Ziegler. In 1953, a German chemist, Karl Ziegler, managed to derive a type of plastic from oil — polyethylene — made up of polymer molecules <sup>(5)</sup>. The Italian chemist Giulio Natta derived a different polymer: polypropylene, patented under the name 'Moplen'. This discovery was instrumental in triggering a crisis in the mining industry which, throughout human history, had provided the materials <sup>(6)</sup> needed to manufacture objects for both daily life and work.

2.3. Plastic is derived from oil, with two kilograms of oil yielding an average of one kilogram of plastic.

2.3.1. These new materials <sup>(7)</sup> were then used to make a very wide range of objects: they do not rust and are light and unbreakable. In 1973, the first PET bottle was produced <sup>(8)</sup>.

2.4. The EESC has previously emphasised <sup>(9)</sup> how 'the transition to a circular economy could improve the outlook for achieving the Europe 2020 strategy objectives'.

2.5. Indeed, the Committee believes that the transition to a European circular economy can improve the outlook for the systemic competitiveness of the EU 'providing it is based on a shared European strategic vision with active participation from the world of work, governments, employers and employees, consumers and legislative and regulatory authorities at various levels' <sup>(10)</sup>.

2.6. The EESC points to the launch of the 2014 package <sup>(11)</sup> — which was subsequently withdrawn — and that of December 2015 with the adoption of an EU action plan for the circular economy, which made plastics a key priority.

2.7. In the EESC's view, 'behaviour change can be best achieved through clear price signals, i.e. by offering convenience and competitive pricing to consumers. These can be achieved through Extended Producer Responsibility (EPR) schemes and/or green taxation.' <sup>(12)</sup>

2.8. Europe's plastics industry generated a turnover of almost EUR 350 billion in 2016; it comprises around 62 000 businesses, employing more than 1.5 million workers, and produces 60 million tonnes <sup>(13)</sup>.

2.9. Today, plastics are present in every aspect of day-to-day life: from transport to construction, from telecommunications to consumer goods, and from food to health.

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<sup>(3)</sup> Directive 2005/32/EC and subsequent amendments.

<sup>(4)</sup> See Article 8(5) of COM(2008) 33.

<sup>(5)</sup> Together with Giulio Natta, Ziegler discovered the stereospecific synthesis of polypropylene, using catalysts containing titanium; these types of catalysts are commonly known as Ziegler-Natta catalysts. In 1963 they won the Nobel Prize for Chemistry.

<sup>(6)</sup> Zinc, blende, calamine, barite and bakelite.

<sup>(7)</sup> PE (polyethylene); PP (polypropylene); PS (polystyrene); PET (polyethylene terephthalate); PVC (polyvinyl chloride).

<sup>(8)</sup> Patented by the American engineer, N. Convers Wyeth.

<sup>(9)</sup> EESC opinion (OJ C 230, 14.7.2015, p. 91).

<sup>(10)</sup> EESC opinion (OJ C 230, 14.7.2015, p. 91).

<sup>(11)</sup> See SWD(2014) 208 and SWD(2015) 259 fin.

<sup>(12)</sup> EESC opinion (OJ C 230, 14.7.2015, p. 91).

<sup>(13)</sup> See report on 'L'eccellenza della filiera della plastica per il rilancio industriale dell'ITALIA e dell'EUROPA 2017' (The key role played by the plastics industry in the industrial renewal of Italy and Europe, 2017) <https://www.ambrosetti.eu/wp-content/uploads/uploads/parte-2.pdf>

2.10. Some 80 % of EU plastics businesses are SMEs with fewer than 20 employees, and medium/large companies amount to around 20 % <sup>(14)</sup>.

2.11. Every year, Europeans generate 25 million tonnes of plastic waste. Less than 30 % of this is recycled <sup>(15)</sup>.

2.12. According to a recent European study (footnote 15), if plastic were to be replaced by other materials, in its principal applications, the weight of packaging would increase almost fourfold; there would be a 60 % increase in the volume of waste produced and a 57 % increase in lifecycle energy consumption.

2.12.1. On the other hand, 95 % of the value of packaging is lost after being used once. 72 % of the 78 million tonnes used for consumption is not recovered, with 40 % going to landfills and 32 % not covered by official collection systems.

2.13. This is why it is so necessary to develop the eco-design of plastic, to make it more recyclable and thus increase demand for recycled plastic across the various industrial sectors and distribution channels, and among consumers and individual Europeans.

2.13.1. Improved dialogue with the recycling industry is needed to understand its production process, requirements and technologies.

2.14. Recycled plastics should be revamped and upgraded by means of a standardisation and certification labelling process.

2.15. In a circular economy, plastics must be seen as a valuable common tangible heritage, as they are vital for sustainable and competitive economic development geared towards people, health and the environment, provided that objects made with this raw material are no longer seen as 'waste to be disposed of', but rather as 'objects to be recovered'.

### 3. Seas and plastics

3.1. Seas and oceans cover 70 % of the Earth's surface, and seawater accounts for 97 % of its water resources. The oceans are our strongest allies against climate change and were included in the Paris Agreement, with a special report from the IPCC dedicated to the oceans.

3.2. Marine litter, and in particular plastics and microplastics, are another major threat to oceans and are therefore a global concern, affecting all the oceans of the world. Every year, millions and millions of tonnes of litter end up in the ocean worldwide, posing environmental, economic, aesthetic and health problems. Marine litter can cause serious economic damage: losses for coastal communities, limitations on tourism, and impediments to shipping and fishing.

3.3. The potential cost across the EU for coastal and beach cleaning has been assessed at almost EUR 630 million per year.

3.4. Taking into account its accumulation and dissemination, marine litter may be one of the fastest growing threats to the health of the world's oceans. Balanced and effective circular-economy measures are needed here at both international and European levels, with EU marine litter reduction targets of 30 % by 2025 and 50 % by 2030.

3.4.1. In order to meet these targets, the existing legislation needs to be amended: currently, waste is the property of the person who collects it, discouraging collection.

3.4.2. Incentives need to be explored for people (particularly fishermen) who could cooperate on cleaning up the seas and rivers, partly by tapping the European Maritime and Fisheries Fund (EMFF).

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<sup>(14)</sup> Ambrosetti, *L'eccellenza della filiera della plastica nell'UE*, 2015.

<sup>(15)</sup> European Commission, press release, 16 January 2018.



3.5. On 18 December 2017, the Council adopted conclusions on eco-innovation and stressed 'the need for coherence between innovation support policies and other policies, in particular with the focus of the protection of human health, the environment and the transition to the circular economy' <sup>(16)</sup>.

3.6. For its part, the EP has adopted a number of documents on this subject: from its resolution of 9 July 2015 on resource efficiency: moving towards a circular economy; to the resolutions it adopted in February 2017 on the waste package; to its resolution of 18 December 2017 on 'International ocean governance'.

3.7. Measures to clean up the Mediterranean Sea could find synergies with the Prima programme (PPP), which provides for ecological measures for environmental purposes <sup>(17)</sup>.

#### 4. The Commission's proposals

4.1. The strategy proposed by the European Commission is aimed at protecting the environment from plastic pollution and, at the same time, promoting growth and innovation, thus seeking to transform the economic challenge of a linear paradigm — production-distribution-consumption-behaviour — into a circular model that is self-sustaining through efficient use of resources, which comes to consider 'waste' as **'resources to be regenerated'**.

4.2. Reuse, recycling and recovery would become key words around which a new paradigm would be built to promote new design, sustainability, innovation and competitiveness throughout the internal market and in international markets.

The proposed strategy includes 40 measures, 15 recommendations for national and regional authorities and eight recommendations addressed to industry.

4.3. The proposal for a directive on port reception facilities introduces new standards to combat the problem of marine waste, with measures intended to guarantee that waste produced on board ship or collected at sea is not dumped into the ocean but rather brought back on land to be processed properly. Provision is also made for measures to reduce the administrative burden on ports, vessels and the competent authorities.

#### 5. General comments and recommendations

5.1. In the Committee's view, if a strategy on plastics is to be successful, the following must be in place: effective educational and training measures; design and behavioural incentives; high-quality common technical and regulatory standards; attractive and rewarding schemes, including tax and financial schemes; a systemic and cross-sectoral approach; widespread and smart use of digital applications; and broad and participatory forward planning exercises, with the aim of accompanying the process with a genuine **European culture of plastic circularity based on an analysis of the entire product lifecycle**.

5.2. Microplastic pollution is one of the biggest dangers for the environment and human health. Microplastics are often used in detergents, cosmetics, furniture and paints. **The EESC believes** that this form of pollution should be tackled at source through EU-level action under the **REACH** programme.

5.3. **In the EU, around 40 % of plastic is used once and is the biggest source of pollution: a minimal cost per plastic bag has slashed the number of bags used. The EESC recommends extending this measure to all types of single-use plastic.**

5.4. The EESC considers that priority must be given to rolling out digital labelling of the various types of plastics for the purposes of identification, selection and possibly exclusion of dangerous substances. Plastics often contain toxic substances which are banned in materials that come into contact with food and in toys. Recycling plastic could mean that these substances appear in other products, so it is imperative to guarantee and certify that 'secondary raw materials' do not contain toxic substances.

5.5. National legislation varies in terms of amounts and what is allowed. A single **harmonised** — and stricter — set of laws would benefit consumers.

<sup>(16)</sup> <http://data.consilium.europa.eu/doc/document/ST-15811-2017-INIT/en/pdf> Council conclusions of 18.12.2017, *Eco-innovation: enabling the transition towards a circular economy*.

<sup>(17)</sup> COM(2016) 662 final and EESC opinion (OJ C 125, 21.4.2017, p. 80).

5.6. The EESC believes that measures should be developed giving priority to:

- common reporting methodologies,
- digitalising products, processes and components by digitally labelling the various types,
- highly efficient infrastructure for collection and sorting, equipped with optical readers,
- standards and certification for products, processes and facilities;
- professionalising and monitoring recycling,
- extended producer and consumer responsibility reward schemes,
- an EU pilot project focusing on the organisation, design and competitive commercial development of a genuine European market in high-quality secondary plastic materials, promoting green public procurement.

5.7. The separate collection and particularly recycling of PET <sup>(18)</sup> can create economic benefits in the EU, generating new economic activity and jobs.

5.8. To date organic recycling by means of composting <sup>(19)</sup> has been favoured, as well as landfill and energy recovery through incineration <sup>(20)</sup>, particularly in the iron and steel and cement industries, with the appropriate filtering of waste gas.

5.9. Recycling plastic into new items is becoming increasingly prevalent, either of the same type (bottle-bottle), or of a different type (plastic-fabric). However, this requires a system of incentives for consumers <sup>(21)</sup> and easy identification by means of digital readers at collection points.

5.10. Recycled PET can be used as a fibre for the production of summer and winter fabrics, overalls, military uniforms, tyre reinforcements, poles, conveyor belts, film for packaging and printed products.

5.11. With vigorous technical and legislative standardisation and certification, even after recycling, and if the processes are properly conducted and certified <sup>(22)</sup>, PET remains chemically inert and therefore suitable for applications that involve safe contact with food <sup>(23)</sup>.

5.12. **With regard to marine litter**, the EESC is in favour of coordinating the directive with the International Convention for the Prevention of Pollution from Ships (MARPOL) and considers that addressing the issue of waste from fishing vessels and pleasure craft will help solve the problem of marine pollution, provided that there are appropriate exemptions for small vessels and restricted traffic ports.

5.13. The fisheries fund (EMFF) should be tapped to involve fishing organisations in organised marine waste collection. When properly trained, fishermen could supplement their unreliable fishing earnings by turning to collection and the recycling industry.

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<sup>(18)</sup> PET: polyethylene terephthalate, composition (C<sub>10</sub>H<sub>8</sub>O<sub>4</sub>)<sub>n</sub>. It is derived from crude oil (C<sub>9</sub>H<sub>18</sub>). It is a thermoplastic resin, suitable for contact with food.

<sup>(19)</sup> **Compost** is what is left after organic waste is kept moist and allowed to rot.

<sup>(20)</sup> RDF, **refuse-derived fuel**. During the combustion process, the bonds between the H and C atoms in the plastic are broken, releasing large amounts of heat.

<sup>(21)</sup> For example, the compulsory deposit in Germany and the obligation on retailers to collect the empty bottles in Switzerland.

<sup>(22)</sup> Prevent the generation of acetaldehyde, by optimising the melting temperature and residence time. Exclude decontamination.

<sup>(23)</sup> Some Member States' legislation stipulates that food containers can be made of no more than 50 % secondary plastic materials. Moreover, these secondary plastic materials cannot come into contact with food; therefore, recycled plastic in the parts of the container which might come into contact with food are covered with 'virgin' plastic.

5.14. The same approach applies to cleaning up rivers by using cooperatives, amending current legislation <sup>(24)</sup>.

5.15. The EESC believes that priority must be given to developing regional agreements on marine pollution, particularly in marine and river areas.

## 6. Specific comments

6.1. **From PET to yarn.** PET recycling involves a non-polluting, innovative chemical/mechanical process, which conserves the purity of the fibre, reducing energy and water consumption and reducing CO<sub>2</sub> emissions by about 30 %, and all without producing slag or waste.

6.1.1. The first step is recovering the raw material, through separate collection. After the stages of: crushing, washing, grinding, drawing, drying and granulation, the PET is transformed into a new polymer, through a non-polluting process, which primarily exploits temperature variations. At the end, the molten polymer that is obtained is sent to an extruder. It is cut to the desired length, in a range of synthetic recycled yarns, in high-quality, high-performance polyester.

6.2. The transformation of PET <sup>(25)</sup> (polyethylene terephthalate) into fabric is innovation, respect for the environment and quality: from production techniques to design.

6.2.1. Technical data <sup>(26)</sup>:

- 2 kg of oil (C<sub>9</sub>H<sub>18</sub>) produces 1 kg of PET (C<sub>10</sub>H<sub>8</sub>O<sub>4</sub>)<sub>N</sub>,
- 1 1,5-litre bottle has a mass of 38 grams,
- 1 0,5-litre bottle has a mass of 25 grams,
- it takes approximately 27 1,5-litre bottles to make a fleece sweatshirt (330 g/m<sup>2</sup>),
- 27 bottles amount to 1 026 grams of PET, or about 2 052 grams of oil,
- the CO<sub>2</sub> reduction for 2 052 grams of oil (24,2136 kWh) <sup>(27)</sup> is **6,39239 kg/CO<sub>2</sub>**.

6.2.2. Another example: 53 900 1,5-litre plastic bottles can be recycled and converted into an excellent polyester that can be made into 7 000 bags, with savings of 3,34 tonnes of CO<sub>2</sub> <sup>(28)</sup>.

## 7. Issues for consideration

7.1. Commitments at national level:

- education, starting at school, on the sorting of waste (including plastics!), particularly within the family,
- setting up of cooperatives/associations to collect plastic, in cooperation with municipalities and businesses, and take it to centres for processing and certification as 'secondary plastic material',
- adapting current standards on waste to what is required for plastics collection.

<sup>(24)</sup> Estimated 1,15 and 2,41 million tonnes of plastic waste currently enters the ocean every year from rivers, with over 74 % of emissions occurring between May and October. The top 20 polluting rivers, mostly located in Asia, account for 67 % of the global total.

<sup>(25)</sup> Polyesters come from PET and are available either as staple fibres or as smooth or bulky yarn or microfibre.

<sup>(26)</sup> Source: Pielletitalia S.r.l Grassobbio Bergamo.

<sup>(27)</sup> Source: JRC Ispra: Conversion factor for crude oil:

— 11,8 MWh/t,

— 0,264 tCO<sub>2</sub>/MWh.

<sup>(28)</sup> See footnote 28 JRC Ispra.

7.2. The EESC supports dialogue between stakeholders with a view to setting up a fund to invest in plastic recycling technologies and establishing a European market in high quality secondary plastic.

7.3. Through H 2020 **and the new Framework Programme 9**, including with studies on bacteria<sup>(29)</sup>, the EESC supports the Joint Technology Initiatives, and specifically the institutional public-private partnership (one of the 7 JTI) on Bio-based Industries.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(29)</sup> Kyoto Institute of Technology and Keio University, along with other Japanese research institutes, have isolated a bacterium — *Ideonella sakaiensis* — that can 'devour' plastic, using it as a source of sustenance and growth, by means of the chemical action of only two enzymes. See: [science.sciencemag.org/content/351/6278/1196](https://www.sciencemag.org/content/351/6278/1196) — YOSHIDA & OTHERS. University of Portsmouth biologist Professor John McGeehan and his colleagues accidentally created a super-powered version of the plastic-eating enzyme, published in the journal *Proceedings of the National Academy of Sciences* 2018.

**Opinion of the European Economic and Social Committee on**  
**Communication from the Commission to the European Parliament, the Council, the European**  
**Economic and Social Committee and the Committee of the Regions**

**The Future of Food and Farming**

(COM(2017) 713 *final*)

(2018/C 283/10)

Rapporteur: **Jarmila DUBRAVSKÁ**

Co-rapporteur: **John BRYAN**

Consultation	European Commission, 18.1.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Bureau decision	5.12.2017
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Adopted in section	3.5.2018
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Plenary session No	535
Outcome of vote	195/7/18
(for/against/abstentions)	

## **1. Conclusions and recommendations**

1.1. The EESC welcomes the Commission's communication on the Future of Food and Farming and believes that a strong, well-funded common agricultural policy (CAP) is essential for sustainable and viable agriculture in the EU.

1.2. The future CAP must meet the original objectives set down in the Treaty of Rome as well as new objectives around the environment, climate change and biodiversity, while at the same time ensuring that the European model of agriculture is maintained and remains competitive and viable, to meet the needs of European citizens. The new CAP must also adopt and deliver on the targets set down in the UN Sustainable Development Goals (SDGs) and COP21.

1.3. The EESC welcomes the direction of the reforms and the new proposals on subsidiarity and the new delivery model, and highlights the need to ensure that they are implemented in a way that protects the common policy and single market and is in line with the commitments on the delivery of simplification. However, the EESC believes that the communication should have been more specific. The Committee hoped the Commission would take into account the view of civil society set out in this opinion in the forthcoming legislative proposals. The timeline for the EESC's opinion and EC's legislative proposals was too tight.

1.4. The EESC supports the CAP two-pillar model, with the first pillar providing direct payments, which should be reoriented and which must ensure a fair income for farmers and an incentive for the delivery of public goods, as well as market support, and the second pillar supporting rural areas and fighting depopulation in line with the Cork 2.0 declaration. The EESC is opposed to co-financing of the first pillar. It calls for a reasonable level of co-financing of the second pillar for all Member States. The EESC is clear that direct payments should only go to active farmers, based on objective criteria relating to agricultural activities and the provision of public goods.

1.5. The EESC supports a strong, well-funded CAP and an increase in the EU budget to 1,3 % of GNI in line with the growth in the EU economy. Adequate CAP funding must be provided to address low incomes of farmers and agricultural workers, inflation and any Brexit shortfall, as well as additional environmental and climate change requirements, and to address the need for approximation of direct payments between Member States taking into consideration differences in conditions.

1.6. The EESC believes the CAP must support the small and the large, the young and the old, the new and the established, self-employed farmers and their employees, women as well as men, in such a way as to make life in the countryside viable for active farmers involved in agricultural production, delivering public goods, taking care of the environment and contributing to employment.

1.7. While welcoming the new proposals on subsidiarity and giving greater responsibility to Member States, the EESC is clear that a strong CAP must be maintained, with no renationalisation putting the single market at risk. Subsidiarity must only apply to the Member State plans on implementation of the CAP objectives, while providing Member States with the flexibility to adopt the first and second pillar payment options to best suit the farming types, structures and conditions in specific countries, taking account of their natural conditions and environment.

1.8. The proposed new delivery model around environmental and climate change objectives must be predominantly applied at Member State level. In line with the commitment on simplification, it must be simple and easy to understand for farmers, without imposing additional costs. National strategic plans must be converted at farm level into simple plans with easily understandable and simple to measure indicators.

1.9. Simplification has been a key feature of communication on the CAP for a long time and the commitment to delivery must be honoured in this reform. The EESC believes this reform is a real opportunity for simplification and has proposed a list of very specific issues for implementation. Cross-compliance should be consolidated using technological advances, the form and rate of on-farm inspections must be reviewed and optimised and tolerances, if appropriate, increased in order to avoid spurious accuracy; farmers should have the opportunity to rectify any non-compliance through a close-out process prior to a penalty and payment should be on time. The principle of annuality should apply here to avoid the need for retroactive controls and penalties.

1.10. The EESC is very supportive of improved measures for young farmers and has proposed six specific measures including a clear definition of young farmers to address the critical issue of generational renewal in agriculture.

1.11. From a positive environmental perspective and in order to increase the grassland area across the EU, the EESC recommends stronger direct support to active farmers for permanent grassland with a higher level payment.

1.12. The CAP after 2020 must strengthen the position of farmers in the supply chain so they can achieve a fair income and are not the weakest link in the chain<sup>(1)</sup>. The CAP must protect the functioning of the single market, with mandatory labelling of the origin of agricultural products which will not inhibit the free movement of goods in the EU.

1.13. The EESC believes that the CAP must be complimentary to comprehensive food policy<sup>(2)</sup>.

1.14. The EU needs sustainable food consumption that respects the requirement for low carbon emissions<sup>(3)</sup> and high environmental and climate change standards, in line with the circular economy and environmentally-friendly farming.

1.15. Agriculture involves not only food production but also management of agricultural land, use of water resources and environmental preservation. The EESC therefore calls on the Commission to protect the land at EU level from being grabbed and diverted irreversibly to other uses — and from degradation, desertification, abandonment, pollution and erosion<sup>(4)</sup>. A close link between agriculture and forestry should also be recognised.

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<sup>(1)</sup> EESC opinion on *Factors that influence CAP post-2020* (OJ C 75, 10.3.2017, p. 21).

<sup>(2)</sup> EESC opinion on *Civil society's contribution to the development of a comprehensive food policy in the EU* (OJ C 129, 11.4.2018, p. 18).

<sup>(3)</sup> EESC opinion on *Climate Justice* (OJ C 81, 2.3.2018, p. 22).

<sup>(4)</sup> EESC opinion on *Land use for sustainable food production and ecosystem service* (OJ C 81, 2.3.2018, p. 72).



1.16. The EESC believes that there must be a much more coherent strategy between the CAP and the international trade policy being pursued by the EU. Recognising that a trade policy is crucial for the success of the CAP, the EESC considers that any new trade agreements must insist that European standards across the critical issues of food safety, environmental impact, animal and plant health and welfare, and labour conditions are fully respected.

## **2. The importance of agriculture and the future of food and farming**

2.1. Sustainable and viable agriculture is the only sector that can fulfil the most basic need for the human population in terms of food production, and through land management and maintenance it also provides essential public goods, relating to the environmental protection of our water, soil, air and biodiversity resources.

2.2. As well as the provision of public goods, agriculture, forestry and fisheries, with 11 million farmers, create 22 million jobs directly on farms and a further 22 million jobs within the wider food sector across Europe in related areas such as processing, trade, transport and even science, research and education. Agriculture could contribute more effectively to economic output, growth and jobs across rural areas, if the basic conditions were changed appropriately.

2.3. Farming and agriculture have a vital role to play in the Future of Europe and delivering on the targets set down in both the UN SDGs and the commitments under the 21st Conference of the Parties (COP21). Under the Future of Food and Farming, European agriculture can deliver major benefits to society, through an improved food chain, in terms of providing an abundant supply of safe and affordable food and raw materials in a sustainable fashion that protects our key environmental resources of soil, water, air and biodiversity and also return fair incomes to farmers through viable prices.

2.4. The EESC believes that as well as meeting the key objectives set down in the Treaty of Rome involving (1) increasing agricultural productivity; (2) ensuring a fair standard of living for farmers; (3) stabilising markets; (4) the availability of supplies; and (5) ensuring reasonable prices for consumers, in the future the CAP must also deliver more, especially on the environment, climate change and biodiversity, as well as social issues and employment in rural areas.

2.5. The EESC acknowledges that the CAP objectives of the Treaties of Rome have evolved over time and all the objectives have not been achieved in full. One aim was, and is, to generate sufficient income by raising farm productivity. And farms are indeed now more productive than ever but incomes are often insufficient, and direct payments have in many cases replaced 'fair and just' prices that can be obtained on the markets. Active farmers require CAP single farm payments in addition to market returns.

2.6. The EESC believes that the following key principles must form the basis of the future objectives of the CAP:

- Protecting the European Model of Agriculture with its multifunctional roles and viable family farms, SMEs, cooperatives and other farming systems on a historical base within the EU. The CAP should make it possible to have sustainable agricultural production in all regions of the EU,
- Strong direct payments to support viable farm incomes,
- Strong rural development action,
- A properly functioning single market,
- A stronger position for the primary producer in the value chain,
- Sustainable use and management of the natural resources of soil, water, air and biodiversity,
- Environmental protection and climate change mitigation,
- Preserving nature and the landscape,

- Support for generational renewal and attracting young farmers,
- Promoting employment,
- Protecting jobs and social inclusion,
- Supporting growth and enhancing competitiveness,
- Citizen access to a wide variety of sustainably produced food including regional products, GI products and organic food,
- Adopting a coherent trade policy in line with CAP objectives,
- Mandatory designation of origin as a source of added value for consumers,
- Prioritising training actions focused on the improvement of production and the quality of food,
- Allowing circular migration flows to answer production needs with seasonal workers from third countries,
- Boosting the digitalisation of rural areas, farming activity and the food supply chain.

2.7. The EESC believes that the new proposals in the Commission's communication around subsidiarity and the new delivery model are positive and, implemented in the correct fashion, can have a major positive impact on the CAP at farm level in terms of simplification and reducing bureaucracy and also in terms of better adjusting measures to varying conditions in Member States and making the policy more focused on the environment and climate change. The EESC also believes that, to this end, some basic changes to the CAP are needed, some of which are included in Commission proposals. If properly implemented, they could have a positive impact on agriculture and on the actual achievement of the CAP's objectives.

2.8. The CAP must reflect the key objectives and targets set down in the UN SDGs and COP21. These include no poverty which involves improving farm incomes, fighting hunger, good health and well-being, good education, clean water and sanitation, affordable and clean energy, decent work and economic growth, reduced inequalities, responsible production and consumption, climate action, and protection of water and life on the land. The EESC believes that the CAP must respect these key goals and this should be reflected in the conditionality of direct payments, particularly around land issues and environmental and labour standards.

2.9. In view of the timing of the progression of the proposals, the EESC proposes that there must be clear transition arrangements in place, simply because the necessary political processes and subsequent administrative implementation probably cannot be completed before the end of 2022. Enough time must be allowed to move from the existing policy to the new policy without any problems. Farmers and the agriculture sector need clarity, stability and planning security; the EU must avoid the difficulties that arose with the last reform.

### 3. Budget

3.1. Direct payments will have to continue to play a role in safeguarding incomes, as the current conditions do not enable farmers to generate sufficient income from the sale of their products. As a market for 'public goods' is at the same time to be created for farmers, which is intended not only to compensate for additional costs to farmers and possible earnings reductions but also to have a positive impact on incomes — which the EESC strongly supports — policymakers must ensure sufficient financing in order to actually be able to keep these promises. The EESC is critical of the fact that the communication does not contain any analysis of the real financial needs of the new 'fairer and greener' CAP <sup>(5)</sup>.

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<sup>(5)</sup> In its opinion OJ C 354, 28.12.2010, p. 35, the EESC noted that the European agricultural model cannot be bought at world market prices.

3.2. The EESC therefore calls for the creation of a strong budget for the CAP, but considers that this is at risk. In order to meet the new demands on the CAP around the delivery of additional environmental and climate change requirements at farm level, to address the need for approximation of direct payments between Member States taking into consideration differences in conditions, to continue to be able to react to the pressures from low farm incomes and to close the income gap with other sectors in society and deal with inflation, the CAP budget will probably need to be substantially increased.

3.3. Since the 1980s, expenditure under the CAP has reduced from about 70 % of the EU budget to 38 %. The CAP budget was not increased when the number of EU Member States rose sharply by eighteen and EU agricultural land increased significantly.

3.4. The EESC notes the EP's proposals to increase the EU budget from 1,0 % of GNI to at least 1,3 %. It remains unclear how much of this additional money will go to agriculture and whether this will be enough to support a sufficient and adequate CAP budget and meet all of the ambitious targets and requirements. Both civil society and the European Parliament back a strong budget and the stability that goes with it. CAP reform proposals without a sufficient CAP budget will not succeed.

3.5. Any shortfall in the EU budget and especially the CAP budget as a result of Brexit must be made up for by additional contributions from Member States. In addition, proposals to finance new EU measures must involve new funding.

#### **4. Subsidiarity**

4.1. The EESC welcomes the proposal to introduce more subsidiarity into the CAP but emphasises the importance of maintaining a strong common agricultural policy and a strong EU single market. Subsidiarity cannot be allowed to undermine the CAP or the single market in any way. In addition, the EESC members highlight their concern that through subsidiarity there cannot be any renationalisation of the CAP in any Member State.

4.2. Subsidiarity should only apply to the plans developed by Member States to deliver on the CAP priorities, while retaining the CAP two-pillar model. The EESC welcomes the initiative to develop the agriculture of migrants' regions of origin. Working standards must be respected for all employees including seasonal workers.

4.3. The role of the Commission in approving and supervising the national implementation plans — and, in the event of non-compliance, imposing penalties where appropriate — is crucial to ensure that the CAP remains a common policy.

4.4. The key element of positive subsidiarity should be in the area of allowing Member States to design schemes and operations in the first and second pillar payments that best suit the farming types, structures and conditions in specific countries, while at the same time ensuring greater delivery on climate change and the environment.

4.5. Subsidiarity should also provide the flexibility to allow Member States to adopt the cross-compliance design, conditions and rules to best suit the circumstances in their country and in turn deliver real and substantial simplification at farm level, while retaining proper controls.

#### **5. New delivery model**

5.1. The CAP Communication proposes a new delivery model, which through subsidiarity will allow Member States to devise a mixture of mandatory and voluntary measures in both pillars to meet environmental and climate objectives defined at EU level. It proposes that Member States define quantified targets in strategic plans so as to achieve delivery. In addition, it proposes that all direct payments to farmers will be conditional on undertaking environmental and climate change practices (or continuing those already in place). It also proposes rewarding farmers for more ambitious voluntary practices, which will require strong incentive payments.

5.2. The EESC is clear that quantified targets, results and output indicators on environment and climate change must apply mainly at Member State level.

5.3. At farm level, the new delivery model could include a simple plan involving the key aspects of environmental and climate change measures covering the protection of soil, water, air, biodiversity and landscape features as well as nutrient management.

5.4. Additional and higher level payments in the second pillar would be made where voluntary enhanced environmental, social, labour and climate change conditions apply.

5.5. The EESC considers it is very important that the new delivery model is in line with the objectives on simplification and is easy to understand and apply at farm level.

5.6. The application of the new delivery model should not involve any additional costs at farm level in terms of advisory services or costs of compliance which will erode direct payments. Any costs incurred at farm level to meet the increased delivery of compliance with the new environmental and climate challenges must be reflected in higher payments and budget allocations at Member State level.

5.7. The EESC welcomes the Commission's proposals to embrace the concept of Smart Farming, which helps to improve farm incomes while delivering environmental benefits. It would involve using training, knowledge transfer and technology with the aim of increasing efficiency regarding inputs of water, energy, fertiliser and other inputs such as pesticides <sup>(6)</sup> as well as promoting ecological methods of production, such as environmentally-friendly land management, organic farming and agroecology.

## 6. Simplification

6.1. The EESC is very supportive of substantial simplification of the CAP and delivery of the political commitments made on simplification in order to bring tangible benefits, including a reduction in the bureaucratic burden on farmers. Simplification has been promised in many previous reforms of the CAP with little or no delivery.

6.2. It is critically important that the legislative proposals involve real simplification of the most bureaucratic elements of the CAP, particularly around the on-the-spot checks with regard to aid applications for area-related aid schemes and very extensive and complicated cross-compliance requirements under the Statutory Management Requirements (SMRs) and GAEC, that farmers have to comply with. At the same time, it is important that an effective and efficient risk-based control system is introduced which in any case is linked to an upstream advisory and incentive system for farmers.

6.3. While there was a small level of welcome simplification in the Omnibus Regulation, further changes need to be made to deliver on the objective of simplification.

6.4. The EESC proposes the introduction of simplification, across the following areas, through the new delivery model, subsidiarity and the better use of modern technologies, taking advantage of the resources and tools of the Joint Research Centre (JRC).

— A full review and redesign of the control system at farm level is necessary to make it more efficient and less bureaucratic: based on an annuality principle (without retroactive controls), a focus on guidance and correction shall replace at the first stage penalties and sanctions,

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<sup>(6)</sup> EESC opinion on *A possible reshaping of the CAP* (OJ C 288, 31.8.2017, p. 10).

- Improved use of new technology, satellite inspection and remote sensing could replace some of the cross-compliance on-the-spot checks,
- The current SMRs and GAEC should be optimised without compromising on controls or standards,
- Tolerances should be increased to take account of the specificities of real farm operations, where in many circumstances it may be a one-person operation, and appropriate time to correct or rectify any non-compliance should be provided,
- Inspections should not hold up payments and a policy of applying any penalties in the following year for all eligibility and cross-compliance/SMRs should apply<sup>(7)</sup>.

6.5. Subsidiarity provides Member States with the opportunity to adopt increased levels of simplification at farm level to suit particular circumstances, while at the same time maintaining the delivery of public goods.

## 7. Direct payments, rural development and CMO

7.1. A recent report from the European Court of Auditors (ECA) has highlighted that the basic payment scheme (BPS) for farmers is operationally on track, but its impact on simplification, targeting and the convergence of aid levels is limited. In addition, the ECA states that the BPS is a significant source of income for many farmers but has inherent limitations. It does not take into account market conditions, use of agricultural land or individual circumstances of the holding and it is not based on an analysis of the overall income situation of farmers.

7.2. For many farmers, direct payments have thus become the most important instrument of the CAP<sup>(8)</sup> and critically important to European agriculture, supporting farm incomes, contributing to protecting the EU model of agriculture and supporting the highest levels of food and environmental standards because farmers can often no longer obtain a sufficient income from production and the sale of their products on the market. On average, direct payments made up 46 % of farm income for about 7 million farmers, covering 90 % of farmed land across the EU<sup>(9)</sup>. In some sectors and regions, direct payments are even more important and absolutely essential for the survival of farming.

7.3. The EESC regrets this development, which makes agriculture ever more dependent on budget discussions. In the EESC's view, the CAP must first and foremost ensure that stabilised markets (and fair trade agreements) lead to fair incomes from the sale of sustainably produced products. At the same time, the EESC welcomes the fact that policymakers intend to develop a market for 'public goods' with a positive effect on incomes.

7.4. As is clear from the Commission's communication, this will require changes in the orientation of direct payments. The EESC welcomes the fact that the Commission is looking at the issue of whether the current allocation of funds can be maintained in its current form. Any change would, however, have to preserve one of the key assets of the policy: the protection of the well-functioning internal market the CAP has created over the years.

7.5. The EESC is concerned about the lack of support for farmers who receive little or no direct payments such as fruit and vegetable growers on small areas or, for example, pasture farmers in Member States which do not make coupled premiums available for their services.

7.6. The EESC supports the retention of the CAP two-pillar model, with direct payments and market measures to support farm incomes in the first pillar and interventions targeting economic, environmental, labour and social aspects in agriculture and rural areas, in line with the Cork 2.0 Declaration, in the second pillar<sup>(10)</sup>.

<sup>(7)</sup> EESC opinion on *A possible reshaping of the CAP* (OJ C 288, 31.8.2017, p. 10, point 4.24).

<sup>(8)</sup> 'Farmers need direct support'. Summary of the results of the Public Consultation on modernising and simplifying the CAP (ECORYS) — Table 6.1, p. 95.

<sup>(9)</sup> The Future of Food and Farming COM(2017) 713 final.

<sup>(10)</sup> EESC Opinion — *From Cork 2.0 Declaration to concrete actions* (OJ C 345, 13.10.2017, p. 37).

7.7. The EESC supports the proposals for a higher level of ambition and focus on environmental care and climate action across both pillars to make the CAP greener, where the current policies have proved to be too bureaucratic and need to be made more efficient.

7.8. Direct payments must only go to active farmers based on clear objective criteria and regional practices, centred on agricultural activities and the provision of public goods. Direct payments must not be available to those who just own land and are not actively involved in agricultural production and do not deliver public goods.

7.9. Where necessary, Member States must be allowed to provide an increased level of coupled payments to strongly support vulnerable sectors and regions, without any market distortion. This will help protect biodiversity, grassland-based farming and other sectors in decline and prevent land abandonment, especially in remote rural areas where it is not possible to adopt or change to different farming enterprises. In addition, Member States should have more flexibility to target second pillar payments to improve the situation of vulnerable sectors and areas in decline, where coupled payments may not be suitable.

7.10. The EESC believes that family farms need to be given more targeted support. The most suitable voluntary measures from the first and second pillar of the CAP must be employed in order to improve the economic viability of small farms. A potential redistribution of payments among applicants must not lead to higher land or rental prices, or to lower incomes or profits for active farmers.

7.11. Every Member State will have a strategic plan adopted and will take measures to provide payments to farming based on this. Pillar 1 direct payments should be capped at a fair and reasonable level for individual farmers. Adjustments should be possible and account should be taken of partnerships, cooperatives, companies and the number of employees requiring insurance. Capping should not apply to voluntary environmental measures and for those who provide public goods. Funds recovered from capping could be used for redistributive payments. Member States may take account of employment, animal production and sensitive sectors.

7.12. On the basic payment model, it is proposed that countries that have adopted a model other than the flat basic payment system, such as the hybrid model or approximation model, should be allowed to retain this model post-2020 if it better suits the circumstances in these countries <sup>(11)</sup>. Member States with a single area payment should have the possibility of abolishing the system of payment entitlements. A flat rate payment per hectare can in some cases benefit arable crop producers more than labour-intensive sectors, such as livestock and fruit and vegetable farmers.

7.13. In order to maintain the CAP as a strong common EU policy, the EESC is of the view that there must be no co-financing in the first pillar. The EESC is not in favour of allowing Member States to transfer funds from Pillar II to Pillar I. It calls for a reasonable level of co-financing of the second pillar for all Member States.

7.14. The level of direct aid paid to farmers in the individual EU Member States needs to be further approximated, to take into consideration differences in conditions and so create a level playing-field for farmers in all Member States and to ensure the balanced development of rural areas throughout the EU <sup>(12)</sup>.

7.15. A strong Rural Development Policy with greater room for manoeuvre under CAP Pillar II is essential to support the agricultural, economic, environmental and social requirements in rural areas, including more vulnerable regions, in line with the Cork 2.0 declaration. Measures should concentrate in fighting depopulation, in synergy with other structural policies. The EESC also stresses the close link between agriculture and forestry and forest's role in rural economies.

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<sup>(11)</sup> EESC opinion on *A possible reshaping of the CAP* (OJ C 288, 31.8.2017).

<sup>(12)</sup> EESC opinion on *A possible reshaping of the CAP* (OJ C 288, 31.8.2017, p. 10, point 1.12).



7.16. Payments to areas facing natural or other specific constraints (ANCs) are one of the measures of particular relevance to restoring, preserving and enhancing ecosystems dependent on agriculture and forestry <sup>(13)</sup>. Support for farmers operating in areas facing natural or other specific constraints is key to maintaining farming in these areas, preventing land abandonment and ultimately rural depopulation. Member States must have sufficient financial allocations from the European Agricultural Fund for Rural Development (EAFRD) to support areas facing natural or other specific constraints.

7.17. The EESC continues to support the strengthening of aid in the areas facing natural or other specific constraints. This should vary according to the degree of disadvantage, which should be based on the existing biophysical criteria for determining areas facing natural or other specific constraints.

7.18. The EESC proposes that the current CMO (Common Market Organisation) be improved and strengthened so as to provide an effective safety net and market support, particularly in crisis or challenging times such as the Russian ban or Brexit in order to protect primary producers, processors, consumers, markets and jobs. The EESC believes that the EC legislative proposals must be much stronger on 'markets' and 'trade' and contain meaningful and tangible measures.

7.19. The CAP must strengthen the position of farmers so that they are not the weakest link in the supply chain <sup>(14)</sup>. The EESC welcomes the Commission's initiative to draft legislative measures to tackle unfair trading practices. These must be brought in as soon as possible so that the support provided by the EU budget is not lost to agriculture but instead creates value and helps farmers place their products on the market at fair prices. In addition, the EESC recommends implementing the proposals of the Agri-Market-Task-Force.

7.20. A well-functioning single market must be at the core of the CAP. The recent trends of renationalisation across the single market are a cause of great concern, resulting in greater price and market divergence. It is essential to introduce rules, where they do not exist, on mandatory labelling of the origin of agricultural products and foodstuffs, something that is necessary to prevent fraud and enable consumers to make informed choices precisely so that such rules do not undermine or inhibit the free movement of goods in the EU single market <sup>(15)</sup>. Unfair competition through the non-respect of labour standards (contracts, social security, health and safety at work) gravely endangers the single market.

7.21. Political uncertainty, climate change and other factors mean that farmers have to contend ever more frequently with natural disasters from weather and high price fluctuations on the markets. Farm incomes can be severely affected by volatile commodity prices. The EESC calls on the Commission and the Member States to provide instruments that will help farmers to effectively surmount the risks and secure themselves a stable income. The current crisis reserve mechanism should be reviewed in order to accumulate financial resources to enable effective responses to crisis situations. The EESC is clear that strong direct payments are the best way to guarantee farmers' incomes.

## 8. Young farmers, generational renewal, new farmers and women in agriculture

8.1. The number of young farmers is steadily declining, as is the number of farmers overall. However, the rapid fall in farmer numbers from 14,5 million to 10,7 million <sup>(16)</sup> in the previous budget period covers all age groups <sup>(17)</sup>. Despite the same support opportunities through the CAP, the number of young farmers and the proportion they make up in the individual Member States vary greatly <sup>(18)</sup>. In 2016, only 31,8 % of EU agricultural workers were under forty, compared with 42,4 % in the working population as a whole <sup>(19)</sup>.

<sup>(13)</sup> Annex VI, Regulation (EU) No 1305/2013.

<sup>(14)</sup> EESC opinion on *Factors that influence CAP post-2020* (OJ C 75, 10.3.2017, p. 21).

<sup>(15)</sup> EESC opinion on *A possible reshaping of the CAP* (OJ C 288, 31.8.2017, p. 10).

<sup>(16)</sup> Ten million in the EU-28 in 2015 (Eurostat 2017).

<sup>(17)</sup> The number of farmers in the EU-27: 14,5 million (2005), 10,7 million (2013).

<sup>(18)</sup> The biggest drop over 2007-2013 in Poland, Germany and Italy, while numbers rose in Romania and Slovenia (Eurostat).

<sup>(19)</sup> 2016 Labour Force Survey (LFS).

8.2. The EESC proposes that CAP support for young farmers and generational renewal be improved. In addition, Member States should be given the flexibility to provide young farmers and young farm workers with measures for stable incomes, tax benefits or other incentive schemes. They should also adopt measures to incorporate new farmers (over 40 years of age) to take into account the increasing job mobility in rural areas as it is increasing in cities.

8.3. The EESC proposes that the definition of a young farmer be clarified as a person under 40 years of age who has the necessary qualifications and meets the requirements as set down for an active farmer.

8.4. Young farmers face great risk, high costs and an uncertain income from their businesses. The EESC makes the following specific proposals to support and assist young farmers and generational renewal:

- Improving incomes and investment support through increased Pillar I and Pillar II payments for young qualified farmers,
- Increasing the 25 % top-up for young farmers in Pillar I,
- Introducing a retirement scheme for farmers wishing to exit and pass on their holdings to young qualified farmers in Pillar II, including a provision for a land mobility scheme,
- Introducing an installation-type scheme and other targeted measures for young farmers to help them get established in Pillar II,
- Providing additional income in the form of a payment for five years, for young people who establish small farms producing for local markets, in order to allow them to set up gradually,
- Developing financial instruments to assist in the provision of low-cost start-up capital or loans,
- Innovation and knowledge-transfer support tailored for young farmers.

8.5. At 35,1 %, the proportion of women working in agriculture in the EU is lower than that of women in employment generally at 45,9 % and varies significantly between Member States. However, the role women play in the labour force is very significant. It is therefore important that measures are included in the CAP to get more women into agriculture and to give them greater motivation.

## 9. Elements of high environmental added value

9.1. The EESC welcomes the strong focus on the environment and climate change in the CAP Communication and particularly on the protection and sustainability of soils, water, air and biodiversity at farm level.

9.2. In addition to its productive functions, permanent grassland, which accounts for more than 20 % of the EU area, has a wide range of other functions. It has manifest environmental benefits, particularly in terms of carbon sequestration and ecological stability as a major source of biodiversity in agricultural areas.

9.3. For this reason and in order to increase the EU grassland area, the EESC recommends that the CAP policy allows the Member States to provide (a) stronger direct support to active farmers for permanent grassland, with a new higher level grassland payment; and (b) support for marketing initiatives for the products of grazing. As a prerequisite for receiving higher amounts of aid, the applicant must comply with the required minimum stocking rate and grazing period. However, it also notes a number of problems in the eligibility of permanent grassland in the Land Parcel Identification System (LPIS) <sup>(20)</sup> due to shortcomings in monitoring or incomplete source data, which results in payment of aid for ineligible areas.

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<sup>(20)</sup> European Court of Auditors, *Special report 25/2016*.

9.4. The EESC also notes long-standing terminology shortcomings in the description of grasslands. We would propose using the unifying concept of 'permanent grassland', which would remove the terminology divergence inherited from past periods<sup>(21)</sup>. The regulation should also better define and take into account non-herbaceous grazing using animal production, as is prominent in many parts of the EU, as they play an essential role in environmental protection.

9.5. Land is a limiting factor first for farming and then for other sectors. Across the EU various measures are in place, legislative as well as non-legislative, to protect land. However, a common European framework would ensure the sustainable use and protection of agricultural land and soils<sup>(22)</sup>. Protecting the health and fertility of the soil should be one of the objectives set at EU level as part of the new CAP delivery model. The EESC is in favour of drawing up and implementing an EU protein strategy to increase self-sufficiency in protein feed.

## 10. Trade and international issues

10.1. As the world's largest net-exporter of agricultural goods, the success of European farming is to a significant extent based on trade with third countries. The potential in future fair and mutually beneficial free trade deals should be used to guarantee the continued contribution to jobs and farmers' income.

10.2. The EESC is of the view that there must be a much more coherent strategy between the CAP and the trade policy being pursued by the EU. The CAP is positively driving a policy of supporting the family farm and other EU farm structures, as well as higher standards across the key areas of food safety, the environment and labour. However, in trade negotiations such as Mercosur, the EU is accepting food imports which fail to meet EU food safety standards, are produced with lower environmental standards and totally unacceptable labour standards.

10.3. Any EU trade agreements must respect the principle of food sovereignty and community preference, involving EU food for EU citizens, and a common external tariff. The maintenance and protection of the highest level of standards on sanitary, phytosanitary, environmental and labour conditions are necessary to prevent carbon leakage and job losses.

10.4. Recent examples on positive trade include the EU/Japan agreement, where equivalent standards were maintained and no major carbon leakage or job losses were involved. In contrast, the proposed EU/Mercosur deal involves major carbon leakage due to the continuing destruction of the Amazon rainforests, additional greenhouse gas emissions and job losses. Greenhouse gas (GHG) emissions from Brazilian beef are estimated at 80 kg CO<sub>2</sub>-eq/kg compared to EU production at 19 kg CO<sub>2</sub>-eq/kg. The Economic Partnership Agreements with developing countries should bear in mind the effects on employment and social standards in their destination countries.

## 11. Food and health

11.1. EU farmers and the CAP ensure that the citizens of the European Union are guaranteed sufficient quantities<sup>(23)</sup> of high-quality food that is affordable, safe and produced in compliance with environmental standards. The CAP is the enabling mechanism for agriculture, which is the basis of the EU food industry<sup>(24)</sup>.

11.2. The EESC highlights that existing EU policy tools need to be realigned and harmonised in order to deliver environmentally, economically and socio-culturally sustainable food systems. The EESC also reiterates that a comprehensive food policy should be complementary to — not replace — a reshaped CAP<sup>(25)</sup>.

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<sup>(21)</sup> <http://www.consilium.europa.eu/media/32072/pe00056en17.pdf>;

[http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Permanent\\_grassland](http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Permanent_grassland)

<sup>(22)</sup> EESC opinion on *Land use for sustainable food production and ecosystem services* (OJ C 81, 2.3.2018, p. 72).

<sup>(23)</sup> Article 39(1)(e) of the Treaty of Lisbon (TFEU).

<sup>(24)</sup> JRC Evaluation of the EU livestock sector contribution to the EU greenhouse gas emissions 2010.

<sup>(25)</sup> EESC opinion on *A possible re-shaping of the CAP* (OJ C 288, 31.08.2017, p. 10).

11.3. The EESC calls on the EC to ensure that — with a view to protecting consumers — production requirements in the internal market for the benefit of the environment and farm animals and SPS, as well as social standards, are also applicable to third-country imports.

Brussels, 24 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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## ANNEX I

At least one quarter of the votes cast opposed the compromise amendment of this paragraph of the Section opinion:

**Point 7.11**

*Pillar 1 direct payments should be capped at a fair and reasonable level for individual active farmers (e.g. equal to the income of a comparable worker). Adjustments should be possible and account should be taken of partnerships, cooperatives, companies and the number of employees with social security. Capping should not apply to voluntary environmental measures and for those who provide public goods. Funds recovered from capping could be used for redistributive payments.*

**Voting**

Votes in favour: 92

Votes against: 85

Abstentions: 30

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## ANNEX II

This compromise amendment was rejected but received at least one quarter of the votes cast:

**Point 7.13**

*In order to maintain the CAP as a strong common EU policy, the EESC is of the view that there must be no co-financing in the first pillar. Both a strong Pillar 1 and Pillar 2 are essential for a new, reshaped CAP with flexible Rural Development Programmes available across all Member States, including Areas of Natural Constraint (ANC) focused on vulnerable regions and sectors. The EESC is not in favour of allowing Member States to transfer funds from Pillar II to Pillar I. It calls for a reasonable level of co-financing of the second pillar — both minimum and maximum limits — for all Member States.*

**Voting**

Votes in favour: 73

Votes against: 98

Abstentions: 37

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**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 on EU actions to improve environmental compliance and governance’**

(COM(2018) 10 *final*)

(2018/C 283/11)

Rapporteur: **Arnaud SCHWARTZ**

Referral	European Commission, 12.2.2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Plenary Assembly decision	16.1.2018
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	3.5.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	192/02/05

## 1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) welcomes the Communication in question, yet with some reservations. It feels that the European Commission's action plan to improve compliance with environmental legislation and environmental governance is severely lacking in both ambition and resources, given the current level of environmental degradation.

1.2. The EESC is all the more cautious as, like the Commission, it acknowledges that a lack of respect for the mechanisms that guarantee the implementation of environmental legislation and governance is a regrettable factor that contributes to unfair competition and economic harm.

1.3. The EESC also joins the Commission in stressing that current shortcomings are undermining people's trust in the effectiveness of EU legislation, and calls on the Member States and the Commission to mobilise substantial funding for the recruitment of additional staff, in order to monitor the implementation of environmental governance and legislation.

1.4. As stated in the Better results through better application communication <sup>(1)</sup>, 'infringements of EU law are no routine matter' and should not be treated as such. The EESC thinks non-compliance with EU law needs to be addressed at an appropriately high level and in a timely manner, which is not the case in the current communication <sup>(2)</sup>.

1.5. The communication only addresses capacity-building and support at Member State level. None of the measures relate to monitoring and enforcement at EU level by the Commission as 'guardian of the treaty'. The action plan fails to address reasons for non-compliance beyond confusion and lack of capacity, such as opportunism and lack of political will. While support of Member States is necessary, the soft measures of this action plan cannot be the sole strategy for improving environmental compliance.

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<sup>(1)</sup> OJ C 18, 19.1.2017, p. 10.

<sup>(2)</sup> COM(2018) 10.

1.6. Furthermore, the EESC, citing the opinion <sup>(3)</sup>, calls in particular for the Commission to include access to justice in its action plan, as this is a key element. The EESC also asks the Commission to address the issue of the cost of access to justice for civil society.

1.7. The EESC also emphasises that more efforts need to be made to prevent environmental damage from arising in the first place and that a prevention strategy should always be preferred over a cure. Consistent and strict enforcement of environmental law by Member States and the Commission are essential for this aim, as they serve as a strong deterrent to future damage. In addition, communication campaigns towards stakeholders and the public would be welcomed in order to raise awareness and thus to improve the role of the public as a watchdog. For people to take on this role, effective access to justice in the environmental domain is indispensable.

1.8. Finally, the EESC welcomes the possibility of appointing EESC representatives to the Environmental Compliance and Governance Forum. To this end, the EESC recommends that three of its members (one from each group) be allowed voting rights in this forum as opposed to observer status.

1.9. The EESC calls upon the Commission to ensure that there is meaningful, effective dialogue with civil society organisations at the Environmental Compliance & Governance Forum in order to ensure that their voices are heard. In this context of environmental compliance, it stresses the essential role of civil society organisations in particular in their capacity as watchdogs for the rule of law, the common good and the protection of the public.

## 2. General comments

2.1. Both the Committee's opinion on the EU Environmental Implementation Review <sup>(4)</sup> and the opinion on Access to justice at national level related to measures implementing EU environmental law <sup>(5)</sup> highlight that poor, fragmented and uneven implementation of EU environmental legislation is a serious problem in many EU Member States.

2.2. The Commission Communication COM(2018) 10 final contains an action plan aimed at increasing compliance with EU environmental law and improving environmental governance.

2.3. The plan provides for close cooperation between the Commission, the Member States and the relevant professionals (inspectors, auditors, police officers and prosecutors) aimed at creating a smart and cooperative culture of compliance with EU environmental rules; yet this is only a tiny fraction of what is needed to ensure that environmental legislation is implemented.

2.4. The implementation of this legislation has been beset by significant challenges, linked to persistent problems (for example: diffuse water pollution, poor air quality, unsatisfactory waste treatment, and species and habitats in decline).

2.5. According to the Commission, the costs of non-implementation amount to EUR 50 billion per year.

2.6. As well as the economic gains discussed above, many other benefits (including to public health and the long-term resources needed by society) could be achieved through more effective application of this legislation.

2.7. Moreover, weak mechanisms for securing compliance with the legislation and effective governance at European, national, regional and local level (including a lack of controls) are among the causes of the failure to implement EU rules.

2.8. They are also a factor in unfair competition for businesses and economic harm (such as loss of tax revenue). This undermines public confidence in the effectiveness of EU laws.

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<sup>(3)</sup> OJ C 129, 11.4.2018, p. 65.

<sup>(4)</sup> OJ C 345, 13.10.2017, p. 114.

<sup>(5)</sup> OJ C 129, 11.4.2018, p. 65.

2.9. This is why the Commission proposes a nine-point action plan, accompanied by the creation of an expert group <sup>(6)</sup>: the Environmental Compliance and Governance Forum.

2.10. The nine types of action that the action plan proposes to undertake are set out in Annex 1 of the Staff Working Document <sup>(7)</sup>.

### 3. Specific comments

#### 3.1. *Achieving a model Europe and protecting the general public*

3.1.1. Within the global context, the EU should strive to be a pioneer in the effective protection of the environment and its citizens and should insist that this issue be prioritised. Given that legislation is already in place and major steps have been taken, the failure to ensure compliance with the legislation in place is a missed opportunity for the EU to live up to its values and to make an actual difference.

3.1.2. The EESC warns the Commission that the state of protection of citizens in certain contexts is very poor. Compliance with EU law in all Member States is of great importance, as incorrect national legislation systematically undermines people's ability to assert their rights and to fully draw on the benefits of EU legislation. This is of particular importance in the context of environmental legislation as non-compliance with e.g. air standards significantly affects human health.

3.1.3. The EESC draws the Commission's attention to its opinion <sup>(8)</sup> and hopes that it will take this opinion into account in its action plan. Moreover, it hopes that the action plan will also address, for example, the regulation, control and governance of nanomaterials and endocrine disruptors, in addition to crime relating to waste and wildlife.

3.1.4. However, the EESC would like to point out that it appreciates the Commission's willingness to promote, for example, the use of drones and smartphone applications to report or detect environmental damage and to encourage Member States and local and regional authorities (as is the case in Ireland, for example) to either use these themselves or support public initiatives that can improve the implementation of environmental rules by using this type of tool.

#### 3.2. *The Single Market and economic aspects*

3.2.1. Consistency in the application of environmental law is an essential factor underpinning the Single Market. Inconsistent application of environmental legislation creates unfair advantages for businesses in Member States where there is a lack of compliance. This leads to unfair market conditions and provides the wrong incentives for EU businesses.

3.2.2. Consistency and certainty of application are required across all Member States to ensure that non-compliance is sanctioned equally across the EU. This provides for the protection of the rule of law and allows businesses to rely upon EU law while also creating a level playing field for businesses in all Member States.

3.2.3. In the Communication, the Commission states that the costs of non-compliance are estimated at EUR 50 billion per year. The Commission's Study to assess the benefits delivered through the enforcement of EU environmental legislation <sup>(9)</sup> also sets out the vast economic benefits that can be obtained from ensuring environmental compliance. Besides the environmental, health and rule of law interests, there should also be a clear economic interest in the prevention of further damage through effective controls and proper enforcement of existing environmental law.

3.2.4. The EESC reminds the Commission of the need for more resources, both human and financial, to verify that environmental rules and governance are being implemented, as previously explained in its opinion on An Action plan for nature, people and the economy <sup>(10)</sup>. Above all, the funding needed to reach the agreed objectives, for example in the field of biodiversity, is in short supply.

<sup>(6)</sup> OJ C 19, 19.1.2018, p. 3.

<sup>(7)</sup> SWD(2018) 10.

<sup>(8)</sup> OJ C 345, 13.10.2017, p. 114.

<sup>(9)</sup> <https://publications.europa.eu/en/publication-detail/-/publication/219e8506-9adf-11e6-868c-01aa75ed71a1>

<sup>(10)</sup> OJ C 129, 11.4.2018, p. 90.

3.2.5. The EESC also hopes that the EU will systematically seek equivalence of its social and environmental legislation for imported products in bilateral and multilateral trade negotiations.

### 3.3. *Enforcement proceedings by the Commission*

3.3.1. While Member States have the primary responsibility for correctly implementing and applying EU law, the Commission is the guardian of the Treaty<sup>(11)</sup>. It must therefore ensure that environmental instruments are respected and that Member States refrain from any measures which could jeopardise the attainment of EU objectives in environmental policy<sup>(12)</sup>. In doing so, it has discretion to instigate enforcement proceedings under Article 258 of the TFEU.

3.3.2. Due to the cross-border impact of environmental harm, compliance in one Member State is of great interest to all Member States seeking to protect their citizens and prevent environmental damage on their own territory. The Commission therefore has a key role in protecting this common EU interest and in providing access to justice in cross-border conflicts.

3.3.3. The European Parliament and the Council declared in 2013 that ‘improving the implementation of the Union’s environmental *acquis* at Member State level will [...] be given top priority in the coming years’<sup>(13)</sup>. The Commission Communication on Better results through better application<sup>(14)</sup> emphasised the importance of the strategic use of its enforcement power to prioritise its enforcement efforts on the most important breaches of EU law affecting the interests of its citizens and businesses. Compliance with environmental regulations is of vital importance to the EU, directly affecting the Single Market and the health of its citizens, and should be given clear priority in the enforcement proceedings of the Commission.

3.3.4. The EESC draws attention to the benefits of infringement proceedings outside their immediate application to a specific case<sup>(15)</sup>. Effective enforcement proceedings send a clear signal to Member States that the EU attaches a high priority to the protection of its citizens and the environment in which they live.

3.3.5. The systemic pursuit of non-compliance also provides a strong deterrence factor, reducing non-compliance more broadly. It would further strengthen trust in EU law beyond the field of environmental protection, with positive spill-over effects in other areas of EU legislation.

### 3.4. *Effectiveness of the law*

3.4.1. The widespread dismantling of criminal environmental law, as well as impediments to public access to environmental justice and governance, has been noted in many countries by organisations representing civil society. This could be due to a misinterpretation of certain EU policy guidelines (for example, a Better Regulation strategy that leads to simplification and experimentation, allowing the rules to be broken).

3.4.2. In addition, for a number of EU environmental policies, Member States should tackle the failure to adequately implement legislation rather than supposedly gold-plating it. This supposed gold-plating at national level can lead to the false perception that Member States are highly ambitious when they are actually failing at the core by under-implementing EU environmental law, leading to non-compliance.

3.4.3. While the Communication presents three classes of intervention for securing compliance, it fails to suggest measures relating to all three. The proposed actions are all measures that promote compliance and build capacity at Member State level. None of the suggested actions relate to follow-up and enforcement measures by the Commission itself, rendering this a very soft action plan that is unlikely to lead to significant improvements in environmental compliance.

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<sup>(11)</sup> Article 17 of the Treaty on European Union (TEU).

<sup>(12)</sup> Article 4(3) TEU.

<sup>(13)</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 ‘Living well, within the limits of our planet’ (OJ L 354, 28.12.2013, p. 171).

<sup>(14)</sup> OJ C 18, 19.1.2017, p. 10.

<sup>(15)</sup> OJ C 81, 2.3.2018, p. 88.

3.4.4. The Commission therefore fails to address monitoring and enforcement measures at EU level in its action plan. Even within the support mechanisms that it proposed, it missed the opportunity to associate clear targets with each action to measure their effectiveness. Financial support is not contingent upon any change of practice in Member States, making the anticipated outcome unclear and therefore questioning the effectiveness and appropriateness of the suggested measures.

3.4.5. The EESC is further disappointed by the failure to address the operation of complaints and inspections of national implementation of EU law. The EESC is seriously concerned about a lack of political will within the Commission leading to a failure to carry forward complaints. The 'soft' nature of the proposed measures underlines this concern.

3.4.6. In the EESC's view, in addition to the correct application of environmental law and good environmental governance, consideration should also be given to the principle of non-regression in environmental law in order to ensure sustainable development.

3.4.7. The Communication recognises that there are different reasons for non-compliance, including confusion, poor understanding or lack of acceptance of rules, lack of investment, opportunism and criminality. Unfortunately, the Commission fails to adequately address all of these reasons, merely suggesting measures to address confusion and poor understanding. While support for Member States is necessary, this cannot be the sole strategy to improve environmental compliance as it fails to address most of the reasons that are unrelated to confusion and limited capacity.

### 3.5. *Access to justice at national and European level*

3.5.1. The EESC reminds the Commission that systemic non-compliance in Member States and the lack of adequate enforcement through national courts presents a clear issue regarding the application of justice at national level.

3.5.2. The EESC urges the Commission to follow its recommendation in its opinion on access to justice<sup>(16)</sup> regarding the monitoring of preliminary references. The EESC emphasises the importance of preliminary references in ensuring the consistency of EU law and urges the Commission to report on usage and compliance with this tool by national courts.

3.5.3. The EESC reiterates<sup>(17)</sup> that free access to environmental information is essential for the public and civil society organisations to be able to perform their role as public watchdogs.

3.5.4. While the EESC recognises the differences between the justice systems of the different members, it is disappointed that neither the issue of standing (*locus standi*) nor the costs involved in bringing a case at national level have been addressed. For citizen and consumer organisations or those representing social and environmental interests, standing and costs present substantial barriers for holding their governments and large businesses accountable through the national courts.

3.5.5. Even if standing is granted, and as previously pointed out in the opinion<sup>(18)</sup>, the EESC reiterates that the financial resources of most civil society organisations are extremely limited, which often leads to a denial of justice for the individuals affected. In addition, these hurdles prevent civil society organisations from doing their helpful work for the correct implementation of existing law, which is essential for the protection of the rule of law.

3.5.6. The EESC also warns that it is important to have systems in place to prevent abuse of the court system. This should be kept in mind when granting free access to justice to civil society organisations. However, the EESC stresses the advantages of granting them access to justice, as it would enable them to protect consumers, health and the environment for the benefit of society as a whole. As a result, the provisions aimed at preventing abusive actions should be specific and targeted, so that they do not hamper the vital work carried out by civil society organisations in helping to implement the legislation.

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<sup>(16)</sup> OJ C 129, 11.4.2018, p. 65.

<sup>(17)</sup> OJ C 345, 13.10.2017, p. 114.

<sup>(18)</sup> OJ C 129, 11.4.2018, p. 65.

3.5.7. The failure of the Commission and the European courts to ensure compliance with EU law jeopardises the rule of law and weakens public confidence and Member States' and businesses' confidence in EU law. It further contributes to preventing access to justice by citizens, civil society organisations and businesses, leading to growing mistrust in the efficiency of the Commission and the courts, and undermining confidence in the EU as a whole.

3.5.8. In addition, the Communication overlooks two points that are sensitive at European level, both of which are related to access to the European courts:

- access to EU justice, which was highlighted at the meeting of the parties to the Aarhus Convention and relates to the internal functioning of the EU's institutions (for example, the Commission decides too quickly not to take action regarding complaints);
- the habits of certain national courts, which refuse to refer preliminary questions and instead take it upon themselves, in breach of the Treaties, to interpret EU law, sometimes with grotesque rulings (for example, in France a public rapporteur at the *Conseil d'État* (Council of State) told judges that it was pointless to refer a preliminary question to the Court of Justice of the European Union since the latter had never addressed the subject at hand).

3.5.9. The EESC therefore calls on the Commission to explicitly include the points made on access to justice at national and EU level to ensure a holistic approach that serves the public by protecting people's health and current and future habitat.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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**Opinion of the European Economic and Social Committee on — Proposal for a Council Regulation  
on establishing the European High Performance Computing Joint Undertaking**

(COM(2018) 8 final — 2018/0003(NLE))

(2018/C 283/12)

Rapporteur: **Ulrich SAMM**

Co-rapporteur: **Antonio LONGO**

Consultation	Council of the European Union, 21.2.2018
Legal basis	Articles 187 and 188 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	4.5.2018
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	196/2/4

## 1. Conclusions and recommendations

1.1. The EESC endorses this initiative for a **EuroHPC Joint Undertaking** as a concrete step in line with the European cloud strategy as well as part of a wider EU strategy (which includes Cybersecurity, the Digital Single Market, the European Gigabit Society, Open Science, etc.). This initiative brings clear **EU added value** with a **key technology** which will help to tackle the most challenging issues of our modern society and will ultimately be beneficial for our well-being, competitiveness and jobs.

1.2. The EESC considers the starting **investment** of EUR 1 billion for the acquisition and operation of world-class supercomputing machines as significant but not too ambitious compared to its competitors the USA and China. However, the EESC is convinced that a substantial increase in the investments (in EU Member States) combined with a strong European **research and innovation programme** will be necessary to maintain a world class level in HPC applications. As the race will continue, there is no doubt that similar efforts will be necessary for the next MFF in line with the global competitors' ones.

1.3. The EESC endorses the **industrial approach** for developing the next generation of low-power microchips in Europe. This would make the EU less dependent on imports and secure access to top HPC technology. The EESC points out that the development of such microchips also has an impact on small-scale computing because the high-end integrated circuits can be adapted (downscaling) to appliances in the **mass market** (PCs, smartphones, automotive sector).

1.4. The EESC would encourage the Commission to put more emphasis on the strong position that this initiative is starting from and on the fact that it is key to continuing the European **success story** based on the existing pillars of PRACE and GEANT, which provide since many years high-end HPC services to science and industry and interconnect research, education and national research networks and HPC centres with secure, high-capacity networks, respectively.

1.5. The EESC, therefore, emphasises the utmost importance of **integrating** the new EuroHPC Joint Undertaking with already existing structures and programmes as the best way to jointly deploy European resources. For example, the peer review being organised by PRACE should be retained to maintain the world-class standard.

1.6. The EESC would like to encourage **more Member States** to join the EuroHPC Joint Undertaking and use it as an opportunity to profit from world-class computing power. In view of the complexity of a Joint Undertaking, the EESC asks the Commission to put adequate efforts into explaining and promoting the advantages and opportunities of this legal instrument, in particular for smaller countries and with regard to the possibility for in-kind contributions.

1.7. The EESC welcomes the fact that two of the Commission's partners in the contractual public-private partnership (cPPP) could become the first private members, which is key for the participation of **industries**, including **SMEs**. The EESC welcomes the possibility of more partners but would also insist that for any new partner, in particular for those from outside the EU, **reciprocity** be fulfilled. The EU should have to profit from the opportunity represented by the development of HPC technology to complete the European industrial sector in order to cover all of the production chain (design, manufacturing, implementation, application). The European Union should establish as a mid-term goal the achievement of the capability to plan and realise an HPC with European technology.

1.8. The EESC recommends **informing citizens and enterprises** about this new important initiative to recover citizens' confidence in the European integration process, and to help European enterprises, SMEs in particular, to be aware of its benefits. Also universities and research centres must be involved through a specific communication activity aimed at raising interest and encouraging projects on HPC.

1.9. The EESC recommends strengthening as much as possible the **social dimension** of the digitalisation process as a fundamental part of the European Social Pillar. The implementation and use of high-level machines must have an evident and measurable positive impact on all citizens' daily lives.

## 2. Introduction

2.1. After being deployed originally in climate research, numerical weather prediction, astrophysics, particle physics and chemistry, **high-performance computing (HPC)** has now also been used in most other scientific fields, from biology, life sciences and health, high fidelity combustion simulations, and materials sciences to social sciences and humanities. In industry, HPC has been widely used in oil and gas exploration, aeronautics, the automotive sector and finance, and is now becoming crucial for ensuring personalised medicine, developing nanotechnologies and enabling the development and deployment of renewable energies. Finally, HPC is becoming a tool of growing importance for supporting public decision-making by simulating scenarios related to natural risk events, industrial risks, biological risks and (cyber)terrorism risks, thus being essential for national security and defence.

2.2. In computing, floating point operations per second (**FLOPS**) is a measure of computer performance. HPC performance represents the upper end of what is technologically possible. This high-end performance is increasing steadily, due to the ever smaller integrated circuits (Moore's law) and the shift from vector to parallel processing. Every 10 to 12 years there was a shift of computational speed by a factor of 1 000; thus it has gone from gigascale (1985), to terascale (1997), to petascale (2008). The transition from petascale to **exascale** (Giga =  $10^9$ , tera =  $10^{12}$ , peta =  $10^{15}$ , exa =  $10^{18}$ ) is expected to happen between 2020 and 2023.

2.3. So far each Member State in the EU has been investing in HPC on its own. Compared to its competitors from the USA, China and Japan, Europe is clearly underinvesting in HPC with a funding gap of EUR 500-700 million per year. Therefore, the EU does not have the fastest supercomputers and moreover the existing HPC machines in the EU depend on non-European technology. The next steps in HPC technology can be best achieved through **joint European efforts** with investments on a scale beyond the possibilities of individual Member States.

2.4. The development of the next generation of microchips in Europe would help to achieve EU independence in access to top HPC technology. But the European HPC technology supply chain can only be improved with clear prospects of a lead market and of developing an ecosystem of machine sized up to exascale. The public sector has to play a key role in this objective, otherwise the European suppliers will not take the risk of developing the machines on their own.

2.5. Consequently, the European Commission is initially planning to invest EUR 1 billion jointly with the Member States in building a **world-class European supercomputer infrastructure**. Such a shared infrastructure and common use of existing capabilities is intended to benefit everyone, from industry, SMEs, science, the public sector and especially the (smaller) Member States without self-sufficient national HPC infrastructures.

2.6. The importance of HPC has been clearly outlined by the European Commission in 2012 in its strategy on 'High-Performance Computing: Europe's place in a global race' <sup>(1)</sup>. In April 2016, the European Commission launched the **European Cloud Initiative** <sup>(2)</sup>. This initiative comprises two main elements: the **European Data Infrastructure** (EDI) with world-class supercomputing capability and high-speed connectivity and the **European Open Science Cloud** (EOSC) with leading-edge data storage and management and interfaces for cloud-based service delivery. The first one is now to be delivered with the **Proposal for a Council Regulation on establishing the European High Performance Computing Joint Undertaking** <sup>(3)</sup>.

2.7. The proposal is a follow-up to the **EuroHPC declaration**, signed on 23 March 2017 at the Digital Day in Rome by seven Member States — France, Germany, Italy, Luxembourg, the Netherlands, Portugal and Spain. They were joined during 2017 by Belgium, Slovenia, Bulgaria, Switzerland, Greece and Croatia. These countries agreed to build a pan-European integrated exascale supercomputing infrastructure. Other Member States and associated countries are encouraged to sign the EuroHPC declaration as well.

2.8. Following an impact assessment, the Commission <sup>(4)</sup> found that a **Joint Undertaking** was the best option for implementing the EuroHPC, which would enable the joint procurement, ownership and operation of the supercomputers to be efficiently combined.

### 3. Gist of the proposal

3.1. The European Commission is proposing a Council Regulation on establishing the European High Performance Computing Joint Undertaking (EuroHPC). This new legal entity will:

- provide a **funding structure** to acquire, build and deploy across Europe a world-class high-performance computing (HPC) infrastructure,
- support a **research and innovation programme** to develop the technologies and machines (hardware) as well as the applications (software) that would run on these supercomputers,
- provide financial support in the form of procurement or **research & innovation grants** to participants following open and competitive calls; provide European industry and in particular small and medium-sized enterprises (SMEs) with better **access** to supercomputers.

3.2. The **EU's contribution** to EuroHPC will be around **EUR 486 million** under the current Multiannual Financial Framework, matched by a **similar amount from Member States** and associated countries. Private members of the initiative can also add **in kind** contributions. Overall, around EUR 1 billion of public funding would be invested by 2020.

3.3. The activities of the EuroHPC Joint Undertaking operating from 2019 until 2026 will consist of:

- **acquisition and operation** of two world-class **pre-exascale** supercomputing machines and at least two mid-range supercomputing machines (petascale), providing and managing access to these supercomputers to a wide range of public and private users starting from 2020,
- a **research and innovation** programme on HPC: to support the development of European supercomputing technology including the first generation of European **low-power microprocessor** technology, and the co-design of European **exascale machines**, and to foster applications, skills development and a wider use of high-performance computing.

3.4. The proposal wants to reach exascale performance by 2022-2023. An intermediate step (50 % of exascale performance) should be reached by 2019. The planned infrastructure will be **jointly owned** and operated by its **members** consisting at first of the countries that have signed the EuroHPC declaration and private members from academia and industry. Other members can join this cooperation at any moment, provided they make a financial contribution (including in kind contributions).

<sup>(1)</sup> COM(2012) 45 final and OJ C 299, 4.10.2012, p. 148.

<sup>(2)</sup> COM(2016) 178 final and OJ C 487, 28.12.2016, p. 86.

<sup>(3)</sup> COM(2018) 8 final and Annex 1.

<sup>(4)</sup> SWD(2018) 6 final.

3.5. The proposal establishes that two infrastructures will be created and implemented in parallel. Such infrastructures will be hosted by two EU countries subject to specific criteria.

3.6. The Joint Undertaking will be managed by a governing board, composed of representatives of the public members of the Joint Undertaking. It will be responsible for strategic policy making and the funding decisions relating to the Joint Undertaking procurement and R&I activities. The members' voting rights and procedures will be in proportion to their financial contribution. The Joint Undertaking model is based on lessons learnt from other joint undertakings in operation, such as the ECSEL. Both joint undertakings are similar in terms of goals and structure. The main difference lies in the large-scale procurement activities in Euro HPC which is absent in the ECSEL. This difference explains the attribution of voting rights in proportion to the contribution of participants.

3.7. The governing board will be supported by an Industrial and Scientific Advisory Board, composed of representatives of the private members of the Joint Undertaking. In order to avoid conflicts of interests, the advisory board will have only a consultative role.

#### 4. Specific comments

4.1. The EESC endorses this initiative as a concrete step in line with the European cloud strategy: the strategic choice of an open European computing cloud geared to the scientific community and industry, as part of a strong political and economic commitment to digital innovation<sup>(5)</sup>. This initiative brings clear **EU added value** with a **key technology** which will help to tackle the most challenging issues of our modern society and will ultimately be beneficial for our well-being, competitiveness and jobs.

4.2. More generally, the HPC initiative is a crucial part of a wider EU strategy (which includes the Cybersecurity Act<sup>(6)</sup>, the Digital Single Market strategy (review)<sup>(7)</sup>, the European Gigabit Society<sup>(8)</sup>, Open Science, etc.) aimed at recovering Europe's digital sovereignty and independence, in order to make the EU a crucial player in digital development with a direct impact on competitiveness and citizens' quality of life.

4.3. The EESC considers the starting investments of 1 billion for the acquisition and operation of two world-class pre-exascale supercomputing machines and at least two mid-range supercomputing machines as significant but not too ambitious compared to its competitors. However, the EESC is convinced that a substantial increase in the investments (in EU Member States) combined with a strong European research and innovation programme will be necessary to maintain a world class level in HPC applications. As the race will continue, there is no doubt that similar efforts are necessary for the next MFF in line with the global competitors' ones.

4.4. The EESC would like to point out that a fast computer alone is not sufficient to be successful. High-end software developments and applications based on a strong research and development programme are also indispensable for real progress. In this area, the EU is not at all lagging behind its competitors and the EESC would encourage the Commission to put more emphasis on the strong position that this initiative is starting from and on the fact that this initiative is key to continuing the European **success story** based on the existing pillars of PRACE and GÉANT, which for more than a decade now have taken the responsibility of bringing together and federating the areas of HPC and networking, respectively.

4.5. The EU co-funded Partnership for Advanced Computing in Europe (**PRACE**) created in 2010 and comprising 25 Member States provides high-end HPC services to science and industry, deploying the largest national supercomputing systems in Europe. In 2017, PRACE provided access to a network of seven leadership-class systems, provided by five hosting members (France, Germany, Italy, Spain and Switzerland) who have invested more than EUR 400 million in PRACE since its inception). PRACE allocates HPC resources on the basis of peer-reviewed calls for proposals, based on scientific excellence, to research projects coming from academia and industry including small and medium-sized companies.

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<sup>(5)</sup> OJ C 487, 28.12.2016, p. 86.

<sup>(6)</sup> OJ C 227, 28.6.2018, p. 86.

<sup>(7)</sup> OJ C 81, 2.3.2018, p. 102.

<sup>(8)</sup> OJ C 125, 21.4.2017, p. 51.

4.6. The pan-European network **GÉANT** launched in 2000 interconnects research, education and national research networks and HPC centres with secure, high-capacity networks. The network is essential for supporting open science with services for trusted access. The GÉANT network is the largest and most advanced R & D network in the world, connecting over 50 million users at 10 000 institutions across Europe and supporting all scientific disciplines. The backbone network operates at speeds of up to 500 Gbps (2017). GÉANT has created the very successful eduroam service to allow R & D users to connect to any Wi-Fi network where the eduroam SSID is present — a scheme which has been proposed by the EESC as a role model for Wi-Fi access for all Europeans in the context of the strategy Connectivity for a competitive Digital Single Market — Towards a European Gigabit Society<sup>(9)</sup>.

4.7. The EESC, therefore, emphasises the utmost importance of integrating the new EuroHPC Joint Undertaking with already existing structures and programmes. For example, the peer review being organised by PRACE should be retained to maintain the world-class standard. Other best practice should be integrated or adapted. An **integrated approach** of EuroHPC, H2020 or its successor in FP and corresponding national activities is the best way to jointly deploy European resources. In this context, the EESC welcomes the Commission's plan to use the EuroHPC JU for coordinating the H2020 funding instrument (and its successor) in the field of HPC. The EESC notes that building infrastructures requires a top-down scheme, while good science, as fostered by PRACE, needs a bottom-up approach where scientists have to be the driver.

4.8. The EESC would like to encourage **more Member States** to join the EuroHPC JU and use it as an opportunity to profit from world-class computing power. Networking is crucial for the scientific use of HPC. In view of the complexity of a Joint Undertaking, the EESC asks the Commission to put adequate efforts into explaining and promoting the advantages and opportunities of this legal instrument, in particular for smaller countries and with regard to the possibility for in kind contributions.

4.9. The EESC welcomes the fact that two of the Commission's partners in the contractual public-private partnership (cPPP) have submitted letters of support for the implementation of the EuroHPC Joint Undertaking: the European Technology Platform for High-Performance Computing (**ETP4HPC**) and the Big Data Value Association (**BDVA**). They could become the first private members, which is key for the participation of industries, including SMEs. The EESC welcomes the possibility of more partners but also insists that for any new partner, in particular for those from outside the EU, **reciprocity** be fulfilled. The EU should have to profit from the opportunity represented by the development of HPC technology to complete the European industrial sector in order to cover all of the production chain (design, manufacturing, implementation, application).

4.10. A 12 petaflop CPU-based supercomputer has a **power consumption** of about 1,5 MW. With a linear scaling to exascale, HPC based on technology existing today would lead to a power consumption in the range of 150 MW, which is unacceptable; therefore the development of low-power microchips is an important objective of the EuroHPC. The EESC points out that low-power microchips will thus play an important role in the objectives of the EU's energy strategy, irrespective of the aim to make the EU independent as regards imports. In line with the above mentioned goals, the European Processor Initiative, launched by the European Commission in 2018 and supported by a consortium of 23 partners from 10 Member States and financed with EUR 120 million, will play an important role in realising the HPC initiative.

4.11. The EESC points out that the development of advanced low-power microchips also has an impact on small-scale computing (PCs, smartphones, automotive sector) because the high-end integrated circuits can also be adapted (downscaling) to appliances in the **mass market**. This will benefit all citizens directly and could open new markets for the EU's industry. HPC is therefore in many ways a key technology for a modern society.

4.12. The EESC recommends informing citizens and enterprises about this new important initiative undertaken by the EU. On the one hand, it will be useful to recover citizens' confidence in the European integration process. Organised civil society could be a useful tool for disseminating such information. On the other hand, a focused campaign will help European enterprises, SMEs in particular, to be aware about the ongoing initiatives. For this reason it is important to support through a specific path the SMEs with high added-value production in accessing and using the new infrastructures.

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<sup>(9)</sup> COM(2016)587 final and OJ C 125, 21.4.2017, p. 51; OJ C 125, 21.4.2017, p. 69.

4.13. Universities and research centres must be involved through a specific communication activity aimed at raising interest and encouraging projects on HPC. Such a process could also stimulate the creation of new school, vocational and academic curricula in order to bridge the European skills gap with respect to the main global competitors <sup>(10)</sup>.

4.14. The EESC recommends strengthening as much as possible the social dimension of the digitalisation process as a fundamental part of the European Social Pillar <sup>(11)</sup>. For this reason, the Committee proposes the establishment of a series of societal challenges to be achieved using the new digital infrastructure. The implementation and use of high-level machines must have an evident and measurable positive impact on all citizens' daily lives.

4.15. The EESC considers that HPC and quantum technology represent two strategic goals for European growth and competitiveness. The Committee thus recommends developing both technologies in parallel in order to ensure that the EU can benefit from the best performance and opportunities in the medium and long term.

Brussels, 23 May 2018.

*The President*  
*of the European Economic and Social Committee*  
Luca JAHIER

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<sup>(10)</sup> OJ C 434, 15.12.2017, p. 30; OJ C 173, 31.5.2017, p. 45.

<sup>(11)</sup> OJ C 125, 21.4.2017, p. 10.



**Opinion of the European Economic and Social Committee on — Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1343/2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area**

(COM(2018) 143 *final* — 2018/0069 COD)

(2018/C 283/13)

Referral	European Parliament, 16.4.2018 Council of the European Union, 12.04.2018
Legal basis	Article 43(2) of the Treaty on the Functioning of the European Union
Section responsible	Agriculture, Rural Development and the Environment
Adopted at plenary	23.5.2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	187/3/10

Since the Committee unreservedly endorses the content of the proposal and feels that it requires no comment on its part, it decided, at its 535th plenary session of 23 and 24 May 2018 (meeting of 23 May), by 187 votes to 3 with 10 abstentions, to issue an opinion endorsing the proposed text.

Brussels, 23 May 2018.

*The President  
of the European Economic and Social Committee*  
Luca JAHIER

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